



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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA
Tuesday, April 23, 2019**

**REGULAR CLOSED SESSION
11:00 a.m., Boardroom**

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. *Timothy Alford, et al. v. East Bay Municipal Utility District, et al.*
Contra Costa County Superior Court, Case No. MSC16-01348
2. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2):
 - a. Town of Moraga
Claim No. 2017-L-290
 - b. William Strauss and Suzanne Strauss
Claim No. 2018-L-076

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

**REGULAR BUSINESS MEETING
1:15 p.m., Boardroom**

ROLL CALL:

BOARD OF DIRECTORS:

- Pledge of Allegiance

PRESENTATIONS:

- California Municipal Utilities Association Award for the Resource Recovery Program

ANNOUNCEMENTS FROM CLOSED SESSION:

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

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

1. Approve the Regular Meeting Minutes of April 9, 2019.
2. File correspondence with the Board.
3. Authorize an agreement with the City of Pleasant Hill in the total amount not to exceed \$146,916 to upgrade District gate valve boxes after street paving beginning on or after April 23, 2019 through June 30, 2019.
4. Authorize an agreement beginning on or after April 23, 2019 with Scott Johnston, Inc., in an amount not to exceed \$100,000 for supplying software support services for the District's Laboratory Information Management System for two years.
5. Authorize an agreement beginning on or after April 23, 2019 with Tait Environmental Services, Inc., in an amount not to exceed \$943,786 for engineering design services for the Fuel System Improvements Project.
6. Approve the Water Supply Assessment requested by the City of Oakland for the Downtown Oakland Specific Plan pursuant to California Water Code, Sections 10910-10915.
7. Approve the February and March 2019 Monthly Investment Transactions Reports.
8. Approve revisions to Policy 4.07 – Investment Policy which was last reviewed on April 24, 2018, and affirm existing delegation of authority for the management of investments on behalf of the District to the Director of Finance, who is also acting as the Treasurer of the District. (Resolution)

DETERMINATION AND DISCUSSION:

9. Conduct a second reading of and enact an ordinance amending the Regional Private Sewer Lateral Ordinance (Ordinance No. 359-13, as previously amended), specifically sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 18 thereof. (Second Reading and Vote – Ordinance No. 369-19)
10. Introduction and first reading on an ordinance amending Section 21 of the EBMUD Employees' Retirement System Ordinance (Ordinance No. 40) to update the actuarially assumed rate of return from 7.25 percent to 7.00 percent. (Introduction and First Reading – Ordinance No. 370-19)
11. File the Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 – Water Supply Availability and Deficiency, and declare that the District's water supply is sufficient for meeting customer demands in 2019.
12. General Manager's Report.

REPORTS AND DIRECTOR COMMENTS:

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

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, May 14, 2019 in the Administration Center Boardroom, 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, and can be viewed on our website at www.ebmud.com.

BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, April 23	Sustainability/Energy Committee Linney {Chair}; Katz, Mellon	9:30 a.m. Training Resource Center	<ul style="list-style-type: none"> • Photovoltaic Update • Climate Action Policy • Wastewater Biogas Utilization Update
	Finance/Administration Committee Patterson {Chair}; Coleman; Katz	10:30 a.m. Training Resource Center	<ul style="list-style-type: none"> • Quarterly Financial Reports • Monthly Investments Transactions Reports • Investment Policy Annual Review • Electronic Bill Presentment and Payment and Payment Processing Update
	Board of Directors	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
Tuesday, May 14	Planning Committee Linney {Chair}; McIntosh; Mellon	9:15 a.m. Training Resource Center	
	Legislative/Human Resources Committee Coleman {Chair}; McIntosh; Patterson	10:15 a.m. Training Resource Center	
	Board of Directors	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
Monday, May 27	Memorial Day		<i>District Offices Closed</i>
Tuesday, May 28	Finance/Administration Committee Patterson {Chair}; Coleman; Katz	Time and location TBD	
	Board of Directors	Time and location TBD	<ul style="list-style-type: none"> • Closed Session • Regular Meeting

MINUTES

Tuesday, April 9, 2019

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

Regular Closed Session Meeting

President Marguerite Young called to order the Regular Closed Session Meeting of the Board of Directors at 11:02 a.m. in the Administration Center Board Room.

ROLL CALL

Directors John A. Coleman, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call. Director Andy Katz arrived in Conference Room 8 at 11:10 a.m.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Assistant General Counsel Xanthe M. Berry (Items 1a, 1b, 1c, 2a and 2b), Risk Manager Karen K. Curry (Items 1a and 1b), Attorney Anna P. Gunderson (Items 1a and 1b), Engineering Manager Elizabeth Z. Bialek (Items 1c, 2a, and 2b), and Attorney Derek T. McDonald (Items 1c, 2a, and 2b).

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Young announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

Regular Business Meeting

President Young called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Young led the Pledge of Allegiance.

PRESENTATIONS

General Manager Alexander R. Coate announced the District received awards for two projects from the American Society of Civil Engineers-San Francisco Section. The Sobrante and Upper San Leandro Water Treatment Plants Ozone Systems Improvements Project received an award for the outstanding water/wastewater project of the year. This \$40 million construction project includes a new state of the art ozone system, seismic improvements, chemical system improvements, power system safety upgrades, and distributed controls system upgrades for greater reliability and improved treatment capabilities. On behalf of the Board of Directors, Director Lesa R. McIntosh presented the award to the following employees in attendance representing the entire project team: Assistant Engineer Samuel A. Abraham, Assistant Engineer Joseph K. Kacyra, Maintenance Superintendent Theodore Q. Lam, Associate Civil Engineer Brett B. Margosian, Assistant Engineer Besnik Miftari, Water Treatment Supervisor Bryan G. Miller, Associate Civil Engineer Ali Sheikholeslami, Associate Civil Engineer Christian L. Shumate, Engineering Manager Serge V. Terentieff, Maintenance Superintendent Lisa A. Toth, and Engineering Manager Jimi Yoloeye. The San Pablo Tunnel East Access Shaft Improvement Project received an award for small project of the year. The tunnel is located 150 feet below the ground surface and the project team applied innovative approaches to safely and efficiently install a new 42-inch valve in the tunnel and a short segment of tunnel liner. On behalf of the Board of Directors, President Marguerite Young presented the award to the following employees in attendance representing the entire project team: Senior Civil Engineer Timothy P. Karlstrand, Senior Civil Engineer Marshall P. McLeod, Senior Construction Inspector Joseph N. Patton, and Associate Civil Engineer Karl F. Tingwald.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Michaela Whitten-Rider commented on a “no boat” buoy placed in the cove behind her home in the North Shore Camanche Reservoir area which she says is impacting her family’s ability to park their boat near their home; and 2) Ivette Rivera commented on copies of an Appellant’s Reply Brief (Ivette Rivera v. East Bay Municipal Utility District, et al. – Appeal from the U.S. District Court for the Northern District of California, NO. CV-15-00389 SBA) that she provided to the Board of Directors.

General Manager Coate responded to Board questions regarding Ms. Whitten-Rider’s comments. The Board requested a follow up information memo on the issue and referred Ms. Whitten-Rider to staff for follow up.

CONSENT CALENDAR

- Item 4 was removed from the Consent Calendar for comment.
- Motion by Director Coleman, seconded by Director Mellon, to approve the recommended actions for Items 1-3 and 5-6 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 058-19** – Approved the Special and Regular Meeting Minutes of March 26, 2019.
2. The following correspondence was filed with the Board: **1)** Undated letter, including attachments, from Nicholas and Michaela Rider to Dr Sirs: Ref. North shore Camanche; **2)** Appellant’s Reply Brief: Ivette Rivera v. East Bay Municipal Utility District, et al. – Appeal from the U.S. District Court for the Northern District of California, NO. CV-15-00389 SBA; **3)** Presentation entitled “Proposed Amendments to Regional Private Sewer Lateral Ordinance,” dated April 9, 2019; **4)** Memo to Board of Directors from Manager of Human Resources Laura A. Acosta entitled “Berkeley Public Schools Fund’s 2019 Spring Luncheon: Pathways to the Future – April 19, 2019”; and **5)** Speakers’ Bureau and Outreach Record CY19 dated April 8, 2019.
3. **Motion No. 059-19** – Awarded a contract to the lowest responsive/responsible bidder, Nutrien Ag Solutions, Inc., in an annual amount, after the addition of taxes, not to exceed \$143,184 for supplying spray and pre-emergent herbicide materials and related services to control vegetation at various District facilities and properties for three years, beginning on or after April 15, 2019 with two options to renew for an additional one-year period for a total cost of \$715,920 under Request for Quotation No. 1817.
4. **Motion No. 060-19** – Awarded a contract to the lowest responsive/responsible bidder Ferguson Waterworks in an annual amount, after the addition of taxes, not to exceed \$989,576 for supplying resilient seated gate and butterfly valves for two years, beginning on or after April 9, 2019 with three options to renew for an additional one-year period for a total cost of \$4,947,880 under Request for Quotation No. 1905A.
 - Addressing the Board was Cisco Ortega from Ferguson Waterworks who thanked the Board for the opportunity to work with the District and acknowledged staff for their work on the contract.
 - Motion by Director Mellon, seconded by Director McIntosh, to approve the recommended action for Item 4, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
5. **Motion No. 061-19** – Authorized an agreement beginning on or after April 15, 2019 with Shaw Law Group, PC, in an amount not to exceed \$46,000 for Harassment Prevention Training for one year with two options to renew for an additional one-year period for a total cost of \$138,000.
- 6a.-6b. **Motion No. 062-19** – Approved the assignment of the following contracts from Cooper Pugged Management, Inc. to CPM Associates, Inc. effective April 9, 2019: Carisbrook Reservoir and Skyline Pumping Plant Replacements Project – Special Inspection Services, previously awarded under Board Motion 128-18 on September 11, 2018 in an amount not to exceed \$87,708; and Sobrante and Upper San Leandro Water Treatment Plants Ozone System Improvements – Construction Support Services, previously awarded under Board Motion 058-17 on April 25, 2017 in an amount not to exceed \$1,692,170.

DETERMINATION AND DISCUSSION

7. Legislative Update.

Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met this morning and supported the staff recommended positions in Legislative Report No. 02-19. Manager of Legislative Affairs Marlaigne K. Dumaine summarized the bills and recommended actions contained in the report. Ms. Dumaine responded to Board questions regarding staff's recommendation of "Oppose unless Amended" for SB 332. As reported to the Legislative/Human Resources Committee, Ms. Dumaine explained the bill's intent is to increase the amount of wastewater that is recycled by essentially eliminating wastewater discharges to saline waters, and requiring that the flow of wastewater that would otherwise be discharged to saline water be recycled or reduced through water conservation and efficiency measures. If passed, the bill would require the District to essentially recycle all wastewater treated at the Main Wastewater Treatment Plant and to work with other wastewater facilities that discharge in EBMUD's drinking water service area to recycle their treated wastewater for use in the District's service area. She discussed additional, potential operational and financial impacts to the District and said staff will be communicating the District's concerns and bill analysis with the bill author, sponsors and supporters. There was additional discussion and the Board asked Ms. Dumaine to attend and testify during the Judiciary Committee hearing on the bill.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Item 7, with the exception of SB 332 (Hertzberg) Wastewater Treatment: Recycled Water; carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
- Motion by Director Coleman, seconded by Director McIntosh, to approve the recommended action for SB 332 (Hertzberg) Wastewater Treatment: Recycled Water.
- Substitute Motion by Director Mellon to postpone taking action on SB 332 to a later date. Following Board discussion, Director Mellon withdrew the Substitute Motion.
- Motion by Director Coleman, seconded by Director McIntosh, to approve the recommended action for SB 332 (Hertzberg) Wastewater Treatment: Recycled Water carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 063-19 – Received Legislative Report No. 02-19 and approved positions on the following bills: SUPPORT AB 292 (Quirk) Recycled Water: Raw Water and Groundwater Augmentation; SUPPORT AB 834 (Quirk) Freshwater and Estuarine Harmful Algal Bloom Program; SUPPORT AB 1180 (Friedman) Water: Recycled Water; SUPPORT AB 1672 (Bloom) Solid Waste: Flushable Products; SUPPORT IN CONCEPT SB 1 (Atkins) California Environmental, Public Health, and Workers Defense Act of 2019; OPPOSE UNLESS AMENDED SB 332 (Hertzberg) Wastewater Treatment: Recycled Water; and SUPPORT SB 785 (Committee on Natural Resources and Water) Public Resources: Parklands, Freshwater Resources, and Coastal Resources.

8. **Introduction and First Reading of Amendments to the Regional Private Sewer Lateral Ordinance (Ordinance No. 359-13, as Previously Amended) to Amend Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 18.**

Manager of Wastewater Environmental Services Alicia R. Chakrabarti presented the recommended action to introduce for first reading amendments to the Regional Private Sewer Lateral (PSL) Ordinance. Sections 11 and 12 of the ordinance specify the requirements for two groups that are not subject to trigger-based compliance: certain persons within common interest developments, and persons responsible for over 1,000 feet of PSLs. Both of these groups have compliance requirements by July 12, 2021. Staff recommends amending the ordinance to provide clarification and transparency to support these groups in meeting the deadline and coming into compliance. In addition, staff has identified additional sections of the ordinance that should be modified or clarified to ensure consistent implementation and enforcement. This item was discussed at the February 13, 2019 Planning Committee meeting and the March 12, 2019 Board meeting. Ms. Chakrabarti provided additional information about the default presumption for common interest developments in response to questions raised at the March 12 Board meeting. Ms. Chakrabarti and Attorney Jonathan D. Salmon also responded to Board questions on ordinance fines and civil penalties. The second reading and final action is currently scheduled for consideration at the April 23, 2019 Board meeting. If approved, the amendments will take effect on May 24, 2019.

Ordinance No. 369-19 – An Ordinance Amending Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 18 Of Ordinance No. 359-13, As Previously Amended Which Is The Regional Private Sewer Later Ordinance (*Introduction and First Reading*).

- Director Patterson left the room at 2:20 p.m. and returned at 2:23 p.m.

9a.-9b. **Approve implementation of the third year general salary increase of 3.8% in accordance with the 2017-2021 Memoranda of Understanding between the District and AFSCME Locals 2019 and 444, IUOE Local 39 and IFPTE Local 21; and authorize a 3.8% general salary increase for Senior Management Team Members, Managers, Confidential employees and other Non-Represented employees in accordance with Resolution No. 35074-18. For purposes of Section 54953(c)(3) of the Brown Act, Senior Management Team Members referenced herein include: General Manager, General Counsel, Secretary of the District, Manager of Customer and Community Services, Director of Engineering and Construction, Director of Finance, Manager of Human Resources, Director of Operations and Maintenance, Director of Wastewater, Director of Water and Natural Resources, Special Assistant IV (Legislative Affairs), and Special Assistant IV (Public Affairs).**

President Young announced that pursuant to Section 54953(c)(3) of the Government Code, the Board of Directors is providing an oral report prior to taking action on the salary, salary schedule and compensation paid in the form of fringe benefits paid to the members of the Senior Management Team listed below, including the General Manager and the General Counsel. In accordance with the employment agreements with the General Manager and the General Counsel, the Board may authorize the same general salary increases and benefits to the General Manager and the General Counsel as that granted to District employees at the department director level. As such, it is recommended that the General Manager and the General Counsel each receive a 3.8% increase to their current annual salary as set forth in their

respective employment agreements and, commensurate with the 3.8% increase being granted to all District employees in this action, effective April 15, 2019. The 3.8% increase consists of a cost-of-living increase of 3.3% based on the Consumer Price Index and an additional 0.5% enhancement. Additionally, it is recommended that the following members of the Senior Management Team also be granted a 3.8% increase in their current annual salary, commensurate with the increase being granted to all District employees in this action, effective April 15, 2019: Secretary of the District; Manager of Customer and Community Services; Director of Engineering and Construction; Director of Finance; Manager of Human Resources; Director of Operations and Maintenance; Director of Wastewater; Director of Water and Natural Resources; Special Assistant IV (Legislative Affairs); and Special Assistant IV (Public Affairs). The current salaries of the aforementioned members of the Senior Management Team are contained in the Salary Schedule dated April 16, 2018, on file with the Secretary of the District.

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended action for Items 9a-9b, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35136-19 – Revise District Salary Ranges, Salaries and Wage Rates.

10. General Manager's Report.

General Manager Alexander R. Coate said to contact him if there were Board questions on the March 2019 Monthly Report and that staff would be checking with Board members after the meeting on logistics for upcoming ward briefing events.

REPORTS AND DIRECTOR COMMENTS

11. Committee Reports.

- There were no Committee Reports filed with the Board.
- Planning Committee Chair Doug Linney reported the Committee met at 8:45 a.m. to receive information on Earthquake Preparedness; a Water Quality Program Annual Update; a Regulatory Compliance Semi-Annual Report; an Advanced Metering Infrastructure Water-Energy Nexus Study Update; the South Interceptor 3rd Street Rehabilitation Phase 2 Project; and an Annual Recreation Report.
- Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met at 10:15 a.m. to receive information on Legislative Report No. 02-19 and Electrical Engineer recruitment and retention efforts.

12. Other Items for Future Consideration.

None.

13. Director Comments.

- Director Coleman reported attending/participating in the following events: Retirement party for Doug Wallace in Oakland on March 28; East Bay Economic Development Alliance Foundation's Innovation Awards event in Oakland on March 28; Lafayette City Council meeting in Lafayette on April 8; and plans to attend the FRWA Board meeting and the League of Women Voters Luncheon in Oakland on April 11.
- Director Mellon reported attending/participating in the following events: Alameda County Mayors' Conference in Fremont on March 13; EBMUD Retirement Board meeting in Oakland on March 21; DERWA Board meeting in San Ramon on March 25; and Alameda County Special Districts Association annual dinner in Castro Valley on March 28.
- Director Patterson reported on the recent passing of his close friends Clemon "Clem" Daniels, former star running back for the Oakland Raiders and The Very Reverend James "Father Jay" Vernon Matthews II, third rector of the Cathedral of Christ the Light in Oakland. He asked that the Board consider closing the meeting in memory of Father Jay and that a condolence letter be sent to his family.
- President Young reported attending the EBMUD Retirement Board meeting in Oakland on March 21.
- Directors Katz, Linney, and McIntosh had no report.

ADJOURNMENT

President Young closed the meeting in memory of The Very Reverend James Vernon Matthews II who passed away on March 30, 2019.

President Young adjourned the meeting at 2:39 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: April 23, 2019

Marguerite Young, President of the Board



AGENDA NO.
MEETING DATE

3.

April 23, 2019

TITLE CITY OF PLEASANT HILL GATE VALVE BOX UPGRADES

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

RECOMMENDED ACTION

Authorize an agreement with the City of Pleasant Hill (City) in the total amount not to exceed \$146,916 to upgrade District gate valve boxes after street paving beginning on or after April 23, 2019 through June 30, 2019. By approving this agreement, the Board of Directors finds that this work cannot be satisfactorily performed under civil service.

SUMMARY

The District has gate valve boxes in public streets that allow access to buried water distribution valves for operation of the water system. The City is completing paving projects in various streets containing District water distribution pipes and valves. This agreement will allow the City or its contractor to modify the District's gate valve boxes to facilitate street paving and to upgrade the gate boxes to current District standards once the paving is completed.

DISCUSSION

The District has approximately 58,000 valves in the water distribution systems that are buried under public streets and rights of way. These valves are critical to operating and maintaining the water distribution system. Each valve has a box that allows access to the valve.

The City is paving various streets under the City's 2019 Street Resurfacing Project No. 02-19. This agreement will allow the City's contractor to lower 212 valve boxes to facilitate surface paving on the condition the City's contractor then upgrades each valve box to grade using District-supplied materials and in accordance with current District standards. The contractor will upgrade the valve box to a "G5" concrete box which permits quick, safe, reliable access to operate District valves. District staff will inspect and approve the work prior to paying the City for installing new valve boxes. This agreement supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

Funds Available: FY19		Budget Code: WSC/725/2009544/7999/5312
DEPARTMENT SUBMITTING Maintenance and Construction	DEPARTMENT MANAGER or DIRECTOR Michael R. Ambrose	APPROVED General Manager

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

SUSTAINABILITY

Economic

Funding for this work is available in the FY19 budget for Pipeline Appurtenances.

Social

Local 444 was notified of this agreement on February 8, 2019. Local 444 issues were addressed at meetings on March 7 and April 3, 2019 and resolved.

Environmental

Water distribution valves are critical for isolating pipes to minimize property and environmental damage due to main breaks. This agreement will limit the time the valves are inaccessible for emergency response during the paving project and improve access for the future.

ALTERNATIVE

Perform the work with District forces. This alternative is not recommended because District resources would not be available to meet the City's schedule requirements.



AGENDA NO.
MEETING DATE

4.
April 23, 2019

TITLE LABORATORY INFORMATION MANAGEMENT SYSTEM SOFTWARE SUPPORT

☒ MOTION _____ ☐ RESOLUTION _____ ☐ ORDINANCE _____

RECOMMENDED ACTION

Authorize an agreement beginning on or after April 23, 2019 with Scott Johnston, Inc. in an amount not to exceed \$100,000 for supplying software support services for the District's Laboratory Information Management System (LIMS) for two years.

SUMMARY

This agreement would provide software support services for the District's legacy LIMS during implementation of the replacement system.

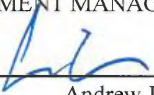
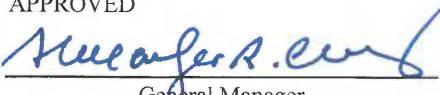
DISCUSSION

The District uses the LIMS to process and report on regulatory, customer and internal samples processed through the District's laboratory. The LIMS, which the District has used since the late 1980s, is customized, complex and uses a unique computer language called Intelligent Data Exchange Language (IDXl) that is dated, unique and difficult to support. The District has initiated a replacement project for the LIMS, and implementation of a new system is scheduled to begin later this year. District staff currently supports the legacy LIMS software, but will need additional assistance during the implementation of the new LIMS.

This effort supports the Water Quality and Environmental Protection Strategic Plan goal by ensuring the District's laboratory can process samples rapidly and accurately.

CONSULTANT SELECTION

After an extensive search, the District found three companies with the skill and/or experience needed to work on a LIMS using IDXl. Requests for bids were sent to these three firms. Scott Johnston, Inc. is the only firm that responded; one firm declined to bid and the other did not respond. Scott Johnston, Inc. has been working with IDXl-based LIMS software since 1990, has worked on the District's system in the past, and is the only consultant available and qualified to work on and support the District's LIMS software.

Funds Available: FY19		Budget Code: WSO/251/8762/5312
DEPARTMENT SUBMITTING Information Systems	DEPARTMENT MANAGER or DIRECTOR  Andrew J. Levine	APPROVED  General Manager

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

SUSTAINABILITY

Economic

This item is included in the FY19 operating budget.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

Locals 2019 and 21 were notified of the agreement on January 8, 2019 and did not raise any specific issues related to this agreement.

ALTERNATIVES

Procure LIMS IDXL support from another vendor. This alternative is not recommended, as all other potential vendors were identified and contacted. Scott Johnston, Inc. is the only option for supporting the District's LIMS IDXL software.

Do not procure maintenance and support for the LIMS IDXL software. This alternative is not recommended because the District does not have the resources to maintain and support the legacy LIMS IDXL software and implement a new LIMS solution concurrently, which would leave the legacy LIMS IDXL software unsupported.

Attachments

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Professional Services Agreement Laboratory Information Management System Software Support - Two-Year Contract				DATE: March 18, 2019							
CONTRACTOR: Scott Johnston, Inc. Manlius, NY 13104 Sole Proposer				PERCENTAGE OF CONTRACT DOLLARS							
BID/PROPOSER'S PRICE: \$100,000		FIRM'S OWNERSHIP Ethnicity: White Gender: Men		Availability Group White Men	Contracting Objectives 25%	Participation 100.0%					
				White Women 6%	0.0%	0.0%					
				Ethnic Minorities 25%	0.0%	0.0%					
CONTRACT EQUITY PARTICIPATION											
COMPANY NAME PRIME: Scott Johnston, Inc. SUBS: None	ESTIMATED AMOUNT \$100,000	ETHNICITY White	GENDER		CONTRACTING PARTICIPATION						
			M X	W	White-Men 100.0%	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
TOTAL		\$100,000			100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)											
		White Men	White Women	Ethnic Minorities	Total Employees						
No. of Employees:		1	0	0	1						
Percent of Total Employees:		100.0%	0.0%	0.0%							
MSA Labor Market %:		35.0%	30.9%	34.1%							
MSA Labor Market Location:		New York									
COMMENTS											
Contract Equity Participation - 100% White Men participation.											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
NA				NA							



AGENDA NO.
MEETING DATE

5.
April 23, 2019

TITLE FUEL SYSTEM IMPROVEMENTS PROJECT DESIGN SERVICES

☒ MOTION _____ ☐ RESOLUTION _____ ☐ ORDINANCE _____

RECOMMENDED ACTION

Authorize an agreement beginning on or after April 23, 2019 with Tait Environmental Services, Inc. (Tait) in an amount not to exceed \$943,786 for engineering design services for the Fuel System Improvements Project.

SUMMARY

The Fuel System Improvements Project will upgrade fueling stations to meet current and future State and Federal regulations. Tait will design facility upgrades, perform tank inspections and assessments, and provide engineering services for the Fuel System Improvements Project.


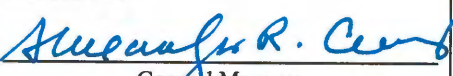
DISCUSSION

The District presently maintains 21 fueling stations in five counties. Most stations need upgrades to meet current and future State and Federal regulations; a few require expansion or consolidation. Existing fuel-dispensing facilities are 25 to 30 years old and are increasingly difficult to maintain. Fourteen of the facilities support District operations, construction and maintenance. The remaining seven facilities are operated by concessionaires at reservoir recreational facilities.

Tait will develop design drawings and specifications, and provide engineering services during construction of the dispensing locations. Tait will also provide inspections and assessments for backup generator tanks. The design work will include upgrading fleet and retail dispensers, resizing or relocating of aboveground storage tanks, replacing tank monitoring systems and wiring, removing unused equipment, addressing fall safety, and improving tertiary containment. The project supports the District's Water Quality and Environmental Protection and Long-Term Infrastructure Investment Strategic Plan goals.

CONSULTANT SELECTION

A request for proposals was sent to eight firms with expertise in fuel-dispensing facilities design and construction. The District received two proposals. After review, the District interviewed the two project teams.

Funds Available: FY19		Budget Code: 783/7999/2012849
DEPARTMENT SUBMITTING Water Operations	DEPARTMENT MANAGER or DIRECTOR  David A. Briggs	APPROVED  General Manager

Tait was selected based on their qualifications and experience, the quality of their written proposal, and oral comment/responses at the interview.

SUSTAINABILITY

Economic

Funding for this item is included in the FY19 budget for the Fuel System Improvements Project. The project will improve long-term fuel system reliability and support the District's Fuel Emergency Mitigation Plan.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

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

Locals 2019 and 21 were notified of this agreement on July 17, 2018 and did not raise any specific issues related to this agreement.

Environmental

The upgrades will prevent or reduce incidental fuel spillage and better contain fuel if a spill did occur. Notices of Exemption will be filed with Contra Costa, Alameda, Amador, San Joaquin, and Calaveras Counties after the 10 percent design submittal.

ALTERNATIVES

Perform the work with District forces. This alternative is not recommended because District staff does not have the necessary expertise. The project work requires an experienced design firm to incorporate the many regulations related to electrical, structural, environmental, fire, and air quality that are unique to fuel storage and dispensing systems.

Do not perform the work. This alternative is not recommended because the work is required to maintain code and regulatory compliance and to improve employee safety.


Attachments

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



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE				DATE:								
Professional Services Agreement Fuel Systems Improvements Project Design Services				April 16, 2019								
CONTRACTOR:				PERCENTAGE OF CONTRACT DOLLARS								
Tait Environmental Services, Inc. Santa Ana, CA 92705				Availability Group		Contracting Objectives		Participation				
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		100.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
\$943,786		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: Tait Environmental Services, Inc.		\$943,786	White	X		100.0%						
SUBS: None												
TOTAL		\$943,786				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		38		10		71		119				
Percent of Total Employees:		31.9%		8.4%		59.7%						
MSA Labor Market %:		39.0%		33.7%		27.3%						
MSA Labor Market Location:		Total USA										
COMMENTS												
Contract Equity Participation - 100.0% White Men participation.												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AGENDA NO.
MEETING DATE

6.

April 23, 2019

TITLE **WATER SUPPLY ASSESSMENT FOR DOWNTOWN OAKLAND SPECIFIC PLAN**

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

RECOMMENDED ACTION

Approve the Water Supply Assessment (WSA) requested by the City of Oakland (City) for the Downtown Oakland Specific Plan (Project) pursuant to California Water Code, Sections 10910-10915.

SUMMARY

The Project is located in the central downtown portion of the City and is generally bounded to the north by 27th Street, to the south by the Jack London Estuary Waterfront and Embarcadero West, to the east by Lake Merritt, and to the west by Interstate 980, Brush and Market Streets (see Attachment A). The Project area consists of approximately 850 acres (1.3 square miles). At build-out, the Project will include approximately 30,000 multi-family housing units, 13.8 million square feet of office space, 2.5 million square feet of retail space, 940,000 square feet of commercial space, 184,000 square feet of light industrial space, and 1.3 million square feet of institutional space, in addition to existing land uses.

The existing land uses consist primarily of mixed-use residential, transportation, and commercial with a historical water use of approximately 2.6 million gallons per day (MGD). The projected water demand at Project build-out including existing historical water use is estimated to be approximately 9.4 MGD. This demand is accounted for in the District's Urban Water Management Plan (UWMP) 2015. Approval of the WSA by the Board of Directors is required prior to its submittal to the City. The WSA is described in the attached letter (Attachment B) and, upon Board approval, will be sent to the City.

DISCUSSION

On February 8, 2019, the City submitted a formal request for a consultation between the District and the City regarding preparation of a WSA for the Project, pursuant to California Environmental Quality Act Guidelines, Section 15155, and California Water Code, Sections 10910-10915. The Project, for which an Environmental Impact Report is being prepared, meets the threshold requirement for an assessment of water supply availability based on the amount of water this Project would require, which is greater than the amount of water required by a 500-dwelling-unit project. The City is required to consult with the public water supplier to determine whether the water demand associated with the Project was

Funds Available: FY		Budget Code:	
DEPARTMENT SUBMITTING Engineering and Construction	DEPARTMENT MANAGER or DIRECTOR Xavier J. Irias		APPROVED General Manager

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

included in its last UWMP and to assess whether its 20-year water supply (available during normal, single-dry and multiple-dry water years) will meet the water demand associated with the Project.

The UWMP 2015 concludes that the District has, and will have, adequate water supplies to serve existing and projected demands within the Ultimate Service Boundary during normal and wet years but that deficits are projected for drought years. During multi-year droughts, the District may require significant customer water use reductions and may also need to acquire supplemental supplies to meet customer demand. The UWMP 2015 includes Drought Management Program (DMP) Guidelines that establish the level of water use restrictions the District may implement under varying conditions. Under the DMP Guidelines, water use restrictions may be determined based upon either projected end-of-September Total System Storage (TSS) or water use restriction mandates from the State Water Resources Control Board. When state-mandated water use restrictions exceed the reductions that would otherwise be called for based upon the end-of-September TSS, the District's water use reduction requirements may be guided by the applicable state mandates. Under either scenario, while the District strives to keep water use reductions at or below 15 percent, if the drought is severe, mandatory water use reductions could exceed 15 percent.

The Project will be subject to the same drought restrictions that apply to all District customers. In addition, the proposed Project will be subject to District regulations aimed at encouraging efficient water use, such as Sections 29 and 31 of the District's Regulations Governing Water Service. Section 29, "Water Use Restrictions," promotes efficient water use by District customers and prohibits certain uses of potable water. Section 31, "Water Efficiency Requirements," identifies the types of water efficiency requirements (i.e., maximum flow rates for flow control devices) for water service.

The WSA letter requests that the City comply with the California Code of Regulations concerning water-efficient landscapes and District water service regulations, including compliance with Sections 29 and 31, described above, in force at the time the application is made. The District also requests a meeting to discuss water conservation opportunities in the Project area which will identify timely opportunities to maximize water conservation and identify District programs, as well as state and federal best management practices applicable to the Project.

Portions of the Project area fall within and around the main recycled water pipeline infrastructure of the East Bayshore Recycled Water Project service area. As part of its long-term water supply planning, the District will consider the feasibility of providing recycled water to the project area for appropriate uses including landscape irrigation and commercial uses, as well as toilet and urinal flushing in non-residential buildings. The District recommends the City and developers maintain continued coordination and consultation with the District about recycled water feasibility as they plan and implement the various components of the Project.

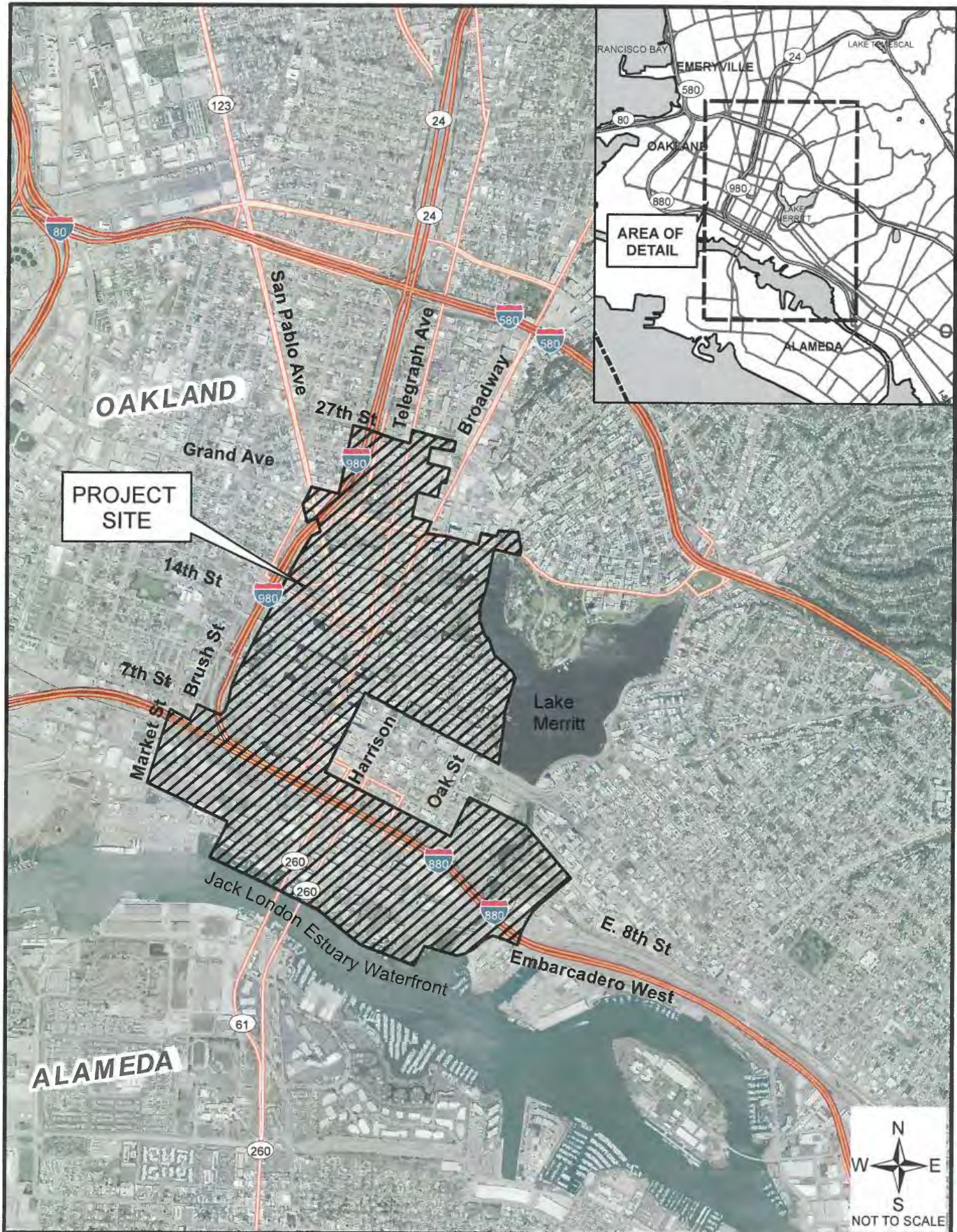
ALTERNATIVE

Do not submit a response. This alternative is not recommended. This WSA has been prepared pursuant to California Water Code, Sections 10910-10915 and is consistent with the law and the District's past WSAs.

Attachments

- A. Map – Downtown Oakland Specific Plan
- B. District's Response to February 8, 2019 Water Supply Assessment Request

I:\SEC\04-23-2019 Board Agenda Items\E&C WSA for Downtown Oakland Specific Plan.docx



DRAFT

April 23, 2019

Alicia Parker, Planner III
City of Oakland Bureau of Planning
259 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Water Supply Assessment – Downtown Oakland Specific Plan

Dear Ms. Parker:

This letter is in response to your request dated February 8, 2019, for water agency consultation (Enclosure 1) concerning the Water Supply Assessment (WSA) for the Downtown Oakland Specific Plan (Project), located in the City of Oakland (City), which is within East Bay Municipal Utility District's (EBMUD's) Ultimate Service Boundary. EBMUD appreciates the opportunity to provide this response.

Pursuant to Sections 10910-10915 of the California Water Code, the Project meets the threshold requirement for an assessment of water supply availability based on the amount of water this Project would require, which is greater than the amount of water required by a 500-dwelling-unit project.

Please note this WSA addresses the issue of water supply only and is not a guarantee of service; future water service is subject to the rates and regulations in effect at that time.

Project Demand

The water demand for the Project is accounted for in EBMUD's water demand projections, as published in EBMUD's Urban Water Management Plan (UWMP) 2015 (Enclosure 2). EBMUD's water demand projections account for anticipated future water demands within EBMUD's service boundaries and for variations in demand-attributed changes in development patterns. The historical water use in the Project area is approximately 2.58 million gallons per day (MGD). The projected water demand at Project build-out is estimated at 9.43 MGD.

EBMUD's demand projections indicate both densification and land use changes in a few existing land use classifications, including commercial and residential land use areas. These changes increase demand for EBMUD water. EBMUD's UWMP 2015 projects water demands over time, accounting for estimated variations in demand usage less conservation and recycled supply sources, as noted in the UWMP 2015, Table 4-1, Mid-Cycle Demand Projections (Table 1). Typically, EBMUD prepares a full demand study every ten years; the most recent version, the

2040 Demand Study, was completed in 2009. For planning purposes, water demands are estimated in five-year increments, but it is recognized that actual incremental amounts may occur stepwise in shorter time increments. An increase in usage by one customer in a particular customer class does not require a strict gallon-for-gallon increase in conservation by other customers in that class as, in actuality, the amount of potable demand, conservation and recycled water use EBMUD-wide will vary somewhat. In 2014, EBMUD prepared the Mid-Cycle Demand Assessment (MCDA) in order to assess any significant effects on metered water consumption caused by the 2008-2010 drought, and the economic downturn that affected growth in the Bay Area. As part of the MCDA, EBMUD reviewed recently updated city and county general plans for significant changes since the 2040 Demand Study, and held meetings with representatives from the cities of Alameda, Oakland, Richmond, and San Ramon. The MCDA concluded that, while the cities and counties might reach their build-out goals later than originally anticipated, they would still reach these goals by 2040. Accordingly, the MCDA validated the 2040 Demand Study, as demands are expected to gradually increase back to 2040 projected levels as development and water use return to pre-drought and pre-recession conditions. EBMUD plans to complete another comprehensive demand study in 2019 with a long-term horizon of 2050. As part of the demand study, EBMUD will reach out to each city and county in the service area to ask about projected development and future land use changes. The study results will be incorporated into the UWMP 2020.

Table 1
Mid-Cycle Demand Projections (UWMP 2015, Table 4-1)

TABLE 4-1				MID-CYCLE DEMAND PROJECTIONS		
AVERAGE ANNUAL DEMAND (MGD)	2015	2020	2025	2030	2035	2040
PROJECTED TOTAL DEMAND	232	267	276	290	304	312
CONSERVATION ¹	-33	-39	-44	-51	-57	-62
NON-POTABLE WATER ^{1,2}	-9	-11	-14	-17	-18	-20
PLANNING LEVEL OF DEMAND	190	217	218	222	229	230

¹ See Chapters 6 and 7 for more discussion of water recycling and conservation, respectively.
² Non-potable water includes recycled water and raw water projects.

Project Area

The Project is located in the central downtown portion of the City and is generally bounded to the north by 27th Street, to the south by the Jack London Estuary Waterfront and Embarcadero West, to the east by Lake Merritt, and to the west by Interstate 980, Brush and Market Streets. The Project area consists of approximately 850 acres. At build-out, the Project will include approximately 30,000 multi-family housing units, 13.8 million square feet of office space, 2.5 million square feet of retail space, 940,000 square feet of commercial space, 184,000 square feet of light industrial space, and 1.3 million square feet of institutional space, in addition to existing land uses.

EBMUD Water Demand Projections

Since the 1970s, water demand within EBMUD's service area has ranged from 200 to 220 MGD in non-drought years. Section 4.1 of the UWMP 2015 outlines past and current EBMUD water demand, including Figure 4-1 which shows historic water use (including metered and unmetered demands) within EBMUD's service area, along with the number of customer accounts. The 2040 water demand forecast of 312 MGD for EBMUD's service area can be reduced to 230 MGD with the successful implementation of water recycling and conservation programs, as outlined in the UWMP 2015. Current demand is lower than estimated in the MCDA as a result of the recent multi-year drought. This is because the planning level of demand may differ from the actual demand in any given year due to water use reductions that typically occur during droughts. After droughts, a rebound effect is expected wherein demand rises back to projected levels. Thus, the MCDA still reflects a reasonable expectation for demand in year 2040, as the demands are expected to gradually increase back to 2040 projected demand levels as development and water use return to pre-drought and pre-recession conditions. The proposed Project's future development and operations will not change EBMUD's 2040 demand projection.

EBMUD Water Supply, Water Rights and the UWMP 2015

EBMUD has water right permits and licenses that allow for delivery of up to a maximum of 325 MGD from the Mokelumne River, subject to the availability of Mokelumne River runoff and the senior water rights of other users. EBMUD's position in the hierarchy of Mokelumne River water users is determined by a variety of agreements between Mokelumne River water right holders and the terms of the appropriative water right permits and licenses.

Conditions that could, depending on hydrology, restrict EBMUD's ability to receive its full entitlement include:

- Upstream water use by senior water right holders.
- Downstream water use by riparian and senior appropriators and other downstream obligations, including protection of public trust resources.
- Variability in precipitation and runoff.

During prolonged droughts, the Mokelumne River supply cannot meet EBMUD's projected customer demands. To address this, EBMUD has completed construction of the Freeport Regional Water Facility and the Bayside Groundwater Project Phase 1, which are discussed below in the Supplemental Water Supply and Demand Management section of this assessment. EBMUD has obtained and continues to seek supplemental supplies.

The UWMP 2015, adopted on June 28, 2016 by EBMUD's Board of Directors under Resolution No. 34092-16, is a long-range planning document used to assess current and projected water usage, water supply planning, along with conservation and recycling efforts. EBMUD's water supply sources are discussed in Section 1.5.1 of the UWMP 2015. EBMUD's main water supply is the Mokelumne River, and EBMUD has rights to receive up to 325 MGD of water from this source subject to the availability of runoff, senior water rights of other users, and downstream

fishery flow requirements. EBMUD also has a Long-Term Renewal Contract (Contract No. 14-06-200-5183A-LTR1) with the United States (U.S.) Bureau of Reclamation to receive water from the Central Valley Project (CVP) through the Freeport Regional Water Facility in years when EBMUD's water supplies are relatively low (for more details, see Section 3.3.2 of the UWMP 2015). During some dry years, EBMUD may purchase water transfers to help meet customer demands. Section 5.1 of the UWMP 2015 discusses EBMUD's water transfer program.

EBMUD maintains a biennial budget and five-year capital improvement program to optimize investments and maximize drinking water quality, and the reliability, safety, flexibility, and overall efficiency of the water supply system. EBMUD's most recently adopted budget, which includes capital expenditures for the delivery of water supplies to its customers, can be found at <http://www.ebmud.com/about-us/investors/budget-and-rates/>.

EBMUD complies with applicable local, state, and federal regulations in the operation of its water supply system. Figure 1-4 of the UWMP 2015 illustrates the numerous local, state, and federal agencies that may regulate EBMUD's facilities and operations.

A summary of EBMUD's demand and supply projections, in five-year increments, for a 25-year planning horizon is provided in UWMP 2015, Table 4-5, Preliminary EBMUD Baseline Supply and Demand Analysis (Table 2).

EBMUD's evaluation of water supply availability accounts for the diversions of both upstream and downstream water right holders and fishery releases on the Mokelumne River. Fishery releases are based on the requirements of a 1998 Joint Settlement Agreement (JSA) between EBMUD, U.S. Fish and Wildlife Service, and the California Department of Fish and Wildlife. The JSA requires EBMUD to make minimum flow releases from its reservoirs to the lower Mokelumne River to protect and enhance the fishery resources and ecosystem of the river. As this water is released downriver, it is, therefore, not available for use by EBMUD's customers.

Table 2
Preliminary EBMUD Baseline Supply and Demand Analysis (UWMP 2015, Table 4-5)

TABLE 4-5		PRELIMINARY EBMUD BASELINE SUPPLY & DEMAND ANALYSIS					
SUPPLY AND DEMAND COMPARISON - NORMAL YEAR (MGD)		2015	2020	2025	2030	2035	2040
	MOKELUMNE SYSTEM	>190	>217	>218	>222	>229	>230
	DEMAND TOTALS	190	217	218	222	229	230
	DIFFERENCE	0	0	0	0	0	0
DRY YEAR RESULTS FROM EBMUDSIM (MGD)		2015	2020	2025	2030	2035	2040
SINGLE DRY YEAR OR FIRST YEAR OF MULTI-YEAR DROUGHT	MOKELUMNE SYSTEM	145	169	170	173	179	179
	CVP SUPPLIES²	36	35	35	35	35	35
	BAYSIDE³	0	0	0	0	0	0
	SUPPLY TOTALS	181	204	205	209	214	215
	PLANNING LEVEL DEMAND¹	190	217	218	222	229	230
	RATIONING⁴	5%	6%	6%	6%	7%	7%
	DEMAND TOTALS	180	203	204	208	213	214
	NEED FOR WATER (TAF)⁵	0	0	0	0	0	0
SECOND YEAR	MOKELUMNE SYSTEM	81	103	103	107	112	113
	CVP SUPPLIES²	71	71	71	71	71	71
	BAYSIDE³	0	0	0	0	0	0
	SUPPLY TOTALS	152	174	174	178	183	184
	PLANNING LEVEL DEMAND¹	190	217	218	222	229	230
	RATIONING⁴	20%	20%	20%	20%	20%	20%
	DEMAND TOTALS	152	174	175	178	184	185
	NEED FOR WATER (TAF)⁵	0	0	0	0	0	0
THIRD YEAR	MOKELUMNE SYSTEM	111	132	132	125	120	104
	CVP SUPPLIES²	40	40	40	40	40	40
	BAYSIDE³	1	1	1	1	1	1
	SUPPLY TOTALS	152	174	173	166	162	145
	PLANNING LEVEL DEMAND¹	190	217	218	222	229	230
	RATIONING⁴	20%	20%	20%	20%	20%	20%
	DEMAND TOTALS	152	174	174	178	183	184
	NEED FOR WATER (TAF)⁵	0	0	2	13	24	48

1. Planning Level of Demand accounts for projected savings from water recycling and conservation programs as discussed in Chapters 6 and 7 respectively. Customer demand values are based on the Mid Cycle Demand Assessment, October 2014.
2. Projected available CVP supplies are taken according to the Drought Management Program Guidelines discussed in Chapter 3.
3. For the purposes of this modeling effort, it is assumed that the Bayside Groundwater Project would be brought online in the third year of a drought.
4. Rationing reduction goals are determined according to projected system storage levels in the Drought Management Program Guidelines discussed in Chapter 3.
5. Need for Water includes unmet customer demand as well as shortages on the Lower Mokelumne River.

The available supply and demand shown in Table 2 was derived from EBMUD's baseline hydrologic model with the following assumptions:

- Customer demand values are based on the MCDA, and planning level demands account for projected savings from water recycling and conservation programs.
- EBMUD Drought Planning Sequence assumes water years 1976, 1977 and a modified 1978 hydrology.
- Total system storage is depleted by the end of the third year of the drought.
- EBMUD will implement its Drought Management Program (DMP) when necessary.

- The diversions by Amador and Calaveras Counties upstream of Pardee Reservoir will increase over time, eventually reaching the full extent of their senior rights.
- Releases are made to meet the requirements of senior downstream water right holders and fishery releases, as required by the JSA.
- EBMUD allocation of CVP supply is available the first year of a drought and subsequent drought years, according to the U.S. Bureau of Reclamation's Municipal and Industrial Shortage Policy.
- The Bayside Groundwater Project Phase 1 is available and brought online in the third year of a drought.

The UWMP 2015 concludes that EBMUD has, and will have, adequate water supplies to serve existing and projected demand within the Ultimate Service Boundary during normal and wet years, but that deficits are projected for multi-year droughts. During multi-year droughts, EBMUD may require significant customer water use reductions and may also need to acquire supplemental supplies to meet customer demand.

As discussed under the DMP Guidelines section in Chapter 3 of the UWMP 2015, EBMUD's system storage generally allows EBMUD to continue serving its customers during dry-year events. EBMUD typically imposes water use restrictions based on the projected storage available at the end of September and, based on recent changes to its DMP Guidelines (summarized below), may also implement water use restrictions in response to a State of California mandate. By imposing water use restrictions in the first dry year of potential drought periods, EBMUD attempts to minimize water use restrictions in subsequent years if a drought persists. Throughout dry periods, EBMUD must continue to meet its current and subsequent-year fishery flow release requirements and obligations to downstream agencies.

The UWMP 2015 includes DMP Guidelines that establish the level of water use restrictions EBMUD may implement under varying conditions. Under the DMP Guidelines, water use restrictions may be determined based upon either projected end-of-September Total System Storage (TSS) or water use restriction mandates from the State Water Resources Control Board. When state-mandated water use restrictions exceed the reductions that would otherwise be called for based upon end-of-September TSS, EBMUD's water use reduction requirements may be guided by the applicable state mandates. Under either scenario, while EBMUD strives to keep water use reductions at or below 15 percent, if the drought is severe, mandatory water use reductions could exceed 15 percent.

Despite water savings from EBMUD's aggressive conservation and recycling programs and water use restrictions called for in the DMP Guidelines, supplemental supplies are still needed in significant, severe, and critical droughts. The proposed Project will be subject to the same drought restrictions that apply to all EBMUD customers. In addition, the proposed Project will be subject to EBMUD's regulations aimed at encouraging efficient water use, such as Sections 29 and 31 of EBMUD's Regulations Governing Water Service. Section 29, "Water Use Restrictions," promotes efficient water use by EBMUD customers and prohibits certain uses of potable water. Section 31, "Water Efficiency Requirements," identifies the types of water efficiency requirements (i.e., maximum flow rates for flow control devices) for water service.

Supplemental Water Supply and Demand Management

The goals of meeting projected water needs and increased water reliability rely on supplemental supplies, improving reliability of existing water supply facilities, water conservation and recycled water programs.

By 2011, EBMUD completed construction of the Freeport Regional Water Facility and the Bayside Groundwater Project Phase 1 to augment its water supply during drought periods. However, additional supplemental supplies beyond those provided through these facilities will still be needed, as noted above. Chapter 5 of the UWMP 2015 describes potential supplemental water supply projects that could be implemented to meet projected long-term water demands during multi-year drought periods.

The Freeport Regional Water Facility became operational in February 2011. EBMUD's ability to take delivery of CVP water through the Freeport Regional Water Facility is based on its Long Term Renewal Contract (LTRC) with the U.S. Bureau of Reclamation. The LTRC provides for up to 133,000 acre feet of CVP supply in a single dry year, not to exceed a total of 165,000 acre feet in three consecutive dry years. Under the LTRC, the CVP supply is available to EBMUD only in dry years when EBMUD's total stored water supply is forecast to be below 500,000 total acre feet on September 30 of each year.

EBMUD is developing the Bayside Groundwater Project in phases to provide a source of supplemental supply in dry years. Construction of the first phase (Bayside Groundwater Project Phase 1) was completed in 2010, allowing EBMUD to inject treated potable water into a deep aquifer in the South East Bay Plain Groundwater Basin for later extraction, treatment, and use during severe droughts. A permit from the Department of Public Health is required before the groundwater can be extracted and treated for municipal use. As described in Chapter 4 of the UWMP 2015, EBMUD's drought planning calls for using the Bayside Groundwater Project Phase 1 during the third year of multi-year droughts to provide up to 1 MGD of water to meet customer demands. Additional information on the Bayside Groundwater Project can be found in Section 5.3 and Appendix E of the UWMP 2015.

Chapter 5 of the UWMP 2015 also lists other potential supplemental water projects, including Northern California water transfers, Bayside Groundwater Project Expansion, Expansion of Contra Costa Water District's Los Vaqueros Reservoir, and others that could be implemented to meet the projected long-term water supplemental need during multi-year drought periods. The UWMP 2015 identifies a broad mix of projects, with inherent scalability and the ability to adjust implementation schedules for particular components, which will allow EBMUD to pursue the necessary supplemental supplies while minimizing the risks associated with future uncertainties such as project implementation challenges and global climate change. The Environmental Impact Report that EBMUD certified for the Water Supply Management Program 2040 examined the impacts of pursuing these supplemental supply projects at a program level. Separate project-level environmental documentation will be prepared, as appropriate, for specific components as they are developed in further detail and implemented in accordance with EBMUD's water supply needs.

In addition to pursuing supplemental water supply sources, EBMUD also maximizes resources through continuous improvements in the delivery and transmission of available water supplies and investments in ensuring the safety of its existing water supply facilities. These programs, along with emergency interties and planned water recycling and conservation efforts, would ensure a reliable water supply to meet projected demands for current and future EBMUD customers within the current service area.

Water Conservation and Recycled Water Considerations

The proposed Project presents opportunities to incorporate water conservation measures. Conditions of approval for the implementation of the proposed Project should require that the Project comply with the California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). EBMUD staff would appreciate the opportunity to meet with the City to discuss conservation measures. This meeting will explore early opportunities to expand water conservation via EBMUD's conservation programs and best management practices applicable to the Project.

Conservation strategies will be required to achieve water use reduction goals and restrictions, including compliance with Sections 29 and 31, described above, of EBMUD's Regulations Governing Water Service, and the Water Conservation Act of 2009. The Water Conservation Act of 2009 sets an overall goal of reducing per capita urban water use by 20 percent by December 31, 2020.

Portions of the Project area fall within and around the main recycled water pipeline infrastructure of the East Bayshore Recycled Water Project service area. As part of its long-term water supply planning, EBMUD will consider the feasibility of providing recycled water to the project area for appropriate uses including landscape irrigation and commercial uses, as well as toilet and urinal flushing in non-residential buildings. EBMUD recommends the City and developers maintain continued coordination and consultation with EBMUD on the feasibility of recycled water as they plan and implement the various components of the Project.

The Project sponsor should contact Jennifer L. McGregor, Senior Civil Engineer, at (510) 287-1030 for further information.

Sincerely,

David J. Rehnstrom
Manager of Water Distribution Planning Division

DJR:CW:nl
sb19_051b_Downtown Oakland Specific Plan_WSA_Letter

Enclosures: 1. Letter of Request for Water Supply Assessment dated February 8, 2019
2. EBMUD Urban Water Management Plan 2015

cc: Board of Directors w/o Enclosure 2

RECEIVED

FEB 15 2019

WATER SERVICE PLANNING

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

February 8, 2019

Mr. David Rehnstrom
East Bay Municipal Utility District
Water Distribution Planning Division
375 11th Street
Oakland, CA 94607

Subject : Request for Water Supply Assessment for the proposed Downtown
Oakland Specific Plan (ER18020 and SP16-001)

Dear Mr. Rehnstrom:

Per amendments to Section 10912 of the Water Code implemented by Senate Bill 610, the City of Oakland is submitting the request to the East Bay Municipal Utility District (EBMUD) to prepare a Water Supply Assessment (WSA). The assessment is required in order to determine whether adequate water supply is available to meet the projected water demand of the proposed Downtown Oakland Specific Plan (the project) in the City of Oakland, which encompasses approximately 850 acres in Downtown Oakland. The project is generally bounded by 27th Street to the north; I-980, Brush and Market Street to the west; the Jack London estuary waterfront and Embarcadero West to the south; and Lake Merritt and Channel to the east.

An Environmental Impact Report (EIR) for the Downtown Oakland Specific Plan is being prepared by the City of Oakland as lead agency, as indicated in the attached Notice of Preparation dated January 4, 2019. The Downtown Oakland Specific Plan will be a 20 to 25- year planning document, with a planning horizon to the year 2040. The project would provide for up to approximately 29,077 residential units and 18,717,882 square feet of new non-residential space within the Plan Area, which collectively exceeds the thresholds for requiring a WSA. The development potential is estimated to result in 49,431 new residents and 58,598 new jobs.

The City respectfully requests that EBMUD prepare a water supply assessment for the project. The City acknowledges that this request for an assessment is required as part of

the environmental documents for the project. We appreciate your prompt response to this request.

Please contact me if you need additional information. I can be reached by phone at (510) 238-3362 or by email at aparker@oaklandca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alicia Parker".

Alicia Parker
Planner III
City of Oakland, Bureau of Planning

Attachment: January 4, 2019 Notice of Preparation

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

Dear Interested Party,

The comment period for the Notice of Preparation (NOP) of a Draft Environmental Impact Report for the Downtown Oakland Specific Plan has been extended to February 21, 2019. Responses to the NOP and any questions or comments should be directed in writing or via email to: Alicia Parker, City of Oakland, Bureau of Planning, 250 Frank H. Ogawa, Suite 3315 Oakland, CA 94612; (510) 238-3362 (phone); or by e-mail at aparker@oaklandca.gov. Written comments on the NOP must be received at the above mailing or e-mail address **by 4:00 p.m. on February 21, 2019**. Please reference case number **SP16-001** and **ER18020** in all correspondence.

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #

Project Title: Downtown Oakland Specific Plan**Lead Agency:** City of Oakland**Contact Person:** Alicia Parker**Mailing Address:** 250 Frank H. Ogawa, Suite 3315**Phone:** (510) 238-3362**City:** Oakland**Zip:** 94612**County:** Alameda**Project Location:** County: AlamedaCity/Nearest Community: Oakland**Cross Streets:** 27th St. (north); Brush and Market St. (west); Oakland Estuary (south); Lake Merritt (east) Zip Code: 94612**Longitude/Latitude (degrees, minutes and seconds):** ____° ____' ____" N / ____° ____' ____" W **Total Acres:** 850**Assessor's Parcel No.:** _____ **Section:** _____ **Twp.:** _____ **Range:** _____ **Base:** _____**Within 2 Miles:** State Hwy #: I-980; I-580; I-880; SR-24**Waterways:** Lake Merritt; Lake Merritt Channel; Oakland Estuary**Airports:** _____**Railways:** BART**Schools:** Lincoln ES; Westlake MS**Document Type:**

CEQA: ☒ **NOI** ☐ **Draft EIR** **NEPA:** ☐ **NOI** **Other:** ☐ **Joint Document**
☐ **Early Cons** ☐ **Supplement/Subsequent EIR** ☐ **EA** ☐ **Final Document**
☐ **Neg Dec** (Prior SCH No.) _____ ☐ **Draft EIS** ☐ **Other:** _____
☐ **Mit Neg Dec** **Other:** _____ ☐ **FONSI**

Local Action Type:

☐ **General Plan Update** ☒ **Specific Plan** ☐ **Rezone** ☐ **Annexation**
☐ **General Plan Amendment** ☐ **Master Plan** ☐ **Prezone** ☐ **Redevelopment**
☐ **General Plan Element** ☐ **Planned Unit Development** ☐ **Use Permit** ☐ **Coastal Permit**
☐ **Community Plan** ☐ **Site Plan** ☐ **Land Division (Subdivision, etc.)** ☐ **Other:** _____

Development Type:

☐ **Residential:** Units _____ Acres _____ ☐ **Transportation:** Type _____
☐ **Office:** Sq.ft. _____ Acres _____ Employees _____ ☐ **Mining:** Mineral _____
☐ **Commercial:** Sq.ft. _____ Acres _____ Employees _____ ☐ **Power:** Type _____ MW _____
☐ **Industrial:** Sq.ft. _____ Acres _____ Employees _____ ☐ **Waste Treatment:** Type _____ MGD _____
☐ **Educational:** _____ ☐ **Hazardous Waste:** Type _____
☐ **Recreational:** _____ ☐ **Other:** _____
☐ **Water Facilities:** Type _____ MGD _____

Project Issues Discussed in Document:

☒ **Aesthetic/Visual** ☐ **Fiscal** ☒ **Recreation/Parks** ☐ **Vegetation**
☐ **Agricultural Land** ☒ **Flood Plain/Flooding** ☐ **Schools/Universities** ☒ **Water Quality**
☒ **Air Quality** ☐ **Forest Land/Fire Hazard** ☐ **Septic Systems** ☐ **Water Supply/Groundwater**
☒ **Archeological/Historical** ☒ **Geologic/Seismic** ☐ **Sewer Capacity** ☐ **Wetland/Riparian**
☒ **Biological Resources** ☒ **Minerals** ☐ **Soil Erosion/Compaction/Grading** ☐ **Growth Inducement**
☐ **Coastal Zone** ☒ **Noise** ☐ **Solid Waste** ☒ **Land Use**
☐ **Drainage/Absorption** ☒ **Population/Housing Balance** ☒ **Toxic/Hazardous** ☒ **Cumulative Effects**
☐ **Economic/Jobs** ☒ **Public Services/Facilities** ☒ **Traffic/Circulation** ☐ **Other:** Energy; GHG

Present Land Use/Zoning/General Plan Designation:

See Attached.

Project Description: (please use a separate page if necessary)

The Downtown Oakland Specific Plan will provide a roadmap for how the area develops over the next 20 to 25 years through policy guidance on land use, transportation, housing, economic development, public spaces, cultural arts, and social equity. The Plan aims to ensure that Downtown remains a place of continuing growth and revitalization, as well as a valuable resource for the larger Oakland community through increased employment, housing, arts, and cultural opportunities. Supporting existing residents by growing existing businesses and the creative economy are important to creating a plan that serves both current and future residents.

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation or previous draft document) please fill in.

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X".
If you have already sent your document to the agency please denote that with an "S".

<input checked="" type="checkbox"/> Air Resources Board	<input checked="" type="checkbox"/> Office of Historic Preservation
<input type="checkbox"/> Boating & Waterways, Department of	<input type="checkbox"/> Office of Public School Construction
<input type="checkbox"/> California Emergency Management Agency	<input type="checkbox"/> Parks & Recreation, Department of
<input type="checkbox"/> California Highway Patrol	<input type="checkbox"/> Pesticide Regulation, Department of
<input type="checkbox"/> Caltrans District # _____	<input type="checkbox"/> Public Utilities Commission
<input type="checkbox"/> Caltrans Division of Aeronautics	<input type="checkbox"/> Regional WQCB # _____
<input checked="" type="checkbox"/> Caltrans Planning	<input type="checkbox"/> Resources Agency
<input type="checkbox"/> Central Valley Flood Protection Board	<input type="checkbox"/> Resources Recycling and Recovery, Department of
<input type="checkbox"/> Coachella Valley Mtns. Conservancy	<input checked="" type="checkbox"/> S.F. Bay Conservation & Development Comm.
<input type="checkbox"/> Coastal Commission	<input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
<input type="checkbox"/> Colorado River Board	<input type="checkbox"/> San Joaquin River Conservancy
<input type="checkbox"/> Conservation, Department of	<input type="checkbox"/> Santa Monica Mtns. Conservancy
<input type="checkbox"/> Corrections, Department of	<input checked="" type="checkbox"/> State Lands Commission
<input type="checkbox"/> Delta Protection Commission	<input type="checkbox"/> SWRCB: Clean Water Grants
<input type="checkbox"/> Education, Department of	<input checked="" type="checkbox"/> SWRCB: Water Quality
<input type="checkbox"/> Energy Commission	<input type="checkbox"/> SWRCB: Water Rights
<input type="checkbox"/> Fish & Game Region # _____	<input type="checkbox"/> Tahoe Regional Planning Agency
<input type="checkbox"/> Food & Agriculture, Department of	<input type="checkbox"/> Toxic Substances Control, Department of
<input type="checkbox"/> Forestry and Fire Protection, Department of	<input type="checkbox"/> Water Resources, Department of
<input type="checkbox"/> General Services, Department of	<input checked="" type="checkbox"/> Other: <u>San Francisco Bay Regional Water Quality Control Board</u>
<input checked="" type="checkbox"/> Health Services, Department of	<input type="checkbox"/> Other: _____
<input checked="" type="checkbox"/> Housing & Community Development	
<input type="checkbox"/> Native American Heritage Commission	

Local Public Review Period (to be filled in by lead agency)Starting Date January 4th, 2019Ending Date February 11th, 2019**Lead Agency (Complete if applicable):**Consulting Firm: Urban Planning Partners

Applicant: _____

Address: 388 17th Street, Suite 230

Address: _____

City/State/Zip: Oakland, CA 94612

City/State/Zip: _____

Contact: Lynette Dias

Phone: _____

Phone: (510) 251-8210

Signature of Lead Agency Representative: _____

Date: 1/3/19Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

CITY OF OAKLAND



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Bureau of Planning

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TDD (510) 238-3254

**NOTICE OF PREPARATION (NOP) OF A
DRAFT ENVIRONMENTAL IMPACT REPORT
FOR THE DOWNTOWN OAKLAND SPECIFIC PLAN**

The City of Oakland's Planning and Building Department, Bureau of Planning, is preparing an Environmental Impact Report (EIR) on the Downtown Oakland Specific Plan concurrently with the development of the Draft Downtown Oakland Specific Plan (the Project) as identified below, and is requesting comments on the scope and content of the EIR. The EIR will address the potential physical and environmental effects that the project may have on each of the environmental topics outlined in the California Environmental Quality Act (CEQA). The City has not prepared an Initial Study. Under CEQA, a Lead Agency may proceed directly with EIR preparation without an Initial Study if it is clear that an EIR will be required. The City has made such determination for the Project.

The City of Oakland is the Lead Agency for the Project and is the public agency with the greatest responsibility for approving the Project or carrying it out. This notice is being sent to Responsible Agencies and other interested parties. Responsible Agencies are those public agencies, besides the City of Oakland, that also have a role in approving or carrying out the Project. When the EIR is published, it will be sent to all Responsible Agencies and to others who respond to this NOP or who otherwise indicate that they would like to receive a copy.

Responses to this NOP and any questions or comments should be directed in writing or via email to: Alicia Parker, City of Oakland, Bureau of Planning, 250 Frank H. Ogawa, Suite 3315 Oakland, CA 94612; (510) 238-3362 (phone); or by e-mail at aparker@oaklandca.gov. Written comments on the NOP must be received at the above mailing or e-mail address by 4:00 p.m. on February 11th, 2019. Please reference case number SP16-001 and ER18020 in all correspondence.

In addition, comments may be provided at the EIR Scoping Session Public Hearings to be held before the Landmarks Preservation Advisory Board and the City Planning Commission.

All comments should focus on potential impacts on the physical environment, ways in which potential adverse effects might be minimized, and alternatives to the project in light of the EIR's purpose to provide useful and accurate information about such factors.

EIR SCOPING SESSION PUBLIC HEARINGS:

- (1) The Landmarks Preservation Advisory Board**
Monday February 4, 2019 at 6:00pm
Oakland City Hall, Hearing Room 1
1 Frank H. Ogawa Plaza

2) City Planning Commission
Wednesday, February 6, 2019 at 6:00pm
Oakland City Hall, Hearing Room 1
1 Frank H. Ogawa Plaza

PROJECT TITLE: Downtown Oakland Specific Plan

PROJECT LOCATION: The Downtown Oakland Specific Plan Area encompasses approximately 850 acres in Downtown Oakland and is generally bounded by 27th Street to the north; I-980, Brush and Market Street to the west; the Jack London estuary waterfront and Embarcadero West to the south; and Lake Merritt and Channel to the east. The Plan Area's location is shown in Figure 1, and the Plan Area Boundary is shown in Figure 2.

PROJECT SPONSOR: City of Oakland

EXISTING CONDITIONS: The City of Oakland, with the assistance of grants from the Metropolitan Transportation Commission (MTC) and Bay Area Rapid Transit (BART), is preparing the Downtown Oakland Specific Plan. Downtown Oakland is the cultural, business, government, and entertainment hub of the East Bay. The Plan Area also includes several historic properties and districts including those designated by the City of Oakland as being Areas of Primary Importance (API); Areas of Secondary Importance (ASI); properties individually rated A, B, C, or D; and Landmark Properties. The Plan Area is serviced by two Bay Area Rapid Transit (BART) stations, multiple Alameda County (AC) Transit bus lines, Amtrak train service, and ferry service. There is potential soil and groundwater contamination associated with previous uses in the project area, including approximately 100 properties identified on the California Environmental Protection Agency's Cortese List.

PROJECT DESCRIPTION: The Downtown Oakland Specific Plan will provide a roadmap for how the area develops over the next 20 to 25 years through policy guidance on land use, transportation, housing, economic development, public spaces, cultural arts, and social equity. The Plan aims to ensure that Downtown remains a place of continuing growth and revitalization, as well as a valuable resource for the larger Oakland community through increased employment, housing, arts, and cultural opportunities. Supporting existing residents by growing existing businesses and the creative economy are important to creating a plan that serves both current and future residents.

The Plan builds on extensive community feedback to meet its goals of:

1. Create opportunities for economic growth for all Oaklanders.
2. Ensure sufficient housing is built and retained to meet the varied needs of current and future residents.
3. Make downtown's streets comfortable, safe, and inviting, as well as improve connections to the city as a whole so that everyone has efficient and reliable access to downtown's jobs and services.
4. Allow diverse voices and forms of expression flourish.
5. Provide vibrant public spaces and a healthy environment that improve the quality of life downtown today and for generations to come.
6. Develop downtown in a way that contributes to community needs and preserves Oakland's unique character.

The components of the Specific Plan will include:

- The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan;
- The proposed distribution location, and extent of the uses of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and need to support the land uses described in the plan;
- Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable; and
- A program of implementation measures, including regulations, public works projects, and financing measures necessary to carry out the proposed improvements

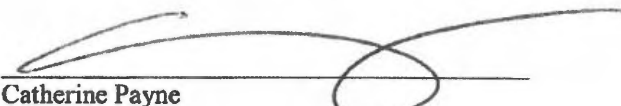
For more information on the project, please visit the project website at:
<https://www.oaklandca.gov/topics/downtown-oakland-specific-plan>.

PROBABLE ENVIRONMENTAL EFFECTS: It is anticipated that the project may have significant environmental impacts to the following: Aesthetics, Air Quality, Biological Resources, Cultural and Historic Architectural Resources, Flood Plain/Flooding, Energy, Geology and Soils, Greenhouse Gas Emissions and Global Climate Change, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise and Vibration, Population and Housing, Public Services, Recreation, Traffic and Transportation, and Utilities and Infrastructure, as well as cumulative effects. All of the noted environmental factors will be analyzed in the EIR.

The Project does not have the potential for any impact on the following environmental factors, and, as a result, these environmental factors will not be the subject of study in this EIR: Agriculture and Forestry (there are no agricultural and forest land resources in the Planning Area), and Mineral Resources (there are no mineral resources in the Plan Area).

The Draft EIR will also examine a reasonable range of alternatives to the project, including the CEQA-mandated No Project Alternative and other potential alternatives that may be capable of reducing or avoiding potential environmental effects.

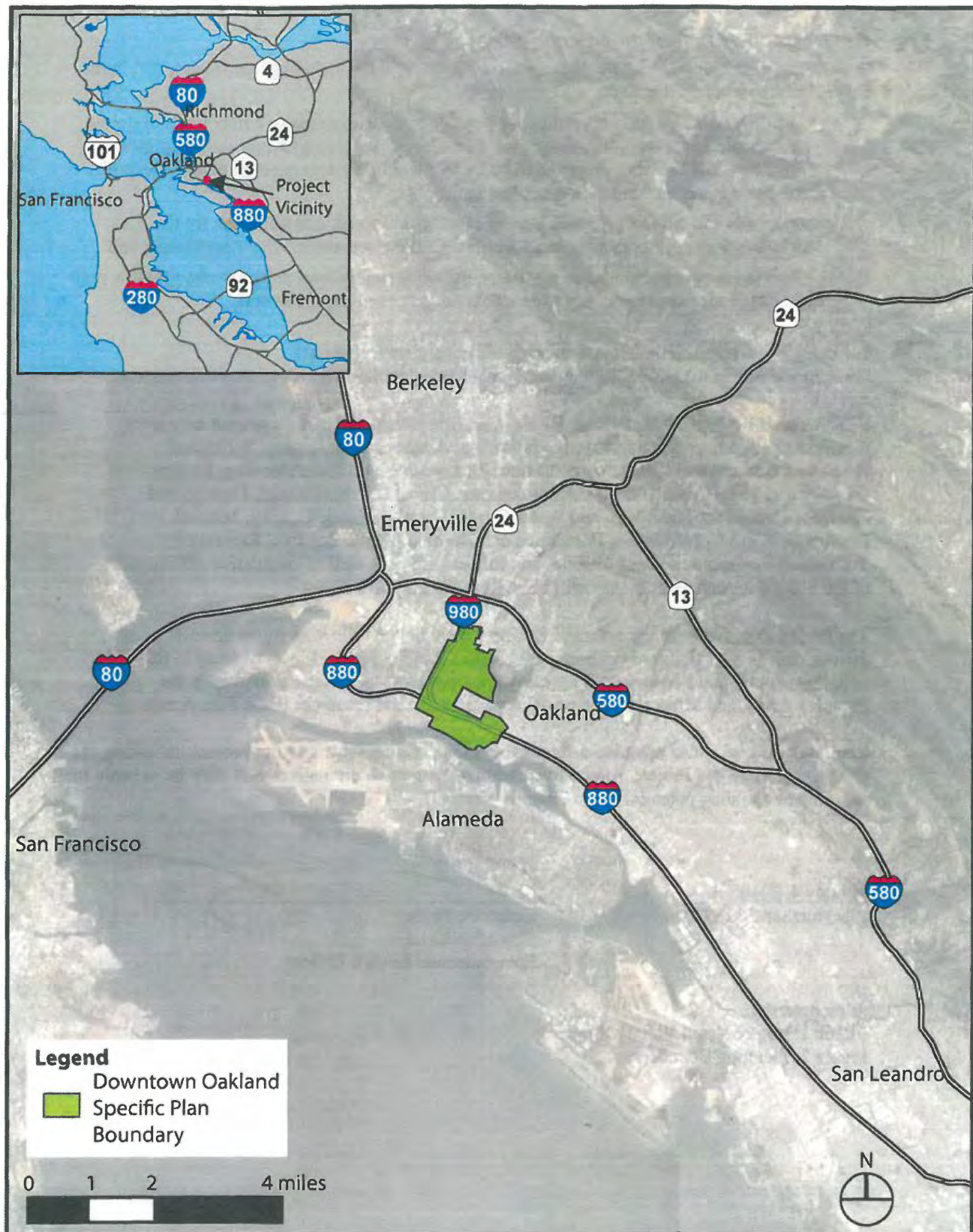
January 4, 2018
File Number ER18020



Catherine Payne
City of Oakland
Environmental Review Officer

Attachments:

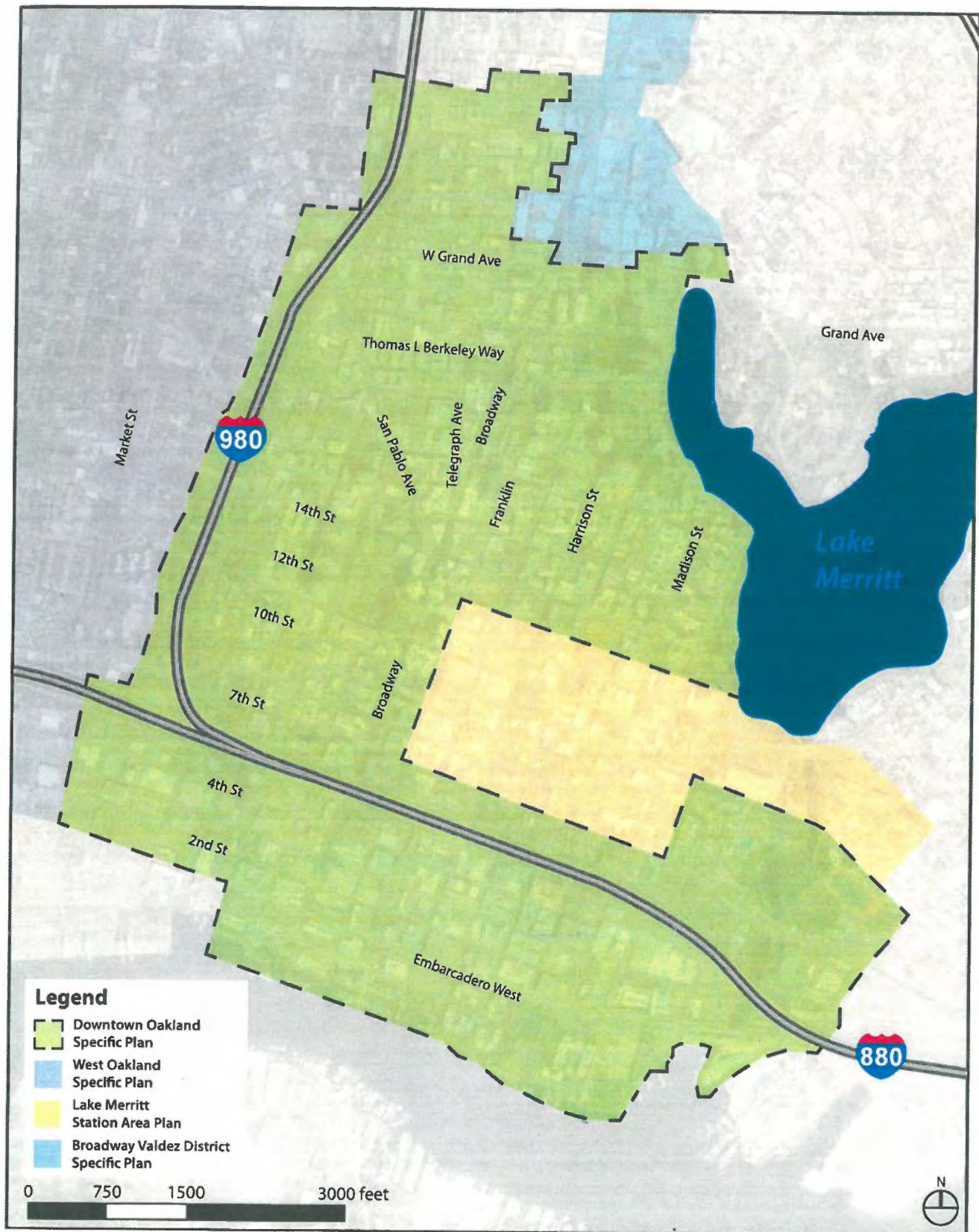
Figure 1: Regional and Vicinity Map
Figure 2: Planning Boundary



**Downtown Oakland Specific Plan Draft EIR
Notice of Preparation**

Source: Google Earth, 2018.

**Figure 1
Regional and Vicinity Map**



Downtown Oakland Specific Plan
Notice of Preparation

Source: Google Earth, 2018.

Figure 2
Planning Boundary



AGENDA NO.
MEETING DATE

7.
April 23, 2019

TITLE MONTHLY INVESTMENT TRANSACTIONS REPORTS

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

RECOMMENDED ACTION

Approve the February and March 2019 Monthly Investment Transactions Reports.

SUMMARY

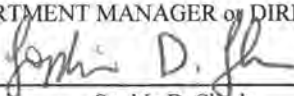
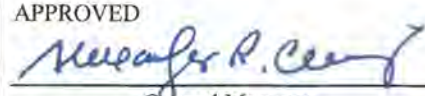
In accordance with Board Resolution No. 30127 and Policy 4.07 – Investment Policy, staff presents a monthly transactions report for the Finance/Administration Committee to review and for the Board to consider each month. The February and March 2019 reports are being submitted for Board consideration. This item was reviewed with the Finance/Administration Committee on April 23, 2019.

DISCUSSION

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

In February 2019, the portfolio increased from \$705.3 million to \$710.3 million. Net transactions increased the total by \$4.2 million and interest received added \$0.7 million. Deposits into short-term liquidity funds totaled \$27.8 million and \$94.2 million was withdrawn. The District purchased \$90.6 million in securities, \$5.1 million in securities matured, and \$13.0 million in securities were called. No securities were sold. Net transactions at the District's commercial bank resulted in a decrease of \$1.9 million.

In March 2019, the portfolio decreased from \$710.3 million to \$704.1 million. Net transactions decreased the total by \$6.4 million and interest received added \$0.3 million. Deposits into short-term liquidity funds totaled \$8.4 million and \$20.3 million was withdrawn. The District purchased \$3.5 million in securities, \$0.6 million in securities matured, and \$3.5 million in securities were called. No securities were sold. Net transactions at the District's commercial bank resulted in an increase of \$6.0 million.

Funds Available:		Budget Code:
DEPARTMENT SUBMITTING Finance	DEPARTMENT MANAGER or DIRECTOR  Sophia D. Skoda	APPROVED  General Manager

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

Monthly Investment Transactions Reports
April 23, 2019
Page 2

This item supports the District's Long-Term Financial Stability Strategic Plan goal to ensure integrity, accountability and transparency in financial management.

Attachments

I:\Sec\2019 Board Related Items\042319 Board Agenda Items\FIN - BD1 Monthly Investment Transactions Reports 042319

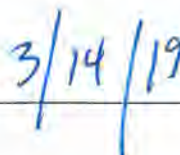
Monthly Investment Transactions Report
February 2019

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

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

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


Approved by: Sophia D. Skoda, Finance Director


Date

SDS:DSK:MH



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Transactions Summary
February 2019

Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	531,843,694.66	17,770,000.00	125,214.14	549,738,908.80
007 - Wastewater Consolidated	114,069,602.89	(340,000.00)	75,329.79	113,804,932.68
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,862,600.00	-	-	2,862,600.00
015 - DERWA	-	-	-	-
002 - FRWA	2,150,000.00	-	-	2,150,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	24,024,372.18	(11,385,000.00)	-	12,639,372.18
065 - Water S2008A DSRF	3,342,012.34	-	5,756.97	3,347,769.31
068 - Water 2010A DSRF	346,790.62	-	597.40	347,388.02
099 - Wells Fargo**	24,487,805.86	(1,878,774.18)	541,776.80	23,150,808.48
Total	705,341,378.55	4,166,225.82	748,675.10	710,256,279.47

* Portfolio balance presented at face value.

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

Matt Houck
 Prepared by: Matt Houck, Accountant 1

Sandy Lindley
 Reviewed by: Sandy Lindley, Accounting Supervisor

D. Scott Klein
 Approved by: D. Scott Klein, Controller

3-11-2019
 Date

3-12-19
 Date

3-12-19
 Date

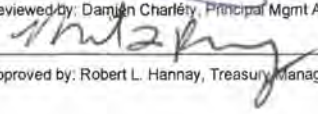


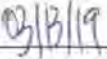
EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	89,282,000.00	20,000,000.00	(3,937,000.00)	(12,575,000.00)	-	(75,000,000.00)	-	17,770,000.00
007 - Wastewater Consolidated	1,300,000.00	-	(1,200,000.00)	(440,000.00)	-	-	-	(340,000.00)
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	7,777,000.00	-	-	-	(19,162,000.00)	-	(11,385,000.00)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
Investment Activity Total	90,582,000.00	27,777,000.00	(5,137,000.00)	(13,015,000.00)	-	(94,162,000.00)	-	6,045,000.00
099 - Wells Fargo	(90,582,000.00)	(27,777,000.00)	5,137,000.00	13,015,000.00	-	94,162,000.00	4,166,225.82	(1,878,774.18)
Total	-	-	-	-	-	-	4,166,225.82	4,166,225.82

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

Reviewed by:  Damien Charléty, Principal Mgmt Analyst

Approved by:  Robert L. Hannay, Treasury Manager


Date
3/14/19
Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Buys										
001 - Water System Consolidated	Medium Term Notes	Apple Inc 2.7 5/13/2022	037833BF6	02/05/2019	02/07/2019	05/13/2022	5,845,000.00	5,839,242.68	36,823.50	5,876,066.18
001 - Water System Consolidated	Medium Term Notes	Apple Inc. 2.3 5/11/2022	037833CQ1	02/05/2019	02/07/2019	05/11/2022	4,444,000.00	4,384,539.28	24,417.31	4,408,956.59
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 2.96 2/6/2023-20	3130AFTK3	02/05/2019	02/06/2019	02/06/2023	12,000,000.00	11,999,400.00	0.00	11,999,400.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 2.67 11/4/2021-19	3130AFT72	02/15/2019	02/19/2019	11/04/2021	7,030,000.00	7,027,891.00	7,820.88	7,035,711.88
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 2.74 4/29/2021-19	3130AFTR8	02/15/2019	02/19/2019	04/29/2021	2,050,000.00	2,050,553.50	2,964.53	2,053,518.03
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 11/22/2022-18	3130ACR22	02/15/2019	02/19/2019	11/22/2022	10,070,000.00	10,054,492.20	54,755.63	10,109,247.83
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 2.875 5/20/2022-19	3134GSX67	02/15/2019	02/20/2019	05/20/2022	10,500,000.00	10,500,000.00	0.00	10,500,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/22/2022-18	3134GB3K6	02/15/2019	02/19/2019	11/22/2022	10,671,000.00	10,651,258.65	54,800.03	10,706,058.68
001 - Water System Consolidated	Medium Term Notes	Apple Inc 2.7 5/13/2022	037833BF6	02/19/2019	02/21/2019	05/13/2022	9,802,000.00	9,793,668.30	72,044.70	9,865,713.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 3 4/17/2023-19	3130ADZ88	02/19/2019	02/20/2019	04/17/2023	5,000,000.00	5,000,000.00	51,250.00	5,051,250.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 2.75 5/27/2022-20	3130AFWP8	02/21/2019	02/27/2019	05/27/2022	3,870,000.00	3,869,806.50	0.00	3,869,806.50
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 11/22/2022-18	3130ACR22	02/21/2019	02/22/2019	11/22/2022	3,000,000.00	2,995,260.00	16,875.00	3,012,135.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/22/2022-18	3134GB3K6	02/21/2019	02/22/2019	11/22/2022	5,000,000.00	4,990,600.00	0.00	4,990,600.00
Sub Total							89,282,000.00			
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 2.72 11/10/2021-19	3130AFV87	02/13/2019	02/14/2019	11/10/2021	800,000.00	799,888.00	120.89	800,008.89
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB Step 10/19/2020-18	3130ACJ21	02/14/2019	02/15/2019	10/19/2020	500,000.00	495,425.00	2,618.06	498,043.06
Sub Total							1,300,000.00			

90,582,000.00 90,452,025.11 324,490.53 90,776,515.64



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Deposits										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	02/27/2019	02/27/2019	N/A	20,000,000.00	20,000,000.00	0.00	20,000,000.00
					Sub Total		20,000,000.00			
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	02/22/2019	02/22/2019	N/A	3,882,000.00	3,882,000.00	0.00	3,882,000.00
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	02/14/2019	02/14/2019	N/A	3,895,000.00	3,895,000.00	0.00	3,895,000.00
					Sub Total		7,777,000.00			

27,777,000.00 27,777,000.00 0.00 27,777,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Matured										
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.2 2/11/2019-16	3133EFT8	02/11/2019	02/11/2019	02/11/2019	1,537,000.00	1,537,000.00	0.00	1,537,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.4 2/25/2019-17	3134GAW26	02/25/2019	02/25/2019	02/25/2019	2,400,000.00	2,400,000.00	0.00	2,400,000.00
					Sub Total		3,937,000.00			
007 - Wastewater Consolidated	Municipal Bonds	Anaheim Redevelopment Agency Su	032554AN6	02/01/2019	02/01/2019	02/01/2019	700,000.00	700,000.00	0.00	700,000.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 1.12 2/22/2019-17	3133EFC70	02/22/2019	02/22/2019	02/22/2019	500,000.00	500,000.00	0.00	500,000.00
					Sub Total		1,200,000.00			

5,137,000.00 5,137,000.00 0.00 5,137,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Calls										
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/22/2019-17	3134GAWK6	02/22/2019	02/22/2019	11/22/2019	2,250,000.00	2,250,000.00	0.00	2,250,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/22/2019-17	3134GAWK6	02/22/2019	02/22/2019	11/22/2019	5,425,000.00	5,425,000.00	0.00	5,425,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/28/2019-17	3134GAEV2	02/28/2019	02/28/2019	08/28/2019	2,400,000.00	2,400,000.00	0.00	2,400,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/28/2019-17	3134GAEV2	02/28/2019	02/28/2019	08/28/2019	2,500,000.00	2,500,000.00	0.00	2,500,000.00
					Sub Total		12,575,000.00			
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/27/2019-17	3134G97C5	02/27/2019	02/27/2019	08/27/2019	440,000.00	440,000.00	0.00	440,000.00
					Sub Total		440,000.00			

13,015,000.00	13,015,000.00	0.00	13,015,000.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

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

*No Transaction this Period

0.00 0.00 0.00 0.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Withdrawals										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	02/22/2019	02/22/2019	N/A	20,000,000.00	20,000,000.00	0.00	20,000,000.00
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	02/20/2019	02/20/2019	N/A	15,000,000.00	15,000,000.00	0.00	15,000,000.00
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	02/19/2019	02/19/2019	N/A	40,000,000.00	40,000,000.00	0.00	40,000,000.00
					Sub Total		75,000,000.00			
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	02/27/2019	02/27/2019	N/A	9,604,000.00	9,604,000.00	0.00	9,604,000.00
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	02/01/2019	02/01/2019	N/A	9,558,000.00	9,558,000.00	0.00	9,558,000.00
					Sub Total		19,162,000.00			
							94,162,000.00	94,162,000.00	0.00	94,162,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
February 2019

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	613,770.94	(488,556.80)	125,214.14
007 - Wastewater Consolidated	128,549.79	(53,220.00)	75,329.79
049 - Ferc Partnership	-	-	-
009 - BACWA	-	-	-
015 - DERWA	-	-	-
002 - FRWA	-	-	-
014 - IICP	-	-	-
010 - UMRWA	-	-	-
003 - Employees Retirement	-	-	-
065 - Water S2008A DSRF	5,756.97	-	5,756.97
068 - Water 2010A DSRF	597.40	-	597.40
Interest Transactions Total	748,675.10	(541,776.80)	206,898.30
099 - Wells Fargo	-	541,776.80	541,776.80
Total	748,675.10	-	748,675.10

*Coupon and other interest received; reinvestment unavailable.

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

Matt Houck
 Prepared by: Matt Houck, Accountant 1

Sandy Lindley
 Reviewed by: Sandy Lindley, Accounting Supervisor

D. Scott Klein
 Approved by: D. Scott Klein, Controller

3-11-2019
 Date

3-12-19

Date

3-12-19
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Transferred to Wells Fargo)										
001 - Water System Consolidated	Municipal Bonds	Contra Costa County Redevelopment Agency Successor	212263AQ0	02/01/2019	02/01/2019	08/01/2020	0.00	0.00	6,562.50	6,562.50
001 - Water System Consolidated	Municipal Bonds	Highland Redevelopment Agency Successor Agency 2	2 430034AV0	02/01/2019	02/01/2019	02/01/2021	0.00	0.00	8,100.00	8,100.00
001 - Water System Consolidated	Municipal Bonds	San Francisco City & Cnty CA Redevelopment Age	79770GGM2	02/01/2019	02/01/2019	08/01/2020	0.00	0.00	15,000.00	15,000.00
001 - Water System Consolidated	Municipal Bonds	San Jose Redevelopment Agency Successor Agency 2	1 798170AB2	02/01/2019	02/01/2019	08/01/2019	0.00	0.00	23,812.30	23,812.30
001 - Water System Consolidated	Municipal Bonds	Santa Clara County CA 2	8/1/2019	02/01/2019	02/01/2019	08/01/2019	0.00	0.00	26,300.00	26,300.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.25 2/10/2020-16	3133EGQR9	02/10/2019	02/10/2019	02/10/2020	0.00	0.00	6,250.00	6,250.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.2 2/11/2019-16	3133EFTY8	02/11/2019	02/11/2019	02/11/2019	0.00	0.00	9,222.00	9,222.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/22/2019-17	3134GAWK6	02/22/2019	02/22/2019	11/22/2019	0.00	0.00	47,968.75	47,968.75
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/22/2022-18	3134GB3K6	02/22/2019	02/22/2019	11/22/2022	0.00	0.00	56,689.69	56,689.69
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 11/23/2020-17	3134GAWW0	02/23/2019	02/23/2019	11/23/2020	0.00	0.00	26,101.56	26,101.56
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/24/2021-17	3134GAEM2	02/24/2019	02/24/2019	08/24/2021	0.00	0.00	90,000.00	90,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 1.15 5/24/2019-17	3136G3AR6	02/24/2019	02/24/2019	05/24/2019	0.00	0.00	5,750.00	5,750.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.4 2/25/2019-17	3134GAW26	02/25/2019	02/25/2019	02/25/2019	0.00	0.00	16,800.00	16,800.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/25/2021-16	3134GACG7	02/25/2019	02/25/2019	08/25/2021	0.00	0.00	37,500.00	37,500.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/25/2021-17	3134G95P8	02/25/2019	02/25/2019	08/25/2021	0.00	0.00	46,875.00	46,875.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 1.4 11/26/2019-16	3136G2YA9	02/26/2019	02/26/2019	11/26/2019	0.00	0.00	35,000.00	35,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/28/2019-17	3134GAEV2	02/28/2019	02/28/2019	08/28/2019	0.00	0.00	30,625.00	30,625.00
Sub Total										488,556.80
007 - Wastewater Consolidated	Municipal Bonds	Anaheim Redevelopment Agency Successor Agency 2	2 032564AN6	02/01/2019	02/01/2019	02/01/2019	0.00	0.00	7,770.00	7,770.00
007 - Wastewater Consolidated	Municipal Bonds	Brea CA Redevelopment Agency Successor Agency 2	8/1 106293CE1	02/01/2019	02/01/2019	08/01/2020	0.00	0.00	3,400.00	3,400.00
007 - Wastewater Consolidated	Municipal Bonds	Brea CA Redevelopment Agency Successor Agency 1	6 106293CD3	02/01/2019	02/01/2019	08/01/2019	0.00	0.00	812.50	812.50
007 - Wastewater Consolidated	Municipal Bonds	Lynwood Unified School District 2	8/1/2019	02/01/2019	02/01/2019	08/01/2019	0.00	0.00	750.00	750.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 1.12 2/22/2019-17	3133EFC70	02/22/2019	02/22/2019	02/22/2019	0.00	0.00	2,800.00	2,800.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/24/2021-17	3134G92Q9	02/24/2019	02/24/2019	08/24/2021	0.00	0.00	17,500.00	17,500.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/24/2021-17	3134GAAJ3	02/24/2019	02/24/2019	08/24/2021	0.00	0.00	6,000.00	6,000.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.5 2/25/2021-16	3134GADG6	02/25/2019	02/25/2019	02/25/2021	0.00	0.00	1,687.50	1,687.50
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC Step 8/27/2019-17	3134G97C5	02/27/2019	02/27/2019	08/27/2019	0.00	0.00	2,750.00	2,750.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.3 8/28/2019-16	3134GAFY5	02/28/2019	02/28/2019	08/28/2019	0.00	0.00	9,750.00	9,750.00
Sub Total										53,220.00
							0.00	0.00	541,776.80	541,776.80



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
February 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Reinvested)										
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	02/28/2019	02/28/2019	N/A	0.00	0.00	38.21	38.21
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	02/28/2019	02/28/2019	N/A	0.00	0.00	125,175.93	125,175.93
Sub Total										125,214.14
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	02/28/2019	02/28/2019	N/A	0.00	0.00	10.21	10.21
007 - Wastewater Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	02/28/2019	02/28/2019	N/A	0.00	0.00	75,319.58	75,319.58
Sub Total										75,329.79
065 - Water S2008A DSRF	Money Market Mutual Funds	Dreyfus MM	MM6999	02/04/2019	02/04/2019	N/A	0.00	0.00	5,756.97	5,756.97
Sub Total										5,756.97
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	02/28/2019	02/28/2019	N/A	0.00	0.00	597.40	597.40
Sub Total										597.40

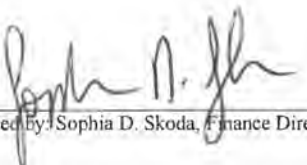
0.00 0.00 206,898.30 206,898.30

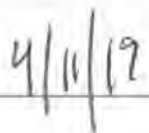
Monthly Investment Transactions Report
March 2019

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

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

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


Approved by: Sophia D. Skoda, Finance Director


Date

SDS:DSK:MH



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Transactions Summary
March 2019

Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	549,738,908.80	(9,360,000.00)	60,316.98	540,439,225.78
007 - Wastewater Consolidated	113,804,932.68	(600,000.00)	80,846.02	113,285,778.70
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,862,600.00	-	-	2,862,600.00
015 - DERWA	-	-	-	-
002 - FRWA	2,150,000.00	(650,000.00)	-	1,500,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	12,639,372.18	(1,814,000.00)	-	10,825,372.18
065 - Water S2008A DSRF	3,347,769.31	-	5,088.32	3,352,857.63
068 - Water 2010A DSRF	347,388.02	-	528.00	347,916.02
099 - Wells Fargo**	23,150,808.48	6,039,342.04	111,371.13	29,301,521.65
Total	710,256,279.47	(6,384,657.96)	258,150.45	704,129,771.96

* Portfolio balance presented at face value.

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

Matt Horck
 Prepared by: Matt Horck, Accountant 1

Sandy Lindley FOR SIGNATURE
 Reviewed by: Sandy Lindley, Accounting Supervisor

D. Scott Klein
 Approved by: D. Scott Klein, Controller

4-10-2019
 Date

4-11-19
 Date

4-11-19
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	3,500,000.00	650,000.00	-	(3,510,000.00)	-	(10,000,000.00)	-	(9,360,000.00)
007 - Wastewater Consolidated	-	-	(600,000.00)	-	-	-	-	(600,000.00)
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	(650,000.00)	-	(650,000.00)
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	7,796,000.00	-	-	-	(9,610,000.00)	-	(1,814,000.00)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
Investment Activity Total	3,500,000.00	8,446,000.00	(600,000.00)	(3,510,000.00)	-	(20,260,000.00)	-	(12,424,000.00)
099 - Wells Fargo	(3,500,000.00)	(8,446,000.00)	600,000.00	3,510,000.00	-	20,260,000.00	(6,384,657.96)	6,039,342.04
Total	-	-	-	-	-	-	(6,384,657.96)	(6,384,657.96)

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

Reviewed by:  Damien Charléty, Principal Mgmt Analyst

Approved by: Robert L. Hannay, Treasury Manager

Date

Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Buys										
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 11/17/2022-17	3130A9T68	03/14/2019	03/15/2019	11/17/2022	3,500,000.00	3,484,932.50	22,944.44	3,507,876.94

3,500,000.00	3,484,932.50	22,944.44	3,507,876.94
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Deposits										
001 - Water System Consolidated	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	03/31/2019	03/31/2019	N/A	650,000.00	650,000.00	0.00	650,000.00
					Sub Total		650,000.00			
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	03/08/2019	03/08/2019	N/A	3,907,000.00	3,907,000.00	0.00	3,907,000.00
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	03/22/2019	03/22/2019	N/A	3,889,000.00	3,889,000.00	0.00	3,889,000.00
					Sub Total		7,796,000.00			
							8,446,000.00	8,446,000.00	0.00	8,446,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Matured										
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1 3/29/2019-16	3134G9B97	03/29/2019	03/29/2019	03/29/2019	500,000.00	500,000.00	0.00	500,000.00
007 - Wastewater Consolidated	Municipal Bonds	Lake Elsinore Redevelopment Agency Su 86459ABQ4		03/01/2019	03/01/2019	03/01/2019	100,000.00	100,000.00	0.00	100,000.00

600,000.00	600,000.00	0.00	600,000.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Calls										
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 12/28/2021-17	3130AABN7	03/28/2019	03/28/2019	12/28/2021	3,510,000.00	3,510,000.00	0.00	3,510,000.00

3,510,000.00	3,510,000.00	0.00	3,510,000.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

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

*No Transaction this Period

0.00	0.00	0.00	0.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Withdrawals										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	03/22/2019	03/22/2019	N/A	10,000,000.00	10,000,000.00	0.00	10,000,000.00
002 - FRWA	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	03/31/2019	03/31/2019	N/A	650,000.00	650,000.00	0.00	650,000.00
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	03/29/2019	03/29/2019	N/A	9,610,000.00	9,610,000.00	0.00	9,610,000.00
							20,260,000.00	20,260,000.00	0.00	20,260,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
March 2019

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	158,888.11	(98,571.13)	60,316.98
007 - Wastewater Consolidated	93,646.02	(12,800.00)	80,846.02
049 - Ferc Partnership	-	-	-
009 - BACWA	-	-	-
015 - DERWA	-	-	-
002 - FRWA	-	-	-
014 - IICP	-	-	-
010 - UMRWA	-	-	-
003 - Employees Retirement	-	-	-
065 - Water S2008A DSRF	5,088.32	-	5,088.32
068 - Water 2010A DSRF	528.00	-	528.00
Interest Transactions Total	258,150.45	(111,371.13)	146,779.32
099 - Wells Fargo	-	111,371.13	111,371.13
Total	258,150.45	-	258,150.45

*Coupon and other interest received; reinvestment unavailable.

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

Matt Houck
 Prepared by: Matt Houck, Accountant 1
Sandy Lindley FAR S. Lindley
 Reviewed by: Sandy Lindley, Accounting Supervisor
D. Scott Klein
 Approved by: D. Scott Klein, Controller

4-10-2019
 Date
4-11-19
 Date
4-11-19
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Transferred to Wells Fargo)										
001 - Water System Consolidated	Municipal Bonds	Alameda County Improvement Commission Successor A	010775BA1	03/01/2019	03/01/2019	09/01/2020	0.00	0.00	2,250.00	2,250.00
001 - Water System Consolidated	Municipal Bonds	Santa Cruz County Redevelopment Successor Agency 1	80182YCQ8	03/01/2019	03/01/2019	09/01/2019	0.00	0.00	3,823.75	3,823.75
001 - Water System Consolidated	Municipal Bonds	Santa Cruz County Redevelopment Successor Agency 2	80182YCR6	03/01/2019	03/01/2019	09/01/2020	0.00	0.00	7,638.00	7,638.00
001 - Water System Consolidated	Municipal Bonds	Yorba Linda Redevelopment Agency Successor Agency	986176AP0	03/01/2019	03/01/2019	09/01/2020	0.00	0.00	2,056.25	2,056.25
001 - Water System Consolidated	Municipal Bonds	Yorba Linda Redevelopment Agency Successor Agency	986176AR6	03/01/2019	03/01/2019	09/01/2022	0.00	0.00	4,106.25	4,106.25
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.5 9/9/2019-18	3134GA7A6	03/09/2019	03/09/2019	09/09/2019	0.00	0.00	3,150.00	3,150.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 9/23/2021-16	3134GAHM9	03/23/2019	03/23/2019	09/23/2021	0.00	0.00	40,000.00	40,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 12/28/2021-17	3130AABN7	03/28/2019	03/28/2019	12/28/2021	0.00	0.00	27,421.88	27,421.88
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 9/29/2020-18	3130ACFY5	03/29/2019	03/29/2019	09/29/2020	0.00	0.00	8,125.00	8,125.00
Sub Total										98,571.13
007 - Wastewater Consolidated	Municipal Bonds	Palm Springs CA Cmnty Redevelopment Agency Succes	69667ABR6	03/01/2019	03/01/2019	09/01/2020	0.00	0.00	2,850.00	2,850.00
007 - Wastewater Consolidated	Municipal Bonds	Palm Springs CA Cmnty Redevelopment Agency Succes	69667ABS4	03/01/2019	03/01/2019	09/01/2021	0.00	0.00	1,350.00	1,350.00
007 - Wastewater Consolidated	Municipal Bonds	Successor Agency to the Redevelopment Agency of th	79730WBG4	03/01/2019	03/01/2019	09/01/2019	0.00	0.00	4,225.00	4,225.00
007 - Wastewater Consolidated	Municipal Bonds	Lake Elsinore Redevelopment Agency Successor Agenc	86459ABQ4	03/01/2019	03/01/2019	03/01/2019	0.00	0.00	1,125.00	1,125.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FAMC 1.5 5/15/2019	3132X0QX2	03/21/2019	03/21/2019	05/15/2019	0.00	0.00	750.00	750.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1 3/29/2019-16	3134G9B97	03/29/2019	03/29/2019	03/29/2019	0.00	0.00	2,500.00	2,500.00
Sub Total										12,800.00

0.00 0.00 111,371.13 111,371.13



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
March 2019

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Reinvested)										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	03/31/2019	03/31/2019	N/A	0.00	0.00	60,274.36	60,274.36
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	03/31/2019	03/31/2019	N/A	0.00	0.00	42.62	42.62
Sub Total										60,316.98
007 - Wastewater Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	03/31/2019	03/31/2019	N/A	0.00	0.00	80,834.63	80,834.63
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	03/31/2019	03/31/2019	N/A	0.00	0.00	11.39	11.39
Sub Total										80,846.02
065 - Water S2008A DSRF	Money Market Mutual Funds	Dreyfus MM	MM6999	03/04/2019	03/04/2019	N/A	0.00	0.00	5,088.32	5,088.32
Sub Total										5,088.32
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	03/04/2019	03/04/2019	N/A	0.00	0.00	528.00	528.00
Sub Total										528.00
							0.00	0.00	146,779.32	146,779.32



AGENDA NO.
MEETING DATE

8.
April 23, 2019

TITLE INVESTMENT POLICY ANNUAL REVIEW

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

RECOMMENDED ACTION

Approve revisions to Policy 4.07 – Investment Policy, which was last revised on April 24, 2018, and affirm existing delegation of authority for the management of investments on behalf of the District to the Director of Finance, who is also acting as the Treasurer of the District.

SUMMARY

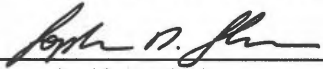

District Policy 4.07 – Investment Policy has been reviewed and amended as needed for clarity, and to ensure continued compliance with California Government Code. Sections have also been added as a best practice.

This item was reviewed with the Finance/Administration Committee on April 23, 2019.

DISCUSSION

Section 53646 of the California Government Code encourages the Treasurer to annually present a statement of investment policy to the Board for their consideration at a public meeting. The District's policy has been reviewed to ensure its continued compliance with the California Government Code and some sections have been added as a best practice. Key changes include:

- Clarification
 - that the yield criteria is to a market rate of return (versus high or maximum),
 - that the Director of Finance can delegate to staff some duties under the policy,
 - on the review process of money market mutual funds,
- Addition
 - of a section on performance measurement being risk-adjusted and cash-flow dependent,
 - of a requirement for purchasing entities to provide annual financial statements.

Funds Available FY:		Budget Code:	
DEPARTMENT SUBMITTING:	DEPARTMENT MANAGER or DIRECTOR:		APPROVED:
Finance	 Sophia D. Skoda		 General Manager

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

Investment Policy Annual Review

April 23, 2019

Page 2

The proposed policy with changes marked, and the proposed policy in unmarked form are attached.

This review supports the District's Long-Term Financial Stability Strategic Plan goal.

SUSTAINABILITY

Economic

Approval of the revised policy will continue to provide sound practices for the management of District funds. The interest earned on invested funds directly offsets the need for additional funds from ratepayers or other sources.

Attachments

I:\Sec\2019 Board Related Items\042319 Board Agenda Items\FIN - BD1 - Investment Policy Annual Review 042319.doc



Policy 4.07R

EFFECTIVE [23 APR 19](#)
~~24 APR 18~~

INVESTMENT POLICY

SUPERSEDES [24 APR 18](#)
~~25 APR 17~~

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

Invest District funds and funds managed by the District on behalf of its Joint Powers Authorities (JPAs) in compliance with investment criteria for safety, liquidity, yield and diversification as set forth herein. Investments shall be in securities with a range of maturities to provide adequate security and liquidity to pay demands when due while providing a ~~high~~[market](#) rate of return on investments.

Authority Section 53600 et. seq. of the California Government Code ([Government Code](#)), and [Chapter 6](#), Article 7 ~~in Chapter 6~~ of the Municipal Utility District Act (M.U.D. Act) govern the investment of idle monies of the District. Section 53635 of the [Government Code](#) defines how investments are to be handled for Joint Powers Authorities.

Delegation of Authority The authority and responsibility to invest idle monies of the District is delegated to the Director of Finance as the Treasurer. [The Director of Finance may designate individual staff to carry out his/her responsibilities under this policy.](#)

No Bond Proceeds The investment of bond proceeds is specifically defined in individual bond indenture documents and is not included in this policy.

Ethics and Conflicts of Interest Officers and employees involved in the investment process shall:

- refrain from personal business activity that could conflict with proper execution of the District's investment program, or which could impair their ability to make impartial investment decisions on behalf of the District,
- disclose any material financial interest in financial institutions that conduct business with the District,
- disclose material personal financial/investments that are related to or could reasonably be affected by the performance of the District's investments,
- refrain from undertaking any personal investment transactions with the same individual with whom business is conducted on behalf of the District's investments, and
- comply with the District's Conflict of Interest Code, as required.

Investment Criteria Criteria for selecting investments shall:

- adhere to the prudent investor standard, described in Section 53600.3 of the [Government Code](#) as follows: "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency," **and**

- conform with the [Government](#) Code and M.U.D. Act, **and**
- have the following objectives, in order of priority:
 1. *Safety* - The District's ability to recover principal and interest. Investments shall be made that will seek to ensure the preservation of principal and interest and minimize risk to the greatest extent possible. It is the primary duty of the Treasurer to protect, preserve and maintain cash and investments on behalf of the District.
 2. *Liquidity* - The District's ability to have cash available when needed to support expenditure cycles and budgetary objectives.
 3. *Yield* - The District's ability to provide ~~maximum~~ [a market rate of](#) return on the District's investments while conforming to the safety and liquidity criteria above.
 4. *Diversification* - The District's ability to maintain an investment portfolio that includes a range of security types for the District. In order to accomplish this, each Investment Option shall have defined limits on maximum share of the portfolio, single issuer and single issue holdings, and maturity, rating and other restrictions where applicable.

Maturity

The weighted average maturity of the portfolio shall not exceed 720 days.

**Rating Agencies
and Rating
Requirements**

As outlined below, some Investment Options have rating requirements. In that context, Rating Agencies is defined as:

- Standard & Poor's Financial Services (S&P),
- Moody's Investors Service (Moody's), and
- Fitch Ratings (Fitch), only.

Ratings requirements:

- are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. Rating Agencies scales are included for reference in Exhibit 1,
 - apply at the time of purchase only, with subsequent downgrades below requirement levels prompting a case-by-case evaluation of the investment, and
 - only apply to the Rating Agencies rating the security.
-

**Investment
Options**

The District is able to purchase investments in the instruments listed in this section as allowed and defined under Section 53600 et. seq. of the [Government](#) Code, [Chapter 6](#), Article 7 ~~in Chapter 6~~ of the M.U.D. Act, Board Resolutions, and via this policy. As used in this section, the term "Portfolio" refers to all investable funds managed by the District.

1. United States Treasury Obligations

- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

2. United States Government Agencies Obligations

Under this subsection, only obligations issued by the following agencies are permitted:

- o Federal Agricultural Mortgage Corporation (Farmer Mac)
- o Federal Farm Credit Bank (FFCB)
- o Federal Home Loan Bank (FHLB)
- o Federal Home Loan Mortgage Corporation (FHLMC)
- o Federal National Mortgage Association (FNMA)
- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: 40% of the Portfolio
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

3. State of California, Local Agency Investment Fund (LAIF)

- Maximum Share of Portfolio: as determined by Section 16429.1 of the [Government Code](#)
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: n/a
- Other Restrictions: none

4. Local Government Investment Pools

Under this subsection, only obligations of the following agencies are permitted:

- o California Asset Management Program (CAMP)
- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: Ratings of AAAM by at least one Rating Agency
- Other Restrictions: none

5. Money Market Mutual Funds

Under this subsection, only Money Market Mutual Funds with stable, non-floating NAV (Net Asset Value, the value of assets divided by number of shares) are permitted

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Fund Limit: 5% of Money Market Mutual Fund's assets ~~in the Portfolio~~
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: AAAm by at least two Rating Agencies
- Other Restrictions: ~~n/a~~ none

The District will request from each Money Market Mutual Fund, prior to investing and on an annual basis after investing, documents which provide details on the operations of the fund. These documents, along with the other criteria above, including the rating restriction, will be used to determine the suitability to receive Portfolio funds.

6. Certificates of Time Deposit

Government Code Section 53601.8 allows investments in deposits placed with a private sector entity that assists in the placement of deposits with eligible financial institutions located in the United States. Under this subsection, only such purchases are permitted.

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Negotiable Certificates of Deposit
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit ~~insured (\$250,000 as of April 2018)~~
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed one (1) year from the settlement date
- Minimum Rating: AA- by at least one Rating Agency
- Other Restrictions:
 - o Investment in local branches within the District, whenever possible.

7. Negotiable Certificates of Deposit

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Certificates of Time Deposits
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit ~~insured (\$250,000 as of April 2017)~~
- Maximum Issue Limit: 10% of issue
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: AA- by all Rating Agencies
- Other Restrictions:
 - o Issued by banks with total deposits of one billion dollars (\$1,000,000,000) or more.

8. Commercial Paper

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: 10% of outstanding amount for the issuer
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: A-1+ from at least one Rating Agency
- Other Restrictions:
 - o Issued by an entity that is, at the time of purchase:
 - organized and operating in the United States as a general corporation, with total assets exceeding \$500,000,000 and debt (other than commercial paper) rated A or better by at least one Rating Agency ; or
 - is organized within the United States as a special purpose corporation, trust, or limited liability company, with program wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond, **and** has commercial paper that is rated A-1+ by at least one Rating Agency.

9. Medium Term Corporate Notes

- Maximum Share of Portfolio: 30% of the Portfolio
- Maximum Issuer Limit: 10% of the Portfolio
- Maximum Issue Limit: 5% of original issue amount
- Maximum Maturity: Not to exceed 5 years from the settlement date
- Minimum Rating: AA- from at least one Rating Agency, and not lower than A by any Rating Agency
- Other Restrictions:
 - o Issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

10. Repurchase Agreements

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: n/a
- Other Restrictions:
 - o Collateral may only be in any securities authorized in items 1, or 2
 - o A Master Repurchase Agreement must be on file with the District
 - o Security must be marked to market on a daily basis and delivered to the District's custodial bank at a market value of at least 102%

11. Municipal Obligations

Under this subsection, only registered obligations of the following agencies are permitted:

- Any local agency within the State of California
- the State of California
- Municipal Bonds:
 - Maximum Share of Portfolio: 40% of the Portfolio when added together with Municipal Notes
 - Maximum Issuer Limit: 20% of the Portfolio
 - Maximum Issue Limit: 10% of original issue amount
 - Maximum Maturity: Not to exceed five (5) years or with a put provision within five (5) years of settlement date
 - Minimum Rating: AA- or equivalent by at least one Rating Agency, and not lower than A by any Rating Agency
 - Other Restrictions: none
- Municipal Notes:
 - Maximum Share of Portfolio: 40% of the Portfolio together with Municipal Bonds
 - Maximum Issuer Limit: 20% of the Portfolio
 - Maximum Issue limit: 10% of original issue amount
 - Maximum Maturity: n/a
 - Minimum Rating: Notes maturing within 365 days must have a rating of SP-1+ from at least one Rating Agency
 - Other Restrictions: none

Investment Placement

Investment placement shall be determined by, but not limited to, continual evaluation and projection of market conditions, interest rate trends, cash flow needs, economic data, yield curves, and interest rate forecasts. Additionally, for investments purchased or sold in the secondary market, best efforts will be made to obtain at least three quotations from Purchasing Entities (as defined below) or obtain timely and verifiable third-party market pricing data for the investment in question. The combination of these factors shall determine where, in what denomination, and for what maturity investments are made.

Selling Securities Prior To Maturity

When selling securities prior to maturity, principal losses are only allowable either:

- if the sale of securities is necessary to meet payment obligations,
- to comply with this policy, while considering the impact of the sale(s), or
- if the proposed sale is to be made in conjunction with a purchase and the proposed sale in combination with the subsequent purchase can enhance the Portfolio's yield.

Collateral

Securities placed with agents of depository shall at all times be maintained as specified in District Resolution 33232-01 in one or more trust companies, State or national banks located within California, the Federal Reserve Bank, or with any state or national bank located in any city designated as a federal reserve city by the Board of Governors of the Federal Reserve System, and to take from any such banks or trust companies receipts for securities so deposited. Requests for Collateral substitution and releases are subject to the Treasurer's written approval.

**Portfolio
Performance**

The Portfolio will seek to attain a risk-adjusted market rate of return that takes into consideration the cash flow needs of the District. As a result, Portfolio performance will be measured using commonly used market indicators. Those may include, but are not limited to: the Federal funds rate, short-term government obligations rates, and other market rates that reflect the mix of securities in the Portfolio.

**Purchasing
Entities**

Investments will be purchased from either:

- Primary Dealers as designated by the Federal Reserve Bank of New York,
- National or California State Chartered Banks,
- Federal or California Chartered Savings Institution,
- Broker-Dealers registered with the State of California, **or**
- Issuers of securities eligible for purchase by the District.

In addition, these institutions must:

- be registered by the Securities and Exchange Commission (SEC),
- be members in good standing of the Financial Industry Regulatory Authority (FINRA), and
- provide audited financial statements to the District annually.

The District shall maintain a current eligible list of established dealers, brokers, banks and savings and loan associations with which securities trading and placement of funds are authorized.

Additionally, to be placed on the eligible list, individuals need to certify in writing that they have read, understood, and agree to comply with this policy, where applicable, by completing and filing with the District the 'Certification of Compliance with Investment Policy' included in this policy as Exhibit 2.

Eligibility may be revoked at any time, in the District's sole discretion, for any reason, including but not limited to, failure to meet the above requirements.

**Trade
Confirmations and
Settlements**

To ensure a high degree of internal control, the District shall comply with the following:

1. All Securities purchased from dealers and brokers shall be held in safekeeping by the District's custodial bank, a national bank, a State chartered bank or trust company, established for this purpose as someone other than the selling party of the security. Securities purchased will be covered by a trust or safekeeping receipt in a manner that establishes the District's ownership. All transactions require delivery of the security prior to payment for the security (delivery vs. payment).
2. All trade confirmations shall be received directly and reviewed for conformity to the original transaction by an individual other than the person originating the transaction. Any discrepancies will be brought to the attention of the Treasurer.

**Review And
Reporting
Requirements**

On a monthly basis, in accordance with Section 53607 of the [Government](#) Code, the Treasurer shall prepare and submit a report to the General Manager and the Board of Directors listing investment transactions.

On a quarterly basis, in accordance with Section 53646 of the [Government](#) Code, the Treasurer may prepare and submit a report to the General Manager and the Board of Directors which shall include the type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the District, and provide an investment summary by security type, percent of the portfolio, investment yield and the remaining period of investment to maturity.

On an annual basis, in accordance with Section 53646 of the [Government](#) Code, an investment policy may be presented to the Board for consideration at a public meeting. In conjunction with the investment policy consideration, the Board shall also annually review the delegation of its authority for the management of investments to the Treasurer.

**Performance
Review And
Internal Control**Office of Internal Audit

The Office of Internal Audit will periodically audit the investment portfolio to evaluate the effectiveness of the District's investment program as well as its compliance with the Investment Policy. These audits will supplement the annual review by the District's external auditors.

Finance Department

The Treasurer has established and maintains an internal control structure designed to ensure that funds covered under this policy are protected from loss, theft, fraud, or misuse.

The Treasurer will review the investment portfolio monthly for compliance with the Investment Policy and make recommendations for changes and improvements where warranted.

Authority

Resolution No. 33019-96 on December 10, 1996
Amended by Resolution No. 33134-99 on January 26, 1999
Amended by Resolution No. 33232-01 on January 9, 2001
Amended by Resolution 33287-02 on January 22, 2002
Amended by Resolution 33350-03 on February 25, 2003
Amended by Resolution 33390-04 on January 27, 2004
Amended by Resolution 33464-05 on February 22, 2005
Amended by Resolution 33516-06 on January 24, 2006
Amended by Resolution 33585-07 on March 13, 2007
Approved by Resolution 33658-08, February 26, 2008
Approved by Resolution 33702-09, February 24, 2009
Approved by Resolution 33752-10, January 26, 2010
Approved by Resolution 33792-10, November 23, 2010
Approved by Resolution 33871-12, April 24, 2012
Approved by Resolution 33920-13, March 26, 2013
Reaffirmed by Motion 056-14, March 25, 2014
Approved by Resolution 34027-15, April 28, 2015
Approved by Resolution 34079-16, April 26, 2016
Approved by Resolution 35033-17, April 25, 2017
Approved by Resolution 35083-18, April 24, 2018
[Approved by Resolution XXXXX-19, April 23, 2019](#)

Reference

Procedure 601 – Conflict of Interest Disqualification Procedure

EXHIBIT 1 RATING AGENCIES' SCALES

For purposes of Investment Policy 4.07 the term "Rating Agencies" is defined as: Standard & Poor's Financial Services (S&P), Moody's Investors Service (Moody's), and Fitch Ratings (Fitch).

Ratings requirements are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. The equivalencies are provided in the tables below.

EXAMPLE

Investment Option 6, Certificates of Time Deposits, shows:

"Minimum Rating: AA- by at least one Rating Agency"

This requirement should be read as:

"Minimum Rating: AA- *or equivalent* by at least one Rating Agency."

To determine the equivalent rating in the table below, find the AA- rating under the S&P column and read across the row to find the Moody's equivalent rating of Aa3 and the Fitch equivalent rating of AA-. Accordingly, a Certificate of Time Deposit is equivalent as an investment if it is rated AA- by S&P, Aa3 by Moody's, or AA- by Fitch.

INVESTMENT-GRADE RATING SCALES

LONG-TERM DEBT			
S&P	MOODY'S	FITCH	
AAA	Aaa	AAA	
AA+	Aa1	AA+	
AA	Aa2	AA	
AA-	Aa3	AA-	← Minimum rating required for district investments
A+	A1	A+	
A	A2	A	
A-	A3	A-	
BBB+	Baa1	BBB+	
BBB	Baa2	BBB	
BBB-	Baa3	BBB-	

SHORT-TERM DEBT			
S&P	MOODY'S	FITCH	
A-1+	P-1	F1+	← Minimum rating required for district investments
A-1	-	F1	
A-2	P-2	F2	
A-3	P-3	F3	

FUNDS			
S&P	MOODY'S	FITCH	
AAAm	Aaa-mf	AAAf	← Minimum rating required for district investments
AAm	Aa-mf	AAf	
Am	A-mf	Af	
BBBm	Baa-mf	BBBf	

EXHIBIT 2
East Bay Municipal Utility District
Certification of Compliance with Investment Policy

The East Bay Municipal Utility District (the District), under Policy 4.07 (the Investment Policy), requires that securities trading and placement of funds be conducted only with eligible Purchasing Entities. The Investment Policy also specifies that the District must obtain written certification that eligible Purchasing Entities have read, understood, and agree to comply with the Investment Policy, where applicable. This certification is necessary to be included on an approved list of Purchasing Entities that are eligible to conduct investment transactions with the District. The District has no obligation to enter into securities trading and/or placement of funds transactions with any or all Purchasing Entities on the list. The District retains the sole and exclusive discretion to determine with which of the Purchasing Entities, if any, to engage in individual investment transactions. Eligibility may be revoked at any time, at the District's sole discretion, for any reason, including but not limited to, failure to meet the requirements of the policy and this exhibit.

Please complete the sections below, sign and return this completed form if you wish to be considered for inclusion on the approved list of Purchasing Entities eligible to conduct investment transactions with the District.

Please send completed form:

via mail, to:

Damien Charléty
East Bay Municipal Utility District
375 11th Street, MS809
Oakland, CA 94607

and

electronically, to:

damien.charlety@ebmud.com

A. Entity Name _____

B. My entity is a: (choose all that apply, **at least one must be checked for eligibility**)

- ☐ Primary Dealer as designated by the Federal Reserve Bank of New York
- ☐ National or California State Chartered Bank
- ☐ Federal or California Chartered Savings Institution
- ☐ Broker-Dealer registered with the State of California

AND

I certify that my entity is: (**both must be checked for eligibility**)

- ☐ registered by the Securities and Exchange Commission (SEC)
- ☐ a member in good standing of the Financial Industry Regulatory Authority (FINRA)

C. My entity is an:

- ☐ issuer of securities eligible for purchase by the District

D. My entity:

- ☐ participates in the District's Contract Equity Program

E. I have provided:

- ☐ Audited Financial Statements

I certify that I have read, understood, and agree to comply where applicable with the District's Investment Policy.

Print Name _____

Sign Name _____

Title _____

Date _____

EXHIBIT 3
East Bay Municipal Utility District
Investment Policy Quick Reference Table

The following is a summary of Investment Options and a few of their requirements. Full details on each Investment Option can be found in the main body of the Investment Policy on pages 2 through 5.

Investment Option	Maximum Share of Portfolio	Minimum Rating at purchase	Maximum Maturity at settlement	Additional Limitations
United States Treasury Obligations	100%	n/a	5 years	see page 2, Item 1
United States Government Agencies Obligations	100%	n/a	5 years	see page 3, Item 2
State of California, Local Agency Investment Fund	per Government Code	n/a	n/a	see page 3, Item 3
Local Government Investment Pools	20%	AAAm	n/a	see page 3, Item 4
Money Market Mutual Funds	20%	AAAm	n/a	see page 3, Item 5
Certificates of Time Deposit	20%	AA-	1 year	see page 3-4, Item 6
Negotiable Certificates of Deposit		AA-	5 years	see page 4, Item 7
Commercial Paper	20%	A-1+	270 days	see page 4, Item 9
Medium Term Corporate Notes	30%	AA-	5 years	see page 4, Item 9
Repurchase Agreements	20%	n/a	270 days	see page 5, Item 10
Municipal Obligations	40%	AA-	5 years	see page 5, Item 11

EXHIBIT 4
Glossary of Commonly Used Investment Terms

This Glossary is for informational purposes only and is not intended to modify any of the terms of this Investment Policy, the [Government](#) Code, or M.U.D. Act.

ACCRUED INTEREST	The amount of interest that is earned but unpaid since the last interest payment date.
ASK PRICE	The price at which securities are offered from a seller.
AVERAGE MATURITY	A calculation that expresses the average maturity of an investment portfolio using each investment's maturity weighted by the size of that investment in the portfolio.
BASIS POINT	One basis point equals 1/100 of one percent. Basis points are used more often to describe changes in yields on bonds, notes and other fixed-income securities.
BID PRICE	The price at which a buyer offers to buy a security.
BOOK VALUE	The original cost of the investment, plus accrued interest and amortization of any premium or discount.
BROKER	A broker brings buyers and sellers together and is compensated for his/her service.
CALL PRICE	The price at which an issuer may redeem a bond prior to maturity.
CALLABLE BONDS	Bonds that may be redeemed by the issuing company prior to the maturity date.
CERTIFICATE OF DEPOSIT (CD)	A time deposit with a specific maturity evidenced by a Certificate. Large-denomination CDs are typically negotiable.
COLLATERAL	Securities, evidence of deposit or other property, which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.
COMMERCIAL PAPER (CP)	Short-term unsecured promissory notes.
COUPON	The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.
CURRENT YIELD	The annual income from an investment divided by the current market value.
CUSTODIAN	A bank or other financial institution that keeps custody of stock certificates and other assets.
DEALER	A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.
DELIVERY VS. PAYMENT (DVP)	Delivery of securities with a simultaneous exchange of money for the securities.
DISCOUNT	The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.
DIVERSIFICATION	An investment principle designed to spread the risk in a portfolio by dividing investments among different sectors, industries and companies.
FIXED-INCOME SECURITIES	Securities that return a fixed income over a specified period.
GOVERNMENT SECURITIES	Obligations of the U.S. Government and its agencies and instrumentalities.
INTEREST	The amount earned while owning a debt security, generally calculated as a percentage of the principal amount.
LIQUIDITY	The speed and ease with which an investment can be converted to cash.
MARKET VALUE	The price at which a security is trading and could presumably be purchased or sold.
MATURITY	The date upon which the principal or stated value of an investment

	becomes due and payable.
MEDIUM TERM NOTES (MTN)	Debt securities issued by a corporation or depository institution with a remaining maturity ranging from nine months to five years.
MONEY MARKET MUTUAL FUNDS	An investment company that pools money from investors and invest in a variety of short-term money market instruments.
NET ASSET VALUE (NAV)	A per-share valuation of a mutual fund based on total assets minus total liabilities.
NON-CALLABLE	Bond that cannot be called at the option of the issuer.
OFFER PRICE	The price asked by a seller of securities.
PAR or PAR VALUE	The amount of principal that must be paid on the maturity date. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.
PREMIUM	The difference between the par value of a bond and the market value of the bond, when the market value is above par.
PRIMARY DEALER	A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight.
PRINCIPAL	The face value or par value of an investment.
RATE OF RETURN	The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.
REPURCHASE AGREEMENT	The purchase of securities, on a temporary basis, with the seller's simultaneous agreement to repurchase the securities back at a later date at a specified price that includes interest for the buyer's holding period.
SAFEKEEPING	Storage and protection of a customer's financial assets, valuables, or documents, provided as a service by an institution serving as Agent or Custodian and, where control is delegated by the customer.
SECONDARY MARKET	A market made for the purchase and sale of outstanding issues following the initial distribution.
SETTLEMENT DATE	The date when the security is delivery in exchange for the corresponding payment.
TREASURY BILLS	A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.
TREASURY BONDS	Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years from date of issue.
TREASURY NOTES	Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years from date of issue.
U. S. GOVERNMENT AGENCY SECURITIES	Debt securities issued by U.S. Government sponsored enterprises and federally related institutions.
U.S. TREASURY SECURITIES	Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States.
YIELD TO CALL (YTC)	The rate of return an investor earns from a bond assuming the bond is redeemed (called) prior to its nominal maturity date.
YIELD TO MATURITY (YTM)	The rate of return earned on an investment held to maturity considering all cash flows and timing factors: interest earnings, discounts, and premiums above par.
YIELD	The annual rate of return on a debt investment expressed as a percentage.



Policy 4.07

EFFECTIVE 23 APR 19

SUPERSEDES 24 APR 18

INVESTMENT POLICY

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

Invest District funds and funds managed by the District on behalf of its Joint Powers Authorities (JPAs) in compliance with investment criteria for safety, liquidity, yield and diversification as set forth herein. Investments shall be in securities with a range of maturities to provide adequate security and liquidity to pay demands when due while providing a market rate of return on investments.

Authority	Section 53600 et. seq. of the California Government Code (Government Code) and Chapter 6, Article 7 of the Municipal Utility District Act (M.U.D. Act) govern the investment of idle monies of the District. Section 53635 of the Government Code defines how investments are to be handled for Joint Powers Authorities.
Delegation of Authority	The authority and responsibility to invest idle monies of the District is delegated to the Director of Finance as the Treasurer. The Director of Finance may designate individual staff to carry out his/her responsibilities under this policy.
No Bond Proceeds	The investment of bond proceeds is specifically defined in individual bond indenture documents and is not included in this policy.
Ethics and Conflicts of Interest	<p>Officers and employees involved in the investment process shall:</p> <ul style="list-style-type: none">- refrain from personal business activity that could conflict with proper execution of the District's investment program, or which could impair their ability to make impartial investment decisions on behalf of the District,- disclose any material financial interest in financial institutions that conduct business with the District,- disclose material personal financial/investments that are related to or could reasonably be affected by the performance of the District's investments,- refrain from undertaking any personal investment transactions with the same individual with whom business is conducted on behalf of the District's investments, and- comply with the District's Conflict of Interest Code, as required.
Investment Criteria	<p>Criteria for selecting investments shall:</p> <ul style="list-style-type: none">- adhere to the prudent investor standard, described in Section 53600.3 of the Government Code as follows: "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency," and- conform with the Government Code and M.U.D. Act, and- have the following objectives, in order of priority:

1. *Safety* - The District's ability to recover principal and interest. Investments shall be made that will seek to ensure the preservation of principal and interest and minimize risk to the greatest extent possible. It is the primary duty of the Treasurer to protect, preserve and maintain cash and investments on behalf of the District.
 2. *Liquidity* - The District's ability to have cash available when needed to support expenditure cycles and budgetary objectives.
 3. *Yield* - The District's ability to provide a market rate of return on the District's investments while conforming to the safety and liquidity criteria above.
 4. *Diversification* - The District's ability to maintain an investment portfolio that includes a range of security types for the District. In order to accomplish this, each Investment Option shall have defined limits on maximum share of the portfolio, single issuer and single issue holdings, and maturity, rating and other restrictions where applicable.
-

Maturity

The weighted average maturity of the portfolio shall not exceed 720 days.

Rating Agencies and Rating Requirements

As outlined below, some Investment Options have rating requirements. In that context, Rating Agencies is defined as:

- Standard & Poor's Financial Services (S&P),
- Moody's Investors Service (Moody's), and
- Fitch Ratings (Fitch), only.

Ratings requirements:

- are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. Rating Agencies scales are included for reference in Exhibit 1,
 - apply at the time of purchase only, with subsequent downgrades below requirement levels prompting a case-by-case evaluation of the investment, and
 - only apply to the Rating Agencies rating the security.
-

Investment Options

The District is able to purchase investments in the instruments listed in this section as allowed and defined under Section 53600 et. seq. of the Government Code, Chapter 6, Article 7 of the M.U.D. Act, Board Resolutions, and via this policy. As used in this section, the term "Portfolio" refers to all investable funds managed by the District.

1. United States Treasury Obligations
 - Maximum Share of Portfolio: Unlimited
 - Maximum Issuer Limit: n/a
 - Maximum Issue Limit: n/a
 - Maximum Maturity: Not to exceed five (5) years from the settlement date
 - Minimum Rating: n/a
 - Other Restrictions: none

2. United States Government Agencies Obligations

Under this subsection, only obligations issued by the following agencies are permitted:

- Federal Agricultural Mortgage Corporation (Farmer Mac)
- Federal Farm Credit Bank (FFCB)
- Federal Home Loan Bank (FHLB)
- Federal Home Loan Mortgage Corporation (FHLMC)
- Federal National Mortgage Association (FNMA)
- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: 40% of the Portfolio
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

3. State of California, Local Agency Investment Fund (LAIF)

- Maximum Share of Portfolio: as determined by Section 16429.1 of the Government Code
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: n/a
- Other Restrictions: none

4. Local Government Investment Pools

Under this subsection, only obligations of the following agencies are permitted:

- California Asset Management Program (CAMP)
- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: Ratings of AAAM by at least one Rating Agency
- Other Restrictions: none

5. Money Market Mutual Funds

Under this subsection, only Money Market Mutual Funds with stable, non-floating NAV (Net Asset Value, the value of assets divided by number of shares) are permitted

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Fund Limit: 5% of Money Market Mutual Fund's assets
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: AAAM by at least two Rating Agencies
- Other Restrictions: none

The District will request from each Money Market Mutual Fund, prior to investing and on an annual basis after investing, documents which provide details on the operations of the fund. These documents, along with the other criteria above, including the rating restriction, will be used to determine the suitability to receive Portfolio funds.

6. Certificates of Time Deposit

Government Code Section 53601.8 allows investments in deposits placed with a private sector entity that assists in the placement of deposits with eligible financial institutions located in the United States. Under this subsection, only such purchases are permitted.

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Negotiable Certificates of Deposit
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed one (1) year from the settlement date
- Minimum Rating: AA- by at least one Rating Agency
- Other Restrictions:
 - o Investment in local branches within the District, whenever possible.

7. Negotiable Certificates of Deposit

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Certificates of Time Deposits
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit
- Maximum Issue Limit: 10% of issue
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: AA- by all Rating Agencies
- Other Restrictions:
 - o Issued by banks with total deposits of one billion dollars (\$1,000,000,000) or more.

8. Commercial Paper

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: 10% of outstanding amount for the issuer
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: A-1+ from at least one Rating Agency
- Other Restrictions:
 - o Issued by an entity that is, at the time of purchase:
 - organized and operating in the United States as a general corporation, with total assets exceeding \$500,000,000 and debt (other than commercial paper) rated A or better by at least one Rating Agency ; or
 - is organized within the United States as a special purpose corporation, trust, or limited liability company, with program wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond, **and** has commercial paper that is rated A-1+ by at least one Rating Agency.

9. Medium Term Corporate Notes

- Maximum Share of Portfolio: 30% of the Portfolio
- Maximum Issuer Limit: 10% of the Portfolio
- Maximum Issue Limit: 5% of original issue amount
- Maximum Maturity: Not to exceed 5 years from the settlement date
- Minimum Rating: AA- from at least one Rating Agency, and not lower than A by any Rating Agency
- Other Restrictions:
 - o Issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

10. Repurchase Agreements

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: n/a
- Other Restrictions:
 - o Collateral may only be in any securities authorized in items 1, or 2
 - o A Master Repurchase Agreement must be on file with the District
 - o Security must be marked to market on a daily basis and delivered to the District's custodial bank at a market value of at least 102%

11. Municipal Obligations

Under this subsection, only registered obligations of the following agencies are permitted:

- o Any local agency within the State of California
- o the State of California
- Municipal Bonds:
 - o Maximum Share of Portfolio: 40% of the Portfolio when added together with Municipal Notes
 - o Maximum Issuer Limit: 20% of the Portfolio
 - o Maximum Issue Limit: 10% of original issue amount
 - o Maximum Maturity: Not to exceed five (5) years or with a put provision within five (5) years of settlement date
 - o Minimum Rating: AA- or equivalent by at least one Rating Agency, and not lower than A by any Rating Agency
 - o Other Restrictions: none
- Municipal Notes:
 - o Maximum Share of Portfolio: 40% of the Portfolio together with Municipal Bonds
 - o Maximum Issuer Limit: 20% of the Portfolio
 - o Maximum Issue limit: 10% of original issue amount
 - o Maximum Maturity: n/a
 - o Minimum Rating: Notes maturing within 365 days must have a rating of SP-1+ from at least one Rating Agency
 - o Other Restrictions: none

**Investment
Placement**

Investment placement shall be determined by, but not limited to, continual evaluation and projection of market conditions, interest rate trends, cash flow needs, economic data, yield curves, and interest rate forecasts. Additionally, for investments purchased or sold in the secondary market, best efforts will be made to obtain at least three quotations from Purchasing Entities (as defined below) or obtain timely and verifiable third-party market pricing data for the investment in question. The combination of these factors shall determine where, in what denomination, and for what maturity investments are made.

**Selling Securities
Prior To Maturity**

When selling securities prior to maturity, principal losses are only allowable either:

- if the sale of securities is necessary to meet payment obligations,
 - to comply with this policy, while considering the impact of the sale(s), or
 - if the proposed sale is to be made in conjunction with a purchase and the proposed sale in combination with the subsequent purchase can enhance the Portfolio's yield.
-

Collateral

Securities placed with agents of depository shall at all times be maintained as specified in District Resolution 33232-01 in one or more trust companies, State or national banks located within California, the Federal Reserve Bank, or with any state or national bank located in any city designated as a federal reserve city by the Board of Governors of the Federal Reserve System, and to take from any such banks or trust companies receipts for securities so deposited. Requests for Collateral substitution and releases are subject to the Treasurer's written approval.

**Portfolio
Performance**

The Portfolio will seek to attain a risk-adjusted market rate of return that takes into consideration the cash flow needs of the District. As a result, Portfolio performance will be measured using commonly used market indicators. Those may include, but are not limited to: the Federal funds rate, short-term government obligations rates, and other market rates that reflect the mix of securities in the Portfolio.

**Purchasing
Entities**

Investments will be purchased from either:

- Primary Dealers as designated by the Federal Reserve Bank of New York,
- National or California State Chartered Banks,
- Federal or California Chartered Savings Institution,
- Broker-Dealers registered with the State of California, **or**
- Issuers of securities eligible for purchase by the District.

In addition, these institutions must:

- be registered by the Securities and Exchange Commission (SEC),
- be members in good standing of the Financial Industry Regulatory Authority (FINRA), **and**
- provide audited financial statements to the District annually.

The District shall maintain a current eligible list of established dealers, brokers, banks and savings and loan associations with which securities trading and placement of funds are authorized.

Additionally, to be placed on the eligible list, individuals need to certify in writing that they have read, understood, and agree to comply with this policy, where applicable, by completing and filing with the District the 'Certification of Compliance with Investment Policy' included in this policy as Exhibit 2.

Eligibility may be revoked at any time, in the District's sole discretion, for any reason, including but not limited to, failure to meet the above requirements.

**Trade
Confirmations and
Settlements**

To ensure a high degree of internal control, the District shall comply with the following:

1. All Securities purchased from dealers and brokers shall be held in safekeeping by the District's custodial bank, a national bank, a State chartered bank or trust company, established for this purpose as someone other than the selling party of the security. Securities purchased will be covered by a trust or safekeeping receipt in a manner that establishes the District's ownership. All transactions require delivery of the security prior to payment for the security (delivery vs. payment).
 2. All trade confirmations shall be received directly and reviewed for conformity to the original transaction by an individual other than the person originating the transaction. Any discrepancies will be brought to the attention of the Treasurer.
-

**Review And
Reporting
Requirements**

On a monthly basis, in accordance with Section 53607 of the Government Code, the Treasurer shall prepare and submit a report to the General Manager and the Board of Directors listing investment transactions.

On a quarterly basis, in accordance with Section 53646 of the Government Code, the Treasurer may prepare and submit a report to the General Manager and the Board of Directors which shall include the type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the District, and provide an investment summary by security type, percent of the portfolio, investment yield and the remaining period of investment to maturity.

On an annual basis, in accordance with Section 53646 of the Government Code, an investment policy may be presented to the Board for consideration at a public meeting. In conjunction with the investment policy consideration, the Board shall also annually review the delegation of its authority for the management of investments to the Treasurer.

**Performance
Review And
Internal Control**Office of Internal Audit

The Office of Internal Audit will periodically audit the investment portfolio to evaluate the effectiveness of the District's investment program as well as its compliance with the Investment Policy. These audits will supplement the annual review by the District's external auditors.

Finance Department

The Treasurer has established and maintains an internal control structure designed to ensure that funds covered under this policy are protected from loss, theft, fraud, or misuse.

The Treasurer will review the investment portfolio monthly for compliance with the Investment Policy and make recommendations for changes and improvements where warranted.

Authority

Resolution No. 33019-96 on December 10, 1996
Amended by Resolution No. 33134-99 on January 26, 1999
Amended by Resolution No. 33232-01 on January 9, 2001
Amended by Resolution 33287-02 on January 22, 2002
Amended by Resolution 33350-03 on February 25, 2003
Amended by Resolution 33390-04 on January 27, 2004
Amended by Resolution 33464-05 on February 22, 2005
Amended by Resolution 33516-06 on January 24, 2006
Amended by Resolution 33585-07 on March 13, 2007
Approved by Resolution 33658-08, February 26, 2008
Approved by Resolution 33702-09, February 24, 2009
Approved by Resolution 33752-10, January 26, 2010
Approved by Resolution 33792-10, November 23, 2010
Approved by Resolution 33871-12, April 24, 2012
Approved by Resolution 33920-13, March 26, 2013
Reaffirmed by Motion 056-14, March 25, 2014
Approved by Resolution 34027-15, April 28, 2015
Approved by Resolution 34079-16, April 26, 2016
Approved by Resolution 35033-17, April 25, 2017
Approved by Resolution 35083-18, April 24, 2018
Approved by Resolution XXXXX-19, April 23, 2019

Reference

Procedure 601 – Conflict of Interest Disqualification Procedure

EXHIBIT 1 RATING AGENCIES' SCALES

For purposes of Investment Policy 4.07 the term "Rating Agencies" is defined as: Standard & Poor's Financial Services (S&P), Moody's Investors Service (Moody's), and Fitch Ratings (Fitch).

Ratings requirements are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. The equivalencies are provided in the tables below.

EXAMPLE

Investment Option 6, Certificates of Time Deposits, shows:

"Minimum Rating: AA- by at least one Rating Agency"

This requirement should be read as:

"Minimum Rating: AA- *or equivalent* by at least one Rating Agency."

To determine the equivalent rating in the table below, find the AA- rating under the S&P column and read across the row to find the Moody's equivalent rating of Aa3 and the Fitch equivalent rating of AA-. Accordingly, a Certificate of Time Deposit is equivalent as an investment if it is rated AA- by S&P, Aa3 by Moody's, or AA- by Fitch.

INVESTMENT-GRADE RATING SCALES

LONG-TERM DEBT		
S&P	MOODY'S	FITCH
AAA	Aaa	AAA
AA+	Aa1	AA+
AA	Aa2	AA
AA-	Aa3	AA-
A+	A1	A+
A	A2	A
A-	A3	A-
BBB+	Baa1	BBB+
BBB	Baa2	BBB
BBB-	Baa3	BBB-

← Minimum rating required for district investments

SHORT-TERM DEBT		
S&P	MOODY'S	FITCH
A-1+	P-1	F1+
A-1	-	F1
A-2	P-2	F2
A-3	P-3	F3

← Minimum rating required for district investments

FUNDS		
S&P	MOODY'S	FITCH
AAAm	Aaa-mf	AAAf
AAm	Aa-mf	AAf
Am	A-mf	Af
BBBm	Baa-mf	BBBf

← Minimum rating required for district investments

EXHIBIT 2
East Bay Municipal Utility District
Certification of Compliance with Investment Policy

The East Bay Municipal Utility District (the District), under Policy 4.07 (the Investment Policy), requires that securities trading and placement of funds be conducted only with eligible Purchasing Entities. The Investment Policy also specifies that the District must obtain written certification that eligible Purchasing Entities have read, understood, and agree to comply with the Investment Policy, where applicable. This certification is necessary to be included on an approved list of Purchasing Entities that are eligible to conduct investment transactions with the District. The District has no obligation to enter into securities trading and/or placement of funds transactions with any or all Purchasing Entities on the list. The District retains the sole and exclusive discretion to determine with which of the Purchasing Entities, if any, to engage in individual investment transactions. Eligibility may be revoked at any time, at the District's sole discretion, for any reason, including but not limited to, failure to meet the requirements of the policy and this exhibit.

Please complete the sections below, sign and return this completed form if you wish to be considered for inclusion on the approved list of Purchasing Entities eligible to conduct investment transactions with the District.

Please send completed form:

via mail, to:

Damien Charléty
East Bay Municipal Utility District
375 11th Street, MS809
Oakland, CA 94607

and

electronically, to:

damien.charlety@ebmud.com

A. Entity Name _____

B. My entity is a: (choose all that apply, **at least one must be checked for eligibility**)

- ☐ Primary Dealer as designated by the Federal Reserve Bank of New York
- ☐ National or California State Chartered Bank
- ☐ Federal or California Chartered Savings Institution
- ☐ Broker-Dealer registered with the State of California

AND

I certify that my entity is: (**both must be checked for eligibility**)

- ☐ registered by the Securities and Exchange Commission (SEC)
- ☐ a member in good standing of the Financial Industry Regulatory Authority (FINRA)

C. My entity is an:

- ☐ issuer of securities eligible for purchase by the District

D. My entity:

- ☐ participates in the District's Contract Equity Program

E. I have provided:

- ☐ Audited Financial Statements

I certify that I have read, understood, and agree to comply where applicable with the District's Investment Policy.

Print Name _____

Sign Name _____

Title _____

Date _____

EXHIBIT 3
East Bay Municipal Utility District
Investment Policy Quick Reference Table

The following is a summary of Investment Options and a few of their requirements. Full details on each Investment Option can be found in the main body of the Investment Policy on pages 2 through 5.

Investment Option	Maximum Share of Portfolio	Minimum Rating at purchase	Maximum Maturity at settlement	Additional Limitations
United States Treasury Obligations	100%	n/a	5 years	see page 2, Item 1
United States Government Agencies Obligations	100%	n/a	5 years	see page 3, Item 2
State of California, Local Agency Investment Fund	per Government Code	n/a	n/a	see page 3, Item 3
Local Government Investment Pools	20%	AAAm	n/a	see page 3, Item 4
Money Market Mutual Funds	20%	AAAm	n/a	see page 3, Item 5
Certificates of Time Deposit	20%	AA-	1 year	see page 3-4, Item 6
Negotiable Certificates of Deposit		AA-	5 years	see page 4, Item 7
Commercial Paper	20%	A-1+	270 days	see page 4, Item 9
Medium Term Corporate Notes	30%	AA-	5 years	see page 4, Item 9
Repurchase Agreements	20%	n/a	270 days	see page 5, Item 10
Municipal Obligations	40%	AA-	5 years	see page 5, Item 11

EXHIBIT 4
Glossary of Commonly Used Investment Terms

This Glossary is for informational purposes only and is not intended to modify any of the terms of this Investment Policy, the Government Code, or M.U.D. Act.

ACCRUED INTEREST	The amount of interest that is earned but unpaid since the last interest payment date.
ASK PRICE	The price at which securities are offered from a seller.
AVERAGE MATURITY	A calculation that expresses the average maturity of an investment portfolio using each investment's maturity weighted by the size of that investment in the portfolio.
BASIS POINT	One basis point equals 1/100 of one percent. Basis points are used more often to describe changes in yields on bonds, notes and other fixed-income securities.
BID PRICE	The price at which a buyer offers to buy a security.
BOOK VALUE	The original cost of the investment, plus accrued interest and amortization of any premium or discount.
BROKER	A broker brings buyers and sellers together and is compensated for his/her service.
CALL PRICE	The price at which an issuer may redeem a bond prior to maturity.
CALLABLE BONDS	Bonds that may be redeemed by the issuing company prior to the maturity date.
CERTIFICATE OF DEPOSIT (CD)	A time deposit with a specific maturity evidenced by a Certificate. Large-denomination CDs are typically negotiable.
COLLATERAL	Securities, evidence of deposit or other property, which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.
COMMERCIAL PAPER (CP)	Short-term unsecured promissory notes.
COUPON	The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.
CURRENT YIELD	The annual income from an investment divided by the current market value.
CUSTODIAN	A bank or other financial institution that keeps custody of stock certificates and other assets.
DEALER	A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.
DELIVERY VS. PAYMENT (DVP)	Delivery of securities with a simultaneous exchange of money for the securities.
DISCOUNT	The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.
DIVERSIFICATION	An investment principle designed to spread the risk in a portfolio by dividing investments among different sectors, industries and companies.
FIXED-INCOME SECURITIES	Securities that return a fixed income over a specified period.
GOVERNMENT SECURITIES	Obligations of the U.S. Government and its agencies and instrumentalities.
INTEREST	The amount earned while owning a debt security, generally calculated as a percentage of the principal amount.
LIQUIDITY	The speed and ease with which an investment can be converted to cash.
MARKET VALUE	The price at which a security is trading and could presumably be purchased or sold.
MATURITY	The date upon which the principal or stated value of an investment

	becomes due and payable.
MEDIUM TERM NOTES (MTN)	Debt securities issued by a corporation or depository institution with a remaining maturity ranging from nine months to five years.
MONEY MARKET MUTUAL FUNDS	An investment company that pools money from investors and invest in a variety of short-term money market instruments.
NET ASSET VALUE (NAV)	A per-share valuation of a mutual fund based on total assets minus total liabilities.
NON-CALLABLE	Bond that cannot be called at the option of the issuer.
OFFER PRICE	The price asked by a seller of securities.
PAR or PAR VALUE	The amount of principal that must be paid on the maturity date. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.
PREMIUM	The difference between the par value of a bond and the market value of the bond, when the market value is above par.
PRIMARY DEALER	A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight.
PRINCIPAL	The face value or par value of an investment.
RATE OF RETURN	The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.
REPURCHASE AGREEMENT	The purchase of securities, on a temporary basis, with the seller's simultaneous agreement to repurchase the securities back at a later date at a specified price that includes interest for the buyer's holding period.
SAFEKEEPING	Storage and protection of a customer's financial assets, valuables, or documents, provided as a service by an institution serving as Agent or Custodian and, where control is delegated by the customer.
SECONDARY MARKET	A market made for the purchase and sale of outstanding issues following the initial distribution.
SETTLEMENT DATE	The date when the security is delivery in exchange for the corresponding payment.
TREASURY BILLS	A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.
TREASURY BONDS	Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years from date of issue.
TREASURY NOTES	Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years from date of issue.
U. S. GOVERNMENT AGENCY SECURITIES	Debt securities issued by U.S. Government sponsored enterprises and federally related institutions.
U.S. TREASURY SECURITIES	Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States.
YIELD TO CALL (YTC)	The rate of return an investor earns from a bond assuming the bond is redeemed (called) prior to its nominal maturity date.
YIELD TO MATURITY (YTM)	The rate of return earned on an investment held to maturity considering all cash flows and timing factors: interest earnings, discounts, and premiums above par.
YIELD	The annual rate of return on a debt investment expressed as a percentage.

RESOLUTION NO. _____

ADOPTING REVISED POLICY 4.07, "INVESTMENT POLICY"

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, it is the desire and intention of the Board of Directors to update and revise Policy 4.07, entitled "Investment Policy;" and

WHEREAS, it is the desire and intention of the Board of Directors to affirm its existing delegation of authority for the management of investments on behalf of the East Bay Municipal Utility District to the Director of Finance, who is also acting as the Treasurer of the East Bay Municipal Utility District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that Revised Policy 4.07, attached hereto as Exhibit A, is hereby adopted.

BE IT FURTHER RESOLVED that the Board of Directors' existing delegation of authority for the management of investments on behalf of the East Bay Municipal Utility District to the Director of Finance, who is also acting as the Treasurer of the East Bay Municipal Utility District, is hereby affirmed.

ADOPTED this 23rd day of April, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel



Policy 4.07R

EFFECTIVE 23 APR 19
~~24 APR 18~~

INVESTMENT POLICY

SUPERSEDES 24 APR 18
~~25 APR 17~~

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

Invest District funds and funds managed by the District on behalf of its Joint Powers Authorities (JPAs) in compliance with investment criteria for safety, liquidity, yield and diversification as set forth herein. Investments shall be in securities with a range of maturities to provide adequate security and liquidity to pay demands when due while providing a ~~high~~market rate of return on investments.

Authority	Section 53600 et. seq. of the California Government Code (<u>Government Code</u>), and <u>Chapter 6</u> , Article 7 in Chapter 6 of the Municipal Utility District Act (M.U.D. Act) govern the investment of idle monies of the District. Section 53635 of the <u>Government Code</u> defines how investments are to be handled for Joint Powers Authorities.
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Delegation of Authority	The authority and responsibility to invest idle monies of the District is delegated to the Director of Finance as the Treasurer. <u>The Director of Finance may designate individual staff to carry out his/her responsibilities under this policy.</u>
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No Bond Proceeds	The investment of bond proceeds is specifically defined in individual bond indenture documents and is not included in this policy.
-------------------------	--

Ethics and Conflicts of Interest	<p>Officers and employees involved in the investment process shall:</p> <ul style="list-style-type: none">- refrain from personal business activity that could conflict with proper execution of the District's investment program, or which could impair their ability to make impartial investment decisions on behalf of the District,- disclose any material financial interest in financial institutions that conduct business with the District,- disclose material personal financial/investments that are related to or could reasonably be affected by the performance of the District's investments,- refrain from undertaking any personal investment transactions with the same individual with whom business is conducted on behalf of the District's investments, and- comply with the District's Conflict of Interest Code, as required.
---	---

Investment Criteria	<p>Criteria for selecting investments shall:</p> <ul style="list-style-type: none">- adhere to the prudent investor standard, described in Section 53600.3 of the <u>Government Code</u> as follows: "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency," and
----------------------------	--

- conform with the Government Code and M.U.D. Act, and
 - have the following objectives, in order of priority:
 1. *Safety* - The District's ability to recover principal and interest. Investments shall be made that will seek to ensure the preservation of principal and interest and minimize risk to the greatest extent possible. It is the primary duty of the Treasurer to protect, preserve and maintain cash and investments on behalf of the District.
 2. *Liquidity* - The District's ability to have cash available when needed to support expenditure cycles and budgetary objectives.
 3. *Yield* - The District's ability to provide ~~maximum~~ a market rate of return on the District's investments while conforming to the safety and liquidity criteria above.
 4. *Diversification* - The District's ability to maintain an investment portfolio that includes a range of security types for the District. In order to accomplish this, each Investment Option shall have defined limits on maximum share of the portfolio, single issuer and single issue holdings, and maturity, rating and other restrictions where applicable.
-

Maturity

The weighted average maturity of the portfolio shall not exceed 720 days.

**Rating Agencies
and Rating
Requirements**

As outlined below, some Investment Options have rating requirements. In that context, Rating Agencies is defined as:

- Standard & Poor's Financial Services (S&P),
- Moody's Investors Service (Moody's), and
- Fitch Ratings (Fitch), only.

Ratings requirements:

- are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. Rating Agencies scales are included for reference in Exhibit 1,
 - apply at the time of purchase only, with subsequent downgrades below requirement levels prompting a case-by-case evaluation of the investment, and
 - only apply to the Rating Agencies rating the security.
-

**Investment
Options**

The District is able to purchase investments in the instruments listed in this section as allowed and defined under Section 53600 et. seq. of the Government Code, Chapter 6, Article 7 ~~in Chapter 6~~ of the M.U.D. Act, Board Resolutions, and via this policy. As used in this section, the term "Portfolio" refers to all investable funds managed by the District.

1. United States Treasury Obligations

- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

2. United States Government Agencies Obligations

Under this subsection, only obligations issued by the following agencies are permitted:

- o Federal Agricultural Mortgage Corporation (Farmer Mac)
- o Federal Farm Credit Bank (FFCB)
- o Federal Home Loan Bank (FHLB)
- o Federal Home Loan Mortgage Corporation (FHLMC)
- o Federal National Mortgage Association (FNMA)
- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: 40% of the Portfolio
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

3. State of California, Local Agency Investment Fund (LAIF)

- Maximum Share of Portfolio: as determined by Section 16429.1 of the [Government Code](#)
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: n/a
- Other Restrictions: none

4. Local Government Investment Pools

Under this subsection, only obligations of the following agencies are permitted:

- o California Asset Management Program (CAMP)
- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: Ratings of AAAm by at least one Rating Agency
- Other Restrictions: none

5. Money Market Mutual Funds

Under this subsection, only Money Market Mutual Funds with stable, non-floating NAV (Net Asset Value, the value of assets divided by number of shares) are permitted

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Fund Limit: 5% of Money Market Mutual Fund's assets ~~in the Portfolio~~
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: AAAm by at least two Rating Agencies
- Other Restrictions: ~~n/a~~ none

The District will request from each Money Market Mutual Fund, prior to investing and on an annual basis after investing, documents which provide details on the operations of the fund. These documents, along with the other criteria above, including the rating restriction, will be used to determine the suitability to receive Portfolio funds.

6. Certificates of Time Deposit

Government Code Section 53601.8 allows investments in deposits placed with a private sector entity that assists in the placement of deposits with eligible financial institutions located in the United States. Under this subsection, only such purchases are permitted.

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Negotiable Certificates of Deposit
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit ~~insured (\$250,000 as of April 2018)~~
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed one (1) year from the settlement date
- Minimum Rating: AA- by at least one Rating Agency
- Other Restrictions:
 - o Investment in local branches within the District, whenever possible.

7. Negotiable Certificates of Deposit

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Certificates of Time Deposits
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit ~~insured (\$250,000 as of April 2017)~~
- Maximum Issue Limit: 10% of issue
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: AA- by all Rating Agencies
- Other Restrictions:
 - o Issued by banks with total deposits of one billion dollars (\$1,000,000,000) or more.

8. Commercial Paper

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: 10% of outstanding amount for the issuer
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: A-1+ from at least one Rating Agency
- Other Restrictions:
 - o Issued by an entity that is, at the time of purchase:
 - organized and operating in the United States as a general corporation, with total assets exceeding \$500,000,000 and debt (other than commercial paper) rated A or better by at least one Rating Agency ; or
 - is organized within the United States as a special purpose corporation, trust, or limited liability company, with program wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond, **and** has commercial paper that is rated A-1+ by at least one Rating Agency.

9. Medium Term Corporate Notes

- Maximum Share of Portfolio: 30% of the Portfolio
- Maximum Issuer Limit: 10% of the Portfolio
- Maximum Issue Limit: 5% of original issue amount
- Maximum Maturity: Not to exceed 5 years from the settlement date
- Minimum Rating: AA- from at least one Rating Agency, and not lower than A by any Rating Agency
- Other Restrictions:
 - o Issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

10. Repurchase Agreements

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: n/a
- Other Restrictions:
 - o Collateral may only be in any securities authorized in items 1, or 2
 - o A Master Repurchase Agreement must be on file with the District
 - o Security must be marked to market on a daily basis and delivered to the District's custodial bank at a market value of at least 102%

11. Municipal Obligations

Under this subsection, only registered obligations of the following agencies are permitted:

- Any local agency within the State of California
- the State of California
- Municipal Bonds:
 - Maximum Share of Portfolio: 40% of the Portfolio when added together with Municipal Notes
 - Maximum Issuer Limit: 20% of the Portfolio
 - Maximum Issue Limit: 10% of original issue amount
 - Maximum Maturity: Not to exceed five (5) years or with a put provision within five (5) years of settlement date
 - Minimum Rating: AA- or equivalent by at least one Rating Agency, and not lower than A by any Rating Agency
 - Other Restrictions: none
- Municipal Notes:
 - Maximum Share of Portfolio: 40% of the Portfolio together with Municipal Bonds
 - Maximum Issuer Limit: 20% of the Portfolio
 - Maximum Issue limit: 10% of original issue amount
 - Maximum Maturity: n/a
 - Minimum Rating: Notes maturing within 365 days must have a rating of SP-1+ from at least one Rating Agency
 - Other Restrictions: none

Investment Placement

Investment placement shall be determined by, but not limited to, continual evaluation and projection of market conditions, interest rate trends, cash flow needs, economic data, yield curves, and interest rate forecasts. Additionally, for investments purchased or sold in the secondary market, best efforts will be made to obtain at least three quotations from Purchasing Entities (as defined below) or obtain timely and verifiable third-party market pricing data for the investment in question. The combination of these factors shall determine where, in what denomination, and for what maturity investments are made.

Selling Securities Prior To Maturity

When selling securities prior to maturity, principal losses are only allowable either:

- if the sale of securities is necessary to meet payment obligations,
- to comply with this policy, while considering the impact of the sale(s), or
- if the proposed sale is to be made in conjunction with a purchase and the proposed sale in combination with the subsequent purchase can enhance the Portfolio's yield.

Collateral

Securities placed with agents of depository shall at all times be maintained as specified in District Resolution 33232-01 in one or more trust companies, State or national banks located within California, the Federal Reserve Bank, or with any state or national bank located in any city designated as a federal reserve city by the Board of Governors of the Federal Reserve System, and to take from any such banks or trust companies receipts for securities so deposited. Requests for Collateral substitution and releases are subject to the Treasurer's written approval.

**Portfolio
Performance**

The Portfolio will seek to attain a risk-adjusted market rate of return that takes into consideration the cash flow needs of the District. As a result, Portfolio performance will be measured using commonly used market indicators. Those may include, but are not limited to: the Federal funds rate, short-term government obligations rates, and other market rates that reflect the mix of securities in the Portfolio.

**Purchasing
Entities**

Investments will be purchased from either:

- Primary Dealers as designated by the Federal Reserve Bank of New York,
- National or California State Chartered Banks,
- Federal or California Chartered Savings Institution,
- Broker-Dealers registered with the State of California, **or**
- Issuers of securities eligible for purchase by the District.

In addition, these institutions must:

- be registered by the Securities and Exchange Commission (SEC),
- be members in good standing of the Financial Industry Regulatory Authority (FINRA), and
- provide audited financial statements to the District annually.

The District shall maintain a current eligible list of established dealers, brokers, banks and savings and loan associations with which securities trading and placement of funds are authorized.

Additionally, to be placed on the eligible list, individuals need to certify in writing that they have read, understood, and agree to comply with this policy, where applicable, by completing and filing with the District the 'Certification of Compliance with Investment Policy' included in this policy as Exhibit 2.

Eligibility may be revoked at any time, in the District's sole discretion, for any reason, including but not limited to, failure to meet the above requirements.

**Trade
Confirmations and
Settlements**

To ensure a high degree of internal control, the District shall comply with the following:

1. All Securities purchased from dealers and brokers shall be held in safekeeping by the District's custodial bank, a national bank, a State chartered bank or trust company, established for this purpose as someone other than the selling party of the security. Securities purchased will be covered by a trust or safekeeping receipt in a manner that establishes the District's ownership. All transactions require delivery of the security prior to payment for the security (delivery vs. payment).
2. All trade confirmations shall be received directly and reviewed for conformity to the original transaction by an individual other than the person originating the transaction. Any discrepancies will be brought to the attention of the Treasurer.

**Review And
Reporting
Requirements**

On a monthly basis, in accordance with Section 53607 of the [Government](#) Code, the Treasurer shall prepare and submit a report to the General Manager and the Board of Directors listing investment transactions.

On a quarterly basis, in accordance with Section 53646 of the [Government](#) Code, the Treasurer may prepare and submit a report to the General Manager and the Board of Directors which shall include the type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the District, and provide an investment summary by security type, percent of the portfolio, investment yield and the remaining period of investment to maturity.

On an annual basis, in accordance with Section 53646 of the [Government](#) Code, an investment policy may be presented to the Board for consideration at a public meeting. In conjunction with the investment policy consideration, the Board shall also annually review the delegation of its authority for the management of investments to the Treasurer.

**Performance
Review And
Internal Control**Office of Internal Audit

The Office of Internal Audit will periodically audit the investment portfolio to evaluate the effectiveness of the District's investment program as well as its compliance with the Investment Policy. These audits will supplement the annual review by the District's external auditors.

Finance Department

The Treasurer has established and maintains an internal control structure designed to ensure that funds covered under this policy are protected from loss, theft, fraud, or misuse.

The Treasurer will review the investment portfolio monthly for compliance with the Investment Policy and make recommendations for changes and improvements where warranted.

Authority

Resolution No. 33019-96 on December 10, 1996
Amended by Resolution No. 33134-99 on January 26, 1999
Amended by Resolution No. 33232-01 on January 9, 2001
Amended by Resolution 33287-02 on January 22, 2002
Amended by Resolution 33350-03 on February 25, 2003
Amended by Resolution 33390-04 on January 27, 2004
Amended by Resolution 33464-05 on February 22, 2005
Amended by Resolution 33516-06 on January 24, 2006
Amended by Resolution 33585-07 on March 13, 2007
Approved by Resolution 33658-08, February 26, 2008
Approved by Resolution 33702-09, February 24, 2009
Approved by Resolution 33752-10, January 26, 2010
Approved by Resolution 33792-10, November 23, 2010
Approved by Resolution 33871-12, April 24, 2012
Approved by Resolution 33920-13, March 26, 2013
Reaffirmed by Motion 056-14, March 25, 2014
Approved by Resolution 34027-15, April 28, 2015
Approved by Resolution 34079-16, April 26, 2016
Approved by Resolution 35033-17, April 25, 2017
Approved by Resolution 35083-18, April 24, 2018
[Approved by Resolution XXXXX-19, April 23, 2019](#)

Reference

Procedure 601 – Conflict of Interest Disqualification Procedure

EXHIBIT 1 RATING AGENCIES' SCALES

For purposes of Investment Policy 4.07 the term "Rating Agencies" is defined as: Standard & Poor's Financial Services (S&P), Moody's Investors Service (Moody's), and Fitch Ratings (Fitch).

Ratings requirements are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. The equivalencies are provided in the tables below.

EXAMPLE

Investment Option 6, Certificates of Time Deposits, shows:

"Minimum Rating: AA- by at least one Rating Agency"

This requirement should be read as:

"Minimum Rating: AA- *or equivalent* by at least one Rating Agency."

To determine the equivalent rating in the table below, find the AA- rating under the S&P column and read across the row to find the Moody's equivalent rating of Aa3 and the Fitch equivalent rating of AA-. Accordingly, a Certificate of Time Deposit is equivalent as an investment if it is rated AA- by S&P, Aa3 by Moody's, or AA- by Fitch.

INVESTMENT-GRADE RATING SCALES

LONG-TERM DEBT			
S&P	MOODY'S	FITCH	
AAA	Aaa	AAA	
AA+	Aa1	AA+	
AA	Aa2	AA	
AA-	Aa3	AA-	← Minimum rating required for district investments
A+	A1	A+	
A	A2	A	
A-	A3	A-	
BBB+	Baa1	BBB+	
BBB	Baa2	BBB	
BBB-	Baa3	BBB-	

SHORT-TERM DEBT			
S&P	MOODY'S	FITCH	
A-1+	P-1	F1+	← Minimum rating required for district investments
A-1	-	F1	
A-2	P-2	F2	
A-3	P-3	F3	

FUNDS			
S&P	MOODY'S	FITCH	
AAAm	Aaa-mf	AAAf	← Minimum rating required for district investments
AAm	Aa-mf	AAf	
Am	A-mf	Af	
BBBm	Baa-mf	BBBf	

EXHIBIT 2
East Bay Municipal Utility District
Certification of Compliance with Investment Policy

The East Bay Municipal Utility District (the District), under Policy 4.07 (the Investment Policy), requires that securities trading and placement of funds be conducted only with eligible Purchasing Entities. The Investment Policy also specifies that the District must obtain written certification that eligible Purchasing Entities have read, understood, and agree to comply with the Investment Policy, where applicable. This certification is necessary to be included on an approved list of Purchasing Entities that are eligible to conduct investment transactions with the District. The District has no obligation to enter into securities trading and/or placement of funds transactions with any or all Purchasing Entities on the list. The District retains the sole and exclusive discretion to determine with which of the Purchasing Entities, if any, to engage in individual investment transactions. Eligibility may be revoked at any time, at the District's sole discretion, for any reason, including but not limited to, failure to meet the requirements of the policy and this exhibit.

Please complete the sections below, sign and return this completed form if you wish to be considered for inclusion on the approved list of Purchasing Entities eligible to conduct investment transactions with the District.

Please send completed form:

via mail, to:

Damien Charléty
East Bay Municipal Utility District
375 11th Street, MS809
Oakland, CA 94607

and

electronically, to:

damien.charlety@ebmud.com

A. Entity Name _____

B. My entity is a: (choose all that apply, at least one must be checked for eligibility)

- ☐ Primary Dealer as designated by the Federal Reserve Bank of New York
- ☐ National or California State Chartered Bank
- ☐ Federal or California Chartered Savings Institution
- ☐ Broker-Dealer registered with the State of California

AND

I certify that my entity is: **(both must be checked for eligibility)**

- ☐ registered by the Securities and Exchange Commission (SEC)
- ☐ a member in good standing of the Financial Industry Regulatory Authority (FINRA)

C. My entity is an:

- ☐ issuer of securities eligible for purchase by the District

D. My entity:

- ☐ participates in the District's Contract Equity Program

E. I have provided:

- ☐ Audited Financial Statements

I certify that I have read, understood, and agree to comply where applicable with the District's Investment Policy.

Print Name _____

Sign Name _____

Title _____

Date _____

EXHIBIT 3
East Bay Municipal Utility District
Investment Policy Quick Reference Table

The following is a summary of Investment Options and a few of their requirements. Full details on each Investment Option can be found in the main body of the Investment Policy on pages 2 through 5.

Investment Option	Maximum Share of Portfolio	Minimum Rating at purchase	Maximum Maturity at settlement	Additional Limitations
United States Treasury Obligations	100%	n/a	5 years	see page 2, Item 1
United States Government Agencies Obligations	100%	n/a	5 years	see page 3, Item 2
State of California, Local Agency Investment Fund	per Government Code	n/a	n/a	see page 3, Item 3
Local Government Investment Pools	20%	AAAm	n/a	see page 3, Item 4
Money Market Mutual Funds	20%	AAAm	n/a	see page 3, Item 5
Certificates of Time Deposit	20%	AA-	1 year	see page 3-4, Item 6
Negotiable Certificates of Deposit		AA-	5 years	see page 4, Item 7
Commercial Paper	20%	A-1+	270 days	see page 4, Item 9
Medium Term Corporate Notes	30%	AA-	5 years	see page 4, Item 9
Repurchase Agreements	20%	n/a	270 days	see page 5, Item 10
Municipal Obligations	40%	AA-	5 years	see page 5, Item 11

EXHIBIT 4
Glossary of Commonly Used Investment Terms

This Glossary is for informational purposes only and is not intended to modify any of the terms of this Investment Policy, the [Government](#) Code, or M.U.D. Act.

ACCRUED INTEREST	The amount of interest that is earned but unpaid since the last interest payment date.
ASK PRICE	The price at which securities are offered from a seller.
AVERAGE MATURITY	A calculation that expresses the average maturity of an investment portfolio using each investment's maturity weighted by the size of that investment in the portfolio.
BASIS POINT	One basis point equals 1/100 of one percent. Basis points are used more often to describe changes in yields on bonds, notes and other fixed-income securities.
BID PRICE	The price at which a buyer offers to buy a security.
BOOK VALUE	The original cost of the investment, plus accrued interest and amortization of any premium or discount.
BROKER	A broker brings buyers and sellers together and is compensated for his/her service.
CALL PRICE	The price at which an issuer may redeem a bond prior to maturity.
CALLABLE BONDS	Bonds that may be redeemed by the issuing company prior to the maturity date.
CERTIFICATE OF DEPOSIT (CD)	A time deposit with a specific maturity evidenced by a Certificate. Large-denomination CDs are typically negotiable.
COLLATERAL	Securities, evidence of deposit or other property, which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.
COMMERCIAL PAPER (CP)	Short-term unsecured promissory notes.
COUPON	The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.
CURRENT YIELD	The annual income from an investment divided by the current market value.
CUSTODIAN	A bank or other financial institution that keeps custody of stock certificates and other assets.
DEALER	A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.
DELIVERY VS. PAYMENT (DVP)	Delivery of securities with a simultaneous exchange of money for the securities.
DISCOUNT	The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.
DIVERSIFICATION	An investment principle designed to spread the risk in a portfolio by dividing investments among different sectors, industries and companies.
FIXED-INCOME SECURITIES	Securities that return a fixed income over a specified period.
GOVERNMENT SECURITIES	Obligations of the U.S. Government and its agencies and instrumentalities.
INTEREST	The amount earned while owning a debt security, generally calculated as a percentage of the principal amount.
LIQUIDITY	The speed and ease with which an investment can be converted to cash.
MARKET VALUE	The price at which a security is trading and could presumably be purchased or sold.
MATURITY	The date upon which the principal or stated value of an investment

	becomes due and payable.
MEDIUM TERM NOTES (MTN)	Debt securities issued by a corporation or depository institution with a remaining maturity ranging from nine months to five years.
MONEY MARKET MUTUAL FUNDS	An investment company that pools money from investors and invest in a variety of short-term money market instruments.
NET ASSET VALUE (NAV)	A per-share valuation of a mutual fund based on total assets minus total liabilities.
NON-CALLABLE	Bond that cannot be called at the option of the issuer.
OFFER PRICE	The price asked by a seller of securities.
PAR or PAR VALUE	The amount of principal that must be paid on the maturity date. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.
PREMIUM	The difference between the par value of a bond and the market value of the bond, when the market value is above par.
PRIMARY DEALER	A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight.
PRINCIPAL	The face value or par value of an investment.
RATE OF RETURN	The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.
REPURCHASE AGREEMENT	The purchase of securities, on a temporary basis, with the seller's simultaneous agreement to repurchase the securities back at a later date at a specified price that includes interest for the buyer's holding period.
SAFEKEEPING	Storage and protection of a customer's financial assets, valuables, or documents, provided as a service by an institution serving as Agent or Custodian and, where control is delegated by the customer.
SECONDARY MARKET	A market made for the purchase and sale of outstanding issues following the initial distribution.
SETTLEMENT DATE	The date when the security is delivery in exchange for the corresponding payment.
TREASURY BILLS	A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.
TREASURY BONDS	Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years from date of issue.
TREASURY NOTES	Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years from date of issue.
U. S. GOVERNMENT AGENCY SECURITIES	Debt securities issued by U.S. Government sponsored enterprises and federally related institutions.
U.S. TREASURY SECURITIES	Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States.
YIELD TO CALL (YTC)	The rate of return an investor earns from a bond assuming the bond is redeemed (called) prior to its nominal maturity date.
YIELD TO MATURITY (YTM)	The rate of return earned on an investment held to maturity considering all cash flows and timing factors: interest earnings, discounts, and premiums above par.
YIELD	The annual rate of return on a debt investment expressed as a percentage.



Policy 4.07

EFFECTIVE 23 APR 19

SUPERSEDES 24 APR 18

INVESTMENT POLICY

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

Invest District funds and funds managed by the District on behalf of its Joint Powers Authorities (JPAs) in compliance with investment criteria for safety, liquidity, yield and diversification as set forth herein. Investments shall be in securities with a range of maturities to provide adequate security and liquidity to pay demands when due while providing a market rate of return on investments.

Authority	Section 53600 et. seq. of the California Government Code (Government Code) and Chapter 6, Article 7 of the Municipal Utility District Act (M.U.D. Act) govern the investment of idle monies of the District. Section 53635 of the Government Code defines how investments are to be handled for Joint Powers Authorities.
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Delegation of Authority	The authority and responsibility to invest idle monies of the District is delegated to the Director of Finance as the Treasurer. The Director of Finance may designate individual staff to carry out his/her responsibilities under this policy.
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No Bond Proceeds	The investment of bond proceeds is specifically defined in individual bond indenture documents and is not included in this policy.
-------------------------	--

Ethics and Conflicts of Interest	<p>Officers and employees involved in the investment process shall:</p> <ul style="list-style-type: none">- refrain from personal business activity that could conflict with proper execution of the District's investment program, or which could impair their ability to make impartial investment decisions on behalf of the District,- disclose any material financial interest in financial institutions that conduct business with the District,- disclose material personal financial/investments that are related to or could reasonably be affected by the performance of the District's investments,- refrain from undertaking any personal investment transactions with the same individual with whom business is conducted on behalf of the District's investments, and- comply with the District's Conflict of Interest Code, as required.
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Investment Criteria	<p>Criteria for selecting investments shall:</p> <ul style="list-style-type: none">- adhere to the prudent investor standard, described in Section 53600.3 of the Government Code as follows: "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency," and- conform with the Government Code and M.U.D. Act, and- have the following objectives, in order of priority:
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1. *Safety* - The District's ability to recover principal and interest. Investments shall be made that will seek to ensure the preservation of principal and interest and minimize risk to the greatest extent possible. It is the primary duty of the Treasurer to protect, preserve and maintain cash and investments on behalf of the District.
 2. *Liquidity* - The District's ability to have cash available when needed to support expenditure cycles and budgetary objectives.
 3. *Yield* – The District's ability to provide a market rate of return on the District's investments while conforming to the safety and liquidity criteria above.
 4. *Diversification* – The District's ability to maintain an investment portfolio that includes a range of security types for the District. In order to accomplish this, each Investment Option shall have defined limits on maximum share of the portfolio, single issuer and single issue holdings, and maturity, rating and other restrictions where applicable.
-

Maturity

The weighted average maturity of the portfolio shall not exceed 720 days.

**Rating Agencies
and Rating
Requirements**

As outlined below, some Investment Options have rating requirements. In that context, Rating Agencies is defined as:

- Standard & Poor's Financial Services (S&P),
- Moody's Investors Service (Moody's), and
- Fitch Ratings (Fitch), only.

Ratings requirements:

- are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. Rating Agencies scales are included for reference in Exhibit 1,
 - apply at the time of purchase only, with subsequent downgrades below requirement levels prompting a case-by-case evaluation of the investment, and
 - only apply to the Rating Agencies rating the security.
-

**Investment
Options**

The District is able to purchase investments in the instruments listed in this section as allowed and defined under Section 53600 et. seq. of the Government Code, Chapter 6, Article 7 of the M.U.D. Act, Board Resolutions, and via this policy. As used in this section, the term "Portfolio" refers to all investable funds managed by the District.

1. United States Treasury Obligations

- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

2. United States Government Agencies Obligations

Under this subsection, only obligations issued by the following agencies are permitted:

- Federal Agricultural Mortgage Corporation (Farmer Mac)
- Federal Farm Credit Bank (FFCB)
- Federal Home Loan Bank (FHLB)
- Federal Home Loan Mortgage Corporation (FHLMC)
- Federal National Mortgage Association (FNMA)
- Maximum Share of Portfolio: Unlimited
- Maximum Issuer Limit: 40% of the Portfolio
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: n/a
- Other Restrictions: none

3. State of California, Local Agency Investment Fund (LAIF)

- Maximum Share of Portfolio: as determined by Section 16429.1 of the Government Code
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: n/a
- Other Restrictions: none

4. Local Government Investment Pools

Under this subsection, only obligations of the following agencies are permitted:

- California Asset Management Program (CAMP)
- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: Ratings of AAAm by at least one Rating Agency
- Other Restrictions: none

5. Money Market Mutual Funds

Under this subsection, only Money Market Mutual Funds with stable, non-floating NAV (Net Asset Value, the value of assets divided by number of shares) are permitted

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Fund Limit: 5% of Money Market Mutual Fund's assets
- Maximum Issue Limit: n/a
- Maximum Maturity: n/a
- Minimum Rating: AAAm by at least two Rating Agencies
- Other Restrictions: none

The District will request from each Money Market Mutual Fund, prior to investing and on an annual basis after investing, documents which provide details on the operations of the fund. These documents, along with the other criteria above, including the rating restriction, will be used to determine the suitability to receive Portfolio funds.

6. Certificates of Time Deposit

Government Code Section 53601.8 allows investments in deposits placed with a private sector entity that assists in the placement of deposits with eligible financial institutions located in the United States. Under this subsection, only such purchases are permitted.

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Negotiable Certificates of Deposit
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed one (1) year from the settlement date
- Minimum Rating: AA- by at least one Rating Agency
- Other Restrictions:
 - o Investment in local branches within the District, whenever possible.

7. Negotiable Certificates of Deposit

- Maximum Share of Portfolio: 20% of the Portfolio when added together with Certificates of Time Deposits
- Maximum Issuer Limit: applicable maximum FDIC deposit insurance coverage limit
- Maximum Issue Limit: 10% of issue
- Maximum Maturity: Not to exceed five (5) years from the settlement date
- Minimum Rating: AA- by all Rating Agencies
- Other Restrictions:
 - o Issued by banks with total deposits of one billion dollars (\$1,000,000,000) or more.

8. Commercial Paper

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: 10% of outstanding amount for the issuer
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: A-1+ from at least one Rating Agency
- Other Restrictions:
 - o Issued by an entity that is, at the time of purchase:
 - organized and operating in the United States as a general corporation, with total assets exceeding \$500,000,000 and debt (other than commercial paper) rated A or better by at least one Rating Agency ; or
 - is organized within the United States as a special purpose corporation, trust, or limited liability company, with program wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond, and has commercial paper that is rated A-1+ by at least one Rating Agency.

9. Medium Term Corporate Notes

- Maximum Share of Portfolio: 30% of the Portfolio
- Maximum Issuer Limit: 10% of the Portfolio
- Maximum Issue Limit: 5% of original issue amount
- Maximum Maturity: Not to exceed 5 years from the settlement date
- Minimum Rating: AA- from at least one Rating Agency, and not lower than A by any Rating Agency
- Other Restrictions:
 - o Issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

10. Repurchase Agreements

- Maximum Share of Portfolio: 20% of the Portfolio
- Maximum Issuer Limit: n/a
- Maximum Issue Limit: n/a
- Maximum Maturity: Not to exceed 270 days from the settlement date
- Minimum Rating: n/a
- Other Restrictions:
 - o Collateral may only be in any securities authorized in items 1, or 2
 - o A Master Repurchase Agreement must be on file with the District
 - o Security must be marked to market on a daily basis and delivered to the District's custodial bank at a market value of at least 102%

11. Municipal Obligations

Under this subsection, only registered obligations of the following agencies are permitted:

- o Any local agency within the State of California
- o the State of California
- Municipal Bonds:
 - o Maximum Share of Portfolio: 40% of the Portfolio when added together with Municipal Notes
 - o Maximum Issuer Limit: 20% of the Portfolio
 - o Maximum Issue Limit: 10% of original issue amount
 - o Maximum Maturity: Not to exceed five (5) years or with a put provision within five (5) years of settlement date
 - o Minimum Rating: AA- or equivalent by at least one Rating Agency, and not lower than A by any Rating Agency
 - o Other Restrictions: none
- Municipal Notes:
 - o Maximum Share of Portfolio: 40% of the Portfolio together with Municipal Bonds
 - o Maximum Issuer Limit: 20% of the Portfolio
 - o Maximum Issue limit: 10% of original issue amount
 - o Maximum Maturity: n/a
 - o Minimum Rating: Notes maturing within 365 days must have a rating of SP-1+ from at least one Rating Agency
 - o Other Restrictions: none

Investment Placement	Investment placement shall be determined by, but not limited to, continual evaluation and projection of market conditions, interest rate trends, cash flow needs, economic data, yield curves, and interest rate forecasts. Additionally, for investments purchased or sold in the secondary market, best efforts will be made to obtain at least three quotations from Purchasing Entities (as defined below) or obtain timely and verifiable third-party market pricing data for the investment in question. The combination of these factors shall determine where, in what denomination, and for what maturity investments are made.
Selling Securities Prior To Maturity	<p>When selling securities prior to maturity, principal losses are only allowable either:</p> <ul style="list-style-type: none">- if the sale of securities is necessary to meet payment obligations,- to comply with this policy, while considering the impact of the sale(s), or- if the proposed sale is to be made in conjunction with a purchase and the proposed sale in combination with the subsequent purchase can enhance the Portfolio's yield.
Collateral	Securities placed with agents of depository shall at all times be maintained as specified in District Resolution 33232-01 in one or more trust companies, State or national banks located within California, the Federal Reserve Bank, or with any state or national bank located in any city designated as a federal reserve city by the Board of Governors of the Federal Reserve System, and to take from any such banks or trust companies receipts for securities so deposited. Requests for Collateral substitution and releases are subject to the Treasurer's written approval.
Portfolio Performance	The Portfolio will seek to attain a risk-adjusted market rate of return that takes into consideration the cash flow needs of the District. As a result, Portfolio performance will be measured using commonly used market indicators. Those may include, but are not limited to: the Federal funds rate, short-term government obligations rates, and other market rates that reflect the mix of securities in the Portfolio.
Purchasing Entities	<p>Investments will be purchased from either:</p> <ul style="list-style-type: none">- Primary Dealers as designated by the Federal Reserve Bank of New York,- National or California State Chartered Banks,- Federal or California Chartered Savings Institution,- Broker-Dealers registered with the State of California, or- Issuers of securities eligible for purchase by the District. <p>In addition, these institutions must:</p> <ul style="list-style-type: none">- be registered by the Securities and Exchange Commission (SEC),- be members in good standing of the Financial Industry Regulatory Authority (FINRA), and- provide audited financial statements to the District annually.

The District shall maintain a current eligible list of established dealers, brokers, banks and savings and loan associations with which securities trading and placement of funds are authorized.

Additionally, to be placed on the eligible list, individuals need to certify in writing that they have read, understood, and agree to comply with this policy, where applicable, by completing and filing with the District the 'Certification of Compliance with Investment Policy' included in this policy as Exhibit 2.

Eligibility may be revoked at any time, in the District's sole discretion, for any reason, including but not limited to, failure to meet the above requirements.

**Trade
Confirmations and
Settlements**

To ensure a high degree of internal control, the District shall comply with the following:

1. All Securities purchased from dealers and brokers shall be held in safekeeping by the District's custodial bank, a national bank, a State chartered bank or trust company, established for this purpose as someone other than the selling party of the security. Securities purchased will be covered by a trust or safekeeping receipt in a manner that establishes the District's ownership. All transactions require delivery of the security prior to payment for the security (delivery vs. payment).
 2. All trade confirmations shall be received directly and reviewed for conformity to the original transaction by an individual other than the person originating the transaction. Any discrepancies will be brought to the attention of the Treasurer.
-

**Review And
Reporting
Requirements**

On a monthly basis, in accordance with Section 53607 of the Government Code, the Treasurer shall prepare and submit a report to the General Manager and the Board of Directors listing investment transactions.

On a quarterly basis, in accordance with Section 53646 of the Government Code, the Treasurer may prepare and submit a report to the General Manager and the Board of Directors which shall include the type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the District, and provide an investment summary by security type, percent of the portfolio, investment yield and the remaining period of investment to maturity.

On an annual basis, in accordance with Section 53646 of the Government Code, an investment policy may be presented to the Board for consideration at a public meeting. In conjunction with the investment policy consideration, the Board shall also annually review the delegation of its authority for the management of investments to the Treasurer.

**Performance
Review And
Internal Control****Office of Internal Audit**

The Office of Internal Audit will periodically audit the investment portfolio to evaluate the effectiveness of the District's investment program as well as its compliance with the Investment Policy. These audits will supplement the annual review by the District's external auditors.

Finance Department

The Treasurer has established and maintains an internal control structure designed to ensure that funds covered under this policy are protected from loss, theft, fraud, or misuse.

The Treasurer will review the investment portfolio monthly for compliance with the Investment Policy and make recommendations for changes and improvements where warranted.

Authority

Resolution No. 33019-96 on December 10, 1996
Amended by Resolution No. 33134-99 on January 26, 1999
Amended by Resolution No. 33232-01 on January 9, 2001
Amended by Resolution 33287-02 on January 22, 2002
Amended by Resolution 33350-03 on February 25, 2003
Amended by Resolution 33390-04 on January 27, 2004
Amended by Resolution 33464-05 on February 22, 2005
Amended by Resolution 33516-06 on January 24, 2006
Amended by Resolution 33585-07 on March 13, 2007
Approved by Resolution 33658-08, February 26, 2008
Approved by Resolution 33702-09, February 24, 2009
Approved by Resolution 33752-10, January 26, 2010
Approved by Resolution 33792-10, November 23, 2010
Approved by Resolution 33871-12, April 24, 2012
Approved by Resolution 33920-13, March 26, 2013
Reaffirmed by Motion 056-14, March 25, 2014
Approved by Resolution 34027-15, April 28, 2015
Approved by Resolution 34079-16, April 26, 2016
Approved by Resolution 35033-17, April 25, 2017
Approved by Resolution 35083-18, April 24, 2018
Approved by Resolution XXXXX-19, April 23, 2019

Reference

Procedure 601 – Conflict of Interest Disqualification Procedure

EXHIBIT 1 RATING AGENCIES' SCALES

For purposes of Investment Policy 4.07 the term "Rating Agencies" is defined as: Standard & Poor's Financial Services (S&P), Moody's Investors Service (Moody's), and Fitch Ratings (Fitch).

Ratings requirements are provided using the S&P scale and should be read as "or equivalent" to other Rating Agencies scales. The equivalencies are provided in the tables below.

EXAMPLE

Investment Option 6, Certificates of Time Deposits, shows:

"Minimum Rating: AA- by at least one Rating Agency"

This requirement should be read as:

"Minimum Rating: AA- *or equivalent* by at least one Rating Agency."

To determine the equivalent rating in the table below, find the AA- rating under the S&P column and read across the row to find the Moody's equivalent rating of Aa3 and the Fitch equivalent rating of AA-. Accordingly, a Certificate of Time Deposit is equivalent as an investment if it is rated AA- by S&P, Aa3 by Moody's, or AA- by Fitch.

INVESTMENT-GRADE RATING SCALES

LONG-TERM DEBT		
S&P	MOODY'S	FITCH
AAA	Aaa	AAA
AA+	Aa1	AA+
AA	Aa2	AA
AA-	Aa3	AA-
A+	A1	A+
A	A2	A
A-	A3	A-
BBB+	Baa1	BBB+
BBB	Baa2	BBB
BBB-	Baa3	BBB-

← Minimum rating required for district investments

SHORT-TERM DEBT		
S&P	MOODY'S	FITCH
A-1+	P-1	F1+
A-1	-	F1
A-2	P-2	F2
A-3	P-3	F3

← Minimum rating required for district investments

FUNDS		
S&P	MOODY'S	FITCH
AAAm	Aaa-mf	AAAf
AAm	Aa-mf	AAf
Am	A-mf	Af
BBBm	Baa-mf	BBBf

← Minimum rating required for district investments

EXHIBIT 2
East Bay Municipal Utility District
Certification of Compliance with Investment Policy

The East Bay Municipal Utility District (the District), under Policy 4.07 (the Investment Policy), requires that securities trading and placement of funds be conducted only with eligible Purchasing Entities. The Investment Policy also specifies that the District must obtain written certification that eligible Purchasing Entities have read, understood, and agree to comply with the Investment Policy, where applicable. This certification is necessary to be included on an approved list of Purchasing Entities that are eligible to conduct investment transactions with the District. The District has no obligation to enter into securities trading and/or placement of funds transactions with any or all Purchasing Entities on the list. The District retains the sole and exclusive discretion to determine with which of the Purchasing Entities, if any, to engage in individual investment transactions. Eligibility may be revoked at any time, at the District's sole discretion, for any reason, including but not limited to, failure to meet the requirements of the policy and this exhibit.

Please complete the sections below, sign and return this completed form if you wish to be considered for inclusion on the approved list of Purchasing Entities eligible to conduct investment transactions with the District.

Please send completed form:

via mail, to:

Damien Charléty
East Bay Municipal Utility District
375 11th Street, MS809
Oakland, CA 94607

and

electronically, to:

damien.charlety@ebmud.com

A. Entity Name _____

B. My entity is a: (choose all that apply, **at least one must be checked for eligibility**)

- ☐ Primary Dealer as designated by the Federal Reserve Bank of New York
- ☐ National or California State Chartered Bank
- ☐ Federal or California Chartered Savings Institution
- ☐ Broker-Dealer registered with the State of California

AND

I certify that my entity is: (**both must be checked for eligibility**)

- ☐ registered by the Securities and Exchange Commission (SEC)
- ☐ a member in good standing of the Financial Industry Regulatory Authority (FINRA)

C. My entity is an:

- ☐ issuer of securities eligible for purchase by the District

D. My entity:

- ☐ participates in the District's Contract Equity Program

E. I have provided:

- ☐ Audited Financial Statements

I certify that I have read, understood, and agree to comply where applicable with the District's Investment Policy.

Print Name _____

Sign Name _____

Title _____

Date _____

EXHIBIT 3
East Bay Municipal Utility District
Investment Policy Quick Reference Table

The following is a summary of Investment Options and a few of their requirements. Full details on each Investment Option can be found in the main body of the Investment Policy on pages 2 through 5.

Investment Option	Maximum Share of Portfolio	Minimum Rating at purchase	Maximum Maturity at settlement	Additional Limitations
United States Treasury Obligations	100%	n/a	5 years	see page 2, Item 1
United States Government Agencies Obligations	100%	n/a	5 years	see page 3, Item 2
State of California, Local Agency Investment Fund	per Government Code	n/a	n/a	see page 3, Item 3
Local Government Investment Pools	20%	AAAm	n/a	see page 3, Item 4
Money Market Mutual Funds	20%	AAAm	n/a	see page 3, Item 5
Certificates of Time Deposit	20%	AA-	1 year	see page 3-4, Item 6
Negotiable Certificates of Deposit		AA-	5 years	see page 4, Item 7
Commercial Paper	20%	A-1+	270 days	see page 4, Item 9
Medium Term Corporate Notes	30%	AA-	5 years	see page 4, Item 9
Repurchase Agreements	20%	n/a	270 days	see page 5, Item 10
Municipal Obligations	40%	AA-	5 years	see page 5, Item 11

EXHIBIT 4
Glossary of Commonly Used Investment Terms

This Glossary is for informational purposes only and is not intended to modify any of the terms of this Investment Policy, the Government Code, or M.U.D. Act.

ACCRUED INTEREST	The amount of interest that is earned but unpaid since the last interest payment date.
ASK PRICE	The price at which securities are offered from a seller.
AVERAGE MATURITY	A calculation that expresses the average maturity of an investment portfolio using each investment's maturity weighted by the size of that investment in the portfolio.
BASIS POINT	One basis point equals 1/100 of one percent. Basis points are used more often to describe changes in yields on bonds, notes and other fixed-income securities.
BID PRICE	The price at which a buyer offers to buy a security.
BOOK VALUE	The original cost of the investment, plus accrued interest and amortization of any premium or discount.
BROKER	A broker brings buyers and sellers together and is compensated for his/her service.
CALL PRICE	The price at which an issuer may redeem a bond prior to maturity.
CALLABLE BONDS	Bonds that may be redeemed by the issuing company prior to the maturity date.
CERTIFICATE OF DEPOSIT (CD)	A time deposit with a specific maturity evidenced by a Certificate. Large-denomination CDs are typically negotiable.
COLLATERAL	Securities, evidence of deposit or other property, which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.
COMMERCIAL PAPER (CP)	Short-term unsecured promissory notes.
COUPON	The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.
CURRENT YIELD	The annual income from an investment divided by the current market value.
CUSTODIAN	A bank or other financial institution that keeps custody of stock certificates and other assets.
DEALER	A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.
DELIVERY VS. PAYMENT (DVP)	Delivery of securities with a simultaneous exchange of money for the securities.
DISCOUNT	The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.
DIVERSIFICATION	An investment principle designed to spread the risk in a portfolio by dividing investments among different sectors, industries and companies.
FIXED-INCOME SECURITIES	Securities that return a fixed income over a specified period.
GOVERNMENT SECURITIES	Obligations of the U.S. Government and its agencies and instrumentalities.
INTEREST	The amount earned while owning a debt security, generally calculated as a percentage of the principal amount.
LIQUIDITY	The speed and ease with which an investment can be converted to cash.
MARKET VALUE	The price at which a security is trading and could presumably be purchased or sold.
MATURITY	The date upon which the principal or stated value of an investment

	becomes due and payable.
MEDIUM TERM NOTES (MTN)	Debt securities issued by a corporation or depository institution with a remaining maturity ranging from nine months to five years.
MONEY MARKET MUTUAL FUNDS	An investment company that pools money from investors and invest in a variety of short-term money market instruments.
NET ASSET VALUE (NAV)	A per-share valuation of a mutual fund based on total assets minus total liabilities.
NON-CALLABLE	Bond that cannot be called at the option of the issuer.
OFFER PRICE	The price asked by a seller of securities.
PAR or PAR VALUE	The amount of principal that must be paid on the maturity date. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.
PREMIUM	The difference between the par value of a bond and the market value of the bond, when the market value is above par.
PRIMARY DEALER	A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight.
PRINCIPAL	The face value or par value of an investment.
RATE OF RETURN	The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.
REPURCHASE AGREEMENT	The purchase of securities, on a temporary basis, with the seller's simultaneous agreement to repurchase the securities back at a later date at a specified price that includes interest for the buyer's holding period.
SAFEKEEPING	Storage and protection of a customer's financial assets, valuables, or documents, provided as a service by an institution serving as Agent or Custodian and, where control is delegated by the customer.
SECONDARY MARKET	A market made for the purchase and sale of outstanding issues following the initial distribution.
SETTLEMENT DATE	The date when the security is delivery in exchange for the corresponding payment.
TREASURY BILLS	A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.
TREASURY BONDS	Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years from date of issue.
TREASURY NOTES	Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years from date of issue.
U. S. GOVERNMENT AGENCY SECURITIES	Debt securities issued by U.S. Government sponsored enterprises and federally related institutions.
U.S. TREASURY SECURITIES	Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States.
YIELD TO CALL (YTC)	The rate of return an investor earns from a bond assuming the bond is redeemed (called) prior to its nominal maturity date.
YIELD TO MATURITY (YTM)	The rate of return earned on an investment held to maturity considering all cash flows and timing factors: interest earnings, discounts, and premiums above par.
YIELD	The annual rate of return on a debt investment expressed as a percentage.



AGENDA NO.
MEETING DATE

9.
April 23, 2019

TITLE AMEND REGIONAL PRIVATE SEWER LATERAL ORDINANCE

☐ MOTION ☐ RESOLUTION ☒ ORDINANCE

RECOMMENDED ACTION

Conduct a second reading of and enact an ordinance amending the Regional Private Sewer Lateral Ordinance (Ordinance No. 359-13, as previously amended), specifically sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 18 thereof.



SUMMARY

Under the District's Regional Private Sewer Lateral Ordinance (Ordinance), the majority of property owners in the District's wastewater service area are required to obtain a compliance certificate demonstrating their private sewer lateral (PSL) is leak free and meets applicable District standards when they hit one of three triggers: title transfer, remodeling or construction valued at over \$100,000, or a change in water meter size. This Ordinance supports several Strategic Plan elements, including protection of natural resources and compliance with water quality regulations. Sections 11 and 12 of the Ordinance specify the requirements for the two groups that are not subject to trigger-based compliance: certain persons within common interest developments, and persons responsible for over 1,000 feet of PSLs. Both of these groups have compliance requirements by July 12, 2021. As this deadline approaches, staff recommends amending the Ordinance to provide clarification and transparency to support these groups in meeting the deadline and coming into compliance. In addition, after implementing the Regional PSL Program for nearly eight years, staff has identified several areas that should be altered or clarified to ensure consistent implementation and enforcement.

This item was discussed as an informational item at the February 13, 2019 Planning Committee meeting and the March 12, 2019 Board meeting. The Board conducted a first reading of the proposed Ordinance amendments on April 9, 2019. This is the second reading of the proposed Ordinance amendments. Staff has not proposed further changes to the language considered by the Board at the first reading.

DISCUSSION

The text of the proposed amendments is attached and the key proposed changes are summarized here.

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Wastewater	 Eileen M. White	 General Manager

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

Common interest developments are properties governed by a Homeowners' Association (HOA). The existing Ordinance recognizes the right of an HOA and its property owner members to allocate responsibility to maintain shared infrastructure, including PSLs, in any manner they choose. The existing Ordinance does not require newly formed HOAs to obtain compliance certificates, nor does it establish a specific deadline by which recertification must be done after a certificate expires. The following related changes to the Ordinance are recommended.

- *Require documentation of responsibility.* Require the HOA to provide a statement of responsibility that delineates the extent of its maintenance responsibility for the PSL to the District within 180 days of the effective date of the amended Ordinance (i.e., by November 20, 2019).
- *Specify a defensible default allocation of responsibility.* If an HOA fails to provide the required statement of responsibility, the amended Ordinance will specify a default allocation conforming to existing State statutory law, which requires HOAs to maintain common areas and individual unit owners to maintain the remainder absent an agreement to the contrary.
- *Require certification of PSLs in new common interest developments.* For common interest developments formed after the effective date of the amended Ordinance, require a compliance certificate to be obtained within two years of their formation.
- *Describe the effect of a reallocation of PSL maintenance duties.* Require an HOA expanding its obligation to maintain the PSL to certify the newly-assumed portion of the PSL within two years. Require an HOA decreasing its obligation to maintain the PSL to certify the portion of the PSL to be transferred prior to such transfer.
- *Clarify the 20-year recertification requirement.* Require the HOA to recertify the portion of PSL for which it is responsible within two years of certificate expiration.
- *Definition.* Slightly modify the definition of common interest development to conform more closely to applicable State law.

The existing Ordinance contains special requirements for properties associated with more than 1,000 feet of PSLs. The special requirements apply to individual parcels and groups of adjacent parcels under common ownership that are collectively served by more than 1,000 feet of PSLs. They also apply to HOAs that maintain more than 1,000 feet. Such properties include business and industrial campuses, large common interest developments, some private schools, and others. The existing Ordinance allows owners of such properties to plan and implement their PSL rehabilitation efforts on a schedule approved by District staff. The following changes are recommended to clarify existing requirements and to establish additional requirements for parcels and parcel groups with greater than 1,000 feet of private sewer laterals.

- *Clarify deadlines for newly-formed parcels and parcel groups.* Apply enforceable requirements for parcels or parcel groups that become subject to the 1,000-foot requirements in the future, with specified deadlines for plan submittal and work completion based on the date the parcel or parcel group first becomes served by more than 1,000 feet of PSL.

Amend Regional Private Sewer Lateral Ordinance

April 23, 2019

Page 3

- *Establish deadlines to complete all work.* Require compliance by July 12, 2026, or by July 12, 2029, if the property is associated with more than 5,000 feet of PSLs or if more than 50 percent of the PSLs require replacement.
- *Clarify work plans' required contents and evaluation criteria.* Require submitted work plans to identify the nature, location, and extent of the rehabilitation work to be done; provide a schedule for the work to be completed; and submit a bid price or contractor's estimate. Authorize staff to reject incomplete plans.

The following changes are recommended to clarify the District's enforcement authority and the appeals process.

- *Delete water shutoff provision.* Remove water service termination as an available remedy.
- *Authorize judicial penalties.* Authorize the Director to order a party to comply with the Ordinance, and if the order is violated and litigation is pursued by the District, to request a court to impose monetary civil penalties of up to \$10,000 per day or \$25,000 per day, depending on the nature of the violation, or any lesser amount determined appropriate by the court.
- *Authorize compliance agreements.* Authorize the Director, at his or her sole discretion, to temporarily suspend enforcement of the Ordinance and enter into an enforceable contract, or "compliance agreement." The compliance agreement may extend a deadline or otherwise alter an Ordinance requirement as applied in a specific case; however, it must specify a date by which the property owner will meet all Ordinance requirements and other terms and conditions, and may require a deposit in any amount determined appropriate by District staff.
- *Clarify appeals procedures.* Specify the required contents of a written appeal, clarify appeal deadlines, state the consequences of a failure to submit a timely appeal, and ensure sufficient due process is provided as required by law.

Other modifications are recommended for clarification and/or consistent application of the Ordinance, including the following:

- *Joint forms of property ownership.* Require persons who own property together with others in the form of a tenancy-in-common, joint tenancy, partnership, or community property share to comply with the Ordinance upon the occurrence of a triggering event (such as a title transfer) by any joint owner, except persons who show they have no ownership interest in the PSL. Adopt conforming edits to applicable definitions. This requirement would apply to joint owners jointly and severally to the extent allowable under State law.
- *Prohibit wastewater discharge from noncompliant PSLs.* Build upon the Ordinance's existing prohibition on improper PSL maintenance by further prohibiting wastewater discharge through any PSL not maintained to the standards set forth in the existing Ordinance.

- *Clarify definition of “Verification Test.”* Modify the definition of “Verification Test” to clarify that the test’s purpose is to verify compliance with District requirements, rather than Satellite building code and plumbing requirements which are the Satellites’ responsibility to assess.
- *Broaden exceptions to title transfer trigger.* Add an exception for transfers between a corporate entity and the sole or majority owner of that corporation. Expand the existing exception for transfers made for estate planning or inheritance-related purposes by including within the exception those transfers that defund a living trust or fund a testamentary trust, and by replacing the term “heir” with the broader term “beneficiary.” Delete an unnecessary existing exception for transfers from a co-owner to a revocable trust as that exception is duplicative of another existing broader exception applicable to all transfers into a living trust by anyone whether the trust is revocable or irrevocable.
- *Allow recertification.* Authorize the District to issue a new compliance certificate prior to expiration upon the request of a property owner if all PSLs associated with the subject parcel pass a new verification test.
- *Revocation of improperly issued compliance certificates.* Authorize the Director to revoke or shorten the validity period of compliance certificates immediately when there is fraud or willful misconduct, or after a notice period in other cases of error, subject to a right of appeal and hearing.
- *Expand ability to refund deposits.* Expand the Director’s authority to refund a deposit in circumstances deemed appropriate by the Director.
- *Clarify authority to enter private property.* Incorporate the District’s statutory authority to enter private property to implement the Ordinance with consent, a warrant, or in a public health and safety emergency.
- *Clarify compliance certificate succession.* Clarify that compliance certificates are not legally attached to real property although they are tracked by parcel, and that they are not portable and cannot be removed from the parcel by a departing seller.

SCHEDULE

This is the second reading of the proposed amendments to the Ordinance. If approved, the amended provisions will take effect on May 24, 2019.

SUSTAINABILITY

Economic

No fiscal impact is anticipated. Adopting these amendments will not substantially affect the scope of the District’s responsibilities in administering the Regional PSL Program.

Social

Implementing these amendments will enhance transparency by providing clear requirements for common interest developments, explicit deadlines for properties with more than 1,000 feet of PSLs, and additional details on enforcement and appeals. The amendments will also improve fairness by increasing compliance and facilitating uniform enforcement of the requirements to meet obligations under the 2014 Wet Weather Consent Decree. Broadening the exceptions related to title transfer trigger ensures that estate planning and inheritance-related transfers are not burdened by the Ordinance requirements.

Environmental

The vast majority of the proposed amendments tighten the Ordinance requirements to achieve improved compliance, which will reduce infiltration during storm events, which in turn will reduce discharges from the wet weather facilities, as required by the 2014 Wet Weather Consent Decree.

ALTERNATIVES

Do not approve the proposed Ordinance. This alternative is not recommended because the proposed amendments will provide clarifications necessary for property owners, especially those governed by HOAs, to comply with upcoming deadlines. These amendments support the District's obligation to implement an effective Regional PSL Program, which is required by the 2014 Wet Weather Consent Decree.

Delay approval of the proposed Ordinance. This alternative is not recommended because the clarifications are necessary and sufficient lead time is needed to educate property owners ahead of the upcoming 2021 deadlines in the Ordinance.

Attachment: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
15 AND 18 OF ORDINANCE NO. 359-13, AS PREVIOUSLY AMENDED,
WHICH IS THE REGIONAL PRIVATE SEWER LATERAL ORDINANCE

Introduced by Director

; Seconded by Director

BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District:

SECTION I

The Board finds and declares:

1. The District's wastewater treatment and conveyance facilities receive significantly increased wastewater flows during wet weather events. The increased flows are caused by the infiltration and inflow of non-wastewater sources such as stormwater and groundwater into the regional sanitary sewer system. Although many factors affect inflow and infiltration, including the condition of publicly owned sewer collection facilities, a significant percentage of non-wastewater flows present in the regional sanitary sewer system during wet weather originate from defective or improperly maintained Private Sewer Laterals.
2. The District's Main Wastewater Treatment Plant was not originally intended or designed to treat peak wet weather flows of the magnitude presently experienced. The District has constructed and currently operates three additional wet weather facilities which provide primary treatment and disinfection of peak wet weather wastewater flows ("Wet Weather Facilities"). The Wet Weather Facilities cannot feasibly provide the required level of secondary treatment. During wet weather, wastewater is discharged from defective or improperly maintained Private Sewer Laterals in quantities which, together with infiltration and inflow from other sources, collectively exceed the District's secondary wastewater treatment capacity, thereby requiring the District to use the Wet Weather Facilities which do not provide secondary treatment.
3. The District's Wet Weather Facilities National Pollutant Discharge Elimination System permit ("NPDES Permit") was revised in 2009 to prohibit further discharges from the Wet Weather Facilities. Also in 2009, the United States Environmental Protection Agency and others initiated a lawsuit against the District which alleged the District has violated water quality laws by discharging from its Wet Weather Facilities in violation of the NPDES Permit. In July 2009 the Court overseeing the lawsuit entered an interim stipulated order negotiated among the parties which imposed requirements designed to improve the condition of publicly owned infrastructure and of Private Sewer Laterals. With respect to the latter, the stipulated order required the District to enact a Regional Private Sewer Lateral Ordinance ("Regional Ordinance") setting standards for the performance of Private Sewer Laterals. The interim order was replaced in 2014 with a final Consent Decree which requires the District and other agencies

to make continuous progress towards eliminating most discharges from the Wet Weather Facilities by deadlines established in the Consent Decree.

4. As required by Court order, the District enacted Ordinance No. 353 on February 9, 2010, which added Title VIII to the District's Wastewater Control Ordinance, and, under the authority of Title VIII, began implementing a regional Private Sewer Lateral certification program on August 12, 2011 ("Regional Program"). The District amended Title VIII by enacting Ordinance No. 355 on July 12, 2011 and enacted Ordinance No. 359 on July 23, 2013, which repealed Title VIII and reenacted its provisions, as modified, in the separate, stand-alone Regional Ordinance. Ordinance No. 359 was subsequently amended by Ordinance No. 362 on October 28, 2014.

5. The District is unable to consistently comply with the NPDES Permit's discharge prohibition at this time, due in significant part to the continued presence of large volumes of non-wastewater flows in the regional system which originates as infiltration and inflow from defective Private Sewer Laterals. The Regional Program appears to have made a positive contribution towards the legally mandated goal of eventually eliminating most discharges from the Wet Weather Facilities, by reducing stormwater and groundwater infiltration and inflow originating from Private Sewer Laterals. However, there remains a substantial risk that the District will be unable to meet the interim progress benchmarks and final compliance standards of the Consent Decree within the time allowed.

6. The District is authorized by law to regulate sewage disposal within its sewer service area, including the making and enforcement of all regulations necessary to effectuate the control of the quantity, quality and flow of wastewater within its sewer service area. A central purpose of the Regional Program is to exercise this legal authority in a manner expected to reduce the quantity of infiltration and inflow within the District's wastewater conveyance and treatment facilities sufficiently to allow the District to eventually cease discharges from the Wet Weather Facilities consistent with NPDES Permit requirements, and an additional purpose of the Regional Program is to comply with the District's obligations pursuant to Court order.

7. Although many factors affect the rate of infiltration and inflow reduction that is achievable, including the extent, quality, and location of rehabilitation work performed on public sewer collection facilities, it is appropriate to take additional steps at this time to improve the extent and quality of rehabilitation work performed on Private Sewer Laterals. The amendments to the Regional Ordinance set forth herein are necessary to maintain and improve the rate of reduction over time of infiltration and inflow which originates from Private Sewer Laterals, thereby improving the District's ability to comply with the NPDES Permit and the Consent Decree while also providing environmental benefits.

8. Based on the factual findings set forth herein, the Board finds that the discharge of wastewater from Private Sewer Laterals by persons or entities not in compliance with this Regional Ordinance, or from parcels for which Compliance Certificates are not obtained when required, is or could be harmful to and unreasonably affect the District's sewage disposal facilities and the operation and maintenance thereof, and furthermore unreasonably affects or could unreasonably affect the quality of the District's treatment plant effluent in such a manner that receiving water quality requirements established by law cannot be met by the District, and

furthermore violates quantity, quality and flow standards adopted by the District. On that basis, the Board declares such discharges to be a nuisance within the meaning of California Public Utilities Code section 13573 and related legal authorities.

9. It is important to effectively regulate the maintenance of sewer laterals within common interest developments, as such developments may contain defective Private Sewer Laterals which contribute to the infiltration and inflow problem. Common interest developments are unique insofar as property owners and homeowners' associations have legal authority to declare the extent of each party's respective maintenance obligations in any manner they describe in a declaration of common interest. State law requires maintenance responsibility to be allocated in a manner specified by statute, unless a different manner is described in the declaration of common interest. Effective implementation of the Regional Program within common interest developments requires that homeowners' associations and/or their member property owners provide sufficient information to the District to demonstrate how they have allocated maintenance responsibility among themselves. It is the Board's intention that the Regional Ordinance's requirements be applied to individual parties within common interest developments in accordance with the extent of each party's obligation to maintain the Private Sewer Lateral, if the extent of such obligation is adequately demonstrated to the District, or if it is not, then in accordance with a presumed allocation of responsibility which is consistent with applicable law.

10. It is appropriate to continue to maintain separate requirements applicable to those responsible for maintaining at least 1,000 feet of Private Sewer Laterals, due to the relatively greater expected infiltration and inflow contribution of such properties as compared with others, and due to the inherent cost and complexity of performing rehabilitation work on a greater scale. The Board finds the Regional Ordinance's provisions applicable to such persons appropriately balance these competing interests, and that it is equitable to allow more time to complete rehabilitation work for those who are required to maintain over 5,000 feet of sewer laterals or who will replace more than half their laterals.

11. All deadlines established in the amended Regional Ordinance are necessary and appropriate to achieve the purposes of the Regional Ordinance and meet the requirements of the Consent Decree on the schedule it allows. The Board finds that, to the extent deadlines are modified by these amendments, such modifications are necessary at this time to achieve the infiltration and inflow reductions needed to meet Consent Decree performance benchmarks. The District's compliance with such benchmarks will be determined beginning in 2022 based on flow data collected starting in 2020. The Board finds the Regional Ordinance's deadlines are typically reasonably achievable by the parties subject thereto, and that an appropriate degree of discretion may be used in the management of atypical cases to avoid manifestly unreasonable enforcement outcomes.

12. The Board does not intend to distinguish a title transfer of a person's entire interest in a condominium from a title transfer of a parcel owned in fee simple, regardless of whether the condominium ownership is or can be characterized as "fee simple." Condominium sales or transfers should be treated as title transfers for Regional Ordinance purposes, unless an exception applies to the sale or transfer.

13. Persons or entities who own property concurrently or jointly with others are referred to as "Cotenants" in the amended Regional Ordinance. The Regional Ordinance's requirements are intended to apply to Cotenants in a manner that is fair, reasonable, and consistent with applicable law. It is intended that Regional Ordinance requirements should generally apply to each Cotenant in the same manner as such requirements would apply to those who own property in a sole and exclusive capacity.

14. Title transfers between a business entity and the controlling owner of that entity should not be considered "title transfers" for purposes of invoking Regional Ordinance requirements. The Board finds that making exception for such transfers furthers the Board's general intent to exempt certain transfers that are typically undertaken to retitle property and are often not the result of an arms-length financial transaction.

15. Certain estate planning and inheritance related transactions are currently not considered "title transfers" for purposes of invoking Regional Ordinance requirements. To effectuate the Board's longstanding intent to generally exempt such transactions from ordinance requirements, it is appropriate to clarify and expand the scope of the existing estate planning and inheritance related exceptions in the manner provided by these amendments.

16. A property owner may request a voluntary recertification of a parcel that has already been certified as meeting Regional Ordinance requirements. Similarly, a public agency which operates a sewer collection system may require a property owner to recertify a parcel at specific times established by that agency. The Board finds that providing for recertification will help permanently remove infiltration and inflow from sanitary sewers by promoting continuous maintenance of Private Sewer Laterals, and will facilitate effective cooperation with fellow public agencies.

17. The Board has never intended for any person to have a right or entitlement to a certificate obtained by error, omission, fraud, or misrepresentation. The Board desires to expressly authorize District staff to revoke or adjust the validity period of certificates found to have been obtained in such manner, while providing legally appropriate due process in connection therewith.

18. It is the Board's intention to delegate full authority to take all actions necessary or desirable to implement and enforce this Regional Ordinance, except the initiation of litigation, to the Director of Wastewater and his or her designees (except where action is reserved for the Director of Wastewater personally by the Regional Ordinance). Such authority should be exercised in a manner not inconsistent with the Regional Ordinance.

19. To provide for the effective enforcement of the Regional Ordinance, it is necessary and appropriate to clarify the availability of enforcement remedies provided for by applicable law. The related amendments are intended to expand and clarify the District's enforcement authority, and not to waive, diminish or abrogate any applicable enforcement authority in any way.

20. It is the intention of the Board that District decisions arising under this Regional Ordinance, including enforcement related decisions, be undertaken in a fair and lawful manner

which provides legally appropriate due process and takes into consideration the need to achieve the Regional Ordinance's purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance.

21. It is the intention of the Board for the Regional Ordinance to be enforced reasonably and with an appropriate degree of discretion and flexibility, in light of the Regional Ordinance's stated purposes, the public's interest in its fair, equitable, and consistent implementation, and the facts and circumstances of a particular enforcement situation. In furtherance of this intention, the amended Regional Ordinance authorizes District staff to enter into a compliance agreement, in the sole exercise of prosecutorial discretion, to allow additional time to meet Regional Ordinance requirements or otherwise modify requirements in a given case. However, the Board does not intend to waive any enforcement rights by authorizing compliance agreements nor require a compliance agreement to be offered in any particular circumstances.

22. Additional clarifying or minor amendments to certain provisions of the Regional Ordinance not described above are necessary or desirable to further purposes of the Regional Program.

SECTION II

Ordinance No. 359-13, as previously amended by Ordinance No. 362-14, is hereby further amended as follows:

1. Section 3 is amended to read as follows:

This Regional Ordinance applies only within the sewer service areas of the City of Alameda, City of Albany, City of Emeryville, City of Oakland, City of Piedmont, and Stege Sanitary District.

2. Section 4 is amended to read as follows:

"Cleanout" means a pipe fitting and associated piping connected to a Private Sewer Lateral that provides access to the Private Sewer Lateral for purposes of flushing, rodding, cleaning, and other maintenance and diagnostic purposes.

"Common Area" has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

"Common Interest Development" means a community apartment project, a condominium project, a planned development, or a stock cooperative, created in accordance with applicable provisions of the California Civil Code and managed by a Homeowners' Association.

"Compliance Agreement" means an agreement which may be entered into by the District and a person or entity subject to this Regional Ordinance on a voluntary basis as described in Section 13, which may allow additional time to meet Regional Ordinance

requirements, modify ordinance requirements as applied to the person or entity, and/or include other terms as described in that Section.

“Compliance Certificate” means a certificate issued by the District upon its determination that all Private Sewer Laterals associated with a parcel have demonstrated compliance with applicable standards by passing a Verification Test.

“Cotenant” means a person who owns a present interest in a parcel of real property concurrently with other persons in the form of a tenancy in common, a joint tenancy, a partnership, community property, or any other form of cotenancy, co-ownership, or concurrent ownership recognized by California law. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association.

“Director” means the Director of Wastewater of the East Bay Municipal Utility District. The Director may delegate any privilege or duty conferred by this Regional Ordinance upon him or her to a designated representative except for any privilege or duty which this Regional Ordinance expressly reserves for the Director personally.

“District” means Special District No. 1 of the East Bay Municipal Utility District.

“Exclusive Use Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Exemption Certificate” means a certificate issued by the District as described in Section 10. A Property Owner who holds an Exemption Certificate for a given parcel need not obtain a Compliance Certificate for that parcel during the period the Exemption Certificate remains valid.

“General Waiver” means a status that applies to a Property Owner that relieves the Property Owner from the requirement to perform work on and testing of the Lower Sewer Lateral, or a specified portion of it, where a Satellite presents the District with sufficient evidence that the entire Lower Sewer Lateral was Replaced by the Satellite at any time during the 20 year period preceding a Triggering Event.

“Homeowners’ Association” means a nonprofit corporation or unincorporated association created for the purpose of managing or governing a Common Interest Development and that operates in accordance with governing documents, whether or not the corporation or association is formally designated or commonly referred to as a Homeowners’ Association.

“Limited Waiver” means a document with a definite expiration date issued by a Satellite to a Property Owner for any reason other than the Satellite’s prior Repair or Replacement of the Lower Sewer Lateral that relieves the Property Owner from the requirement to perform work and testing on the Lower Sewer Lateral, or a specified portion of it, until the Limited Waiver’s expiration date.

“Lineal Consanguinity Relationship”. A person is in a Lineal Consanguinity Relationship with another person if, and only if, one person is a direct descendent of the other person. The following are examples of Lineal Consanguinity Relationships: parent and child, grandparent and grandchild, and great-grandparent and great-grandchild. Persons are not in a Lineal Consanguinity Relationship if neither person is directly descended from the other, even if both persons are descended from a common ancestor. The following are not Lineal Consanguinity Relationships: aunt and niece, uncle and nephew, siblings, and cousins of any degree.

“Local Ordinance Requirements” means all standards or requirements duly adopted by a Satellite or a department of a Satellite that relate to the maintenance or condition of Private Sewer Laterals, Lower Sewer Laterals, and/or Upper Sewer Laterals.

“Lower Sewer Lateral” means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Sewer Main, or from the curb line in the street to the Sewer Main if there is no Cleanout near the curb line. The Lower Sewer Lateral includes the connection to the Sewer Main. A Lower Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Lower Sewer Lateral may be associated with an individual parcel.

“Non-Sanitary Sewer Connection” means anything that directly or indirectly conveys storm water, surface water, roof runoff, intercepted groundwater or subsurface drainage into the Sanitary Sewer, including, but not limited to, down spouts, yard drains, sump pumps, or other sources of storm water, run-off or groundwater.

“Parcel Group” means two or more contiguous or directly adjacent parcels of real property under common ownership.

“Permitting Authority” means a city, city department, county or special district, including a Satellite but excluding the District, that regulates buildings, construction, land use, and/or sewers within any portion of the District’s wastewater service area.

“Private Sewer Lateral” means a pipe or pipes and appurtenances that carries sewage and liquid waste from the Structure(s) served, whether the Structure(s) is or are publicly or privately owned, to the Sewer Main. The Private Sewer Lateral includes the Upper Sewer Lateral. The Private Sewer Lateral of a given parcel includes the Lower Sewer Lateral only if applicable Local Ordinance Requirements require the Property Owner to obtain a Compliance Certificate for the Lower Sewer Lateral. A Private Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Private Sewer Lateral may be associated with an individual parcel.

“Property Owner” means a person that owns a present interest in a parcel of real property as a sole owner or as a Cotenant. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm,

joint venture, limited liability company, or association. A Public Entity is not a Property Owner for purposes of this Regional Ordinance. Any person expressly required by applicable Local Ordinance Requirements to obtain a Compliance Certificate from the District or pursuant to this Regional Ordinance is a Property Owner for purposes of this Regional Ordinance.

“Public Entity” means any of the following: (1) a city or county, (2) a special district or agency of the state formed pursuant to general law or special act for the local or regional performance of governmental or proprietary functions within limited boundaries, (3) an agency or entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code, § 6500, et seq.), (4) a school district or community college district, (5) the University of California, (6) the California State University, (7) an air pollution control district or an air quality maintenance district, (8) a housing authority, or (9) any other entity with the capacity to own real property created by any of the above.

“Regional Ordinance” means this Regional Private Sewer Lateral Ordinance.

“Remodeling” means any significant improvement, addition, construction, reconstruction, remodeling, modification or alteration of or to an existing or previously existing Structure.

“Repair” means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the correction of less than the entire Private Sewer Lateral, except a Replacement of the entire Upper Sewer Lateral is a Replacement and not a Repair if the Property Owner holds General Waiver status.

“Replacement” means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the replacement or lining of the complete length of the Private Sewer Lateral, or the complete length of the Upper Sewer Lateral if the Property Owner holds General Waiver status. “Replaced” has the same meaning as “Replacement” where used in this Ordinance.

“Sanitary Sewer” means sewer pipes that convey wastewater from a Structure and to which storm water, groundwater or surface water is not intentionally admitted. The Sanitary Sewer includes Sewer Mains and Private Sewer Laterals.

“Satellite” means a city or special district that owns and operates a sanitary sewer collection system to which a Private Sewer Lateral is connected within the District’s wastewater service area. Satellites include the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District.

“Section” means a section of this Regional Ordinance unless otherwise specified.

“Separate Interest” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Sewer Main” means a publicly owned Sanitary Sewer that receives flows from Private Sewer Laterals. The Sewer Main does not include any portion of a Private Sewer Lateral.

“State of Emergency”. A State of Emergency exists while there is in effect a declaration of emergency within the District’s service area or any portion thereof, made by Board of Directors of the District under the Municipal Utility District Act (Pub. Util. Code, § 11501 et seq.), or by any person to whom the Board of Directors has expressly delegated that authority, or by any person authorized to declare an emergency of any degree under the California Emergency Services Act (Gov. Code, § 8550 et seq.) or under Federal law.

“Statement of Responsibility” means a written statement submitted to the District under penalty of perjury in circumstances required or permitted by this Regional Ordinance which contains all information required by this Regional Ordinance or by the Director and which serves as an evidentiary basis for certain determinations made under this Regional Ordinance in the manner provided herein.

“Structure” means any building or facility that is required to be provided with public sewer service, or that is actually provided with public sewer service, or that is served by a Private Sewer Lateral.

“Time Extension Certificate” means a certificate issued by the District in connection with a Title Transfer transaction to a Property Owner, or to a transferee, that extends the deadline to obtain a Compliance Certificate for 180 days from the date the Time Extension Certificate is issued.

“Title Transfer” means the sale or transfer of an entire real property estate or the fee interest in that real property estate, whether held in sole ownership or concurrently with others in any form of cotenancy, co-ownership, or concurrent ownership recognized by California law. A sale or transfer of an entire interest in a condominium is a Title Transfer. The following are not Title Transfers for purposes of this Regional Ordinance:

- (1) the transfer of a partial interest such as a leasehold;
- (2) a transfer to a beneficiary by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust;
- (3) a transfer from one Cotenant to one or more other existing Cotenants;
- (4) a transfer made by a trustor to fund or defund an inter vivos trust, or by an executor to fund a testamentary trust;

(5) a transfer made to a spouse, or to a registered domestic partner as defined in Section 297 of the Family Code, or to a person or persons in a Lineal Consanguinity Relationship with one or more of the transferors;

(6) a transfer between spouses or registered domestic partners resulting from a decree of dissolution of marriage or domestic partnership, or resulting from a decree of legal separation or from a property settlement agreement incidental to a decree;

(7) a transfer from a Property Owner to a financial institution as a result of a foreclosure or similar process, provided that a transfer from a financial institution to a new Property Owner is a Title Transfer for purposes of this Regional Ordinance; and

(8) a transfer in either direction between a business entity and an individual or corporation who or which owns shares or equity securities possessing more than 50 percent of the voting power of the business entity.

“Triggering Event” means any event described in Section 6 that, upon the occurrence of the event and subject to the exceptions listed in that Section, imposes an obligation on a Property Owner to obtain a Compliance Certificate.

“Upper Sewer Lateral” means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Structure(s) served by that Private Sewer Lateral, or from the curb line in the street to the Structure(s) served by that Private Sewer Lateral if there is no Cleanout near the curb line. The Upper Sewer Lateral includes all portions of the Private Sewer Lateral upon the parcel containing the Structure(s) served. If the parcel contains a sewer pipe system or multiple Private Sewer Laterals, the entire sewer pipe system, including manholes and other appurtenances, and all Private Sewer Laterals are part of the Upper Sewer Lateral to the extent they are located on that parcel. If a Private Sewer Lateral connects to a rear or side yard Sewer Main located in an easement, or to a manhole, the entire Private Sewer Lateral, including the connection to the Sewer Main or manhole, is an Upper Sewer Lateral. An Upper Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Upper Sewer Lateral may be associated with an individual parcel.

“Verification Test” means a test witnessed by the District’s authorized representative(s) to verify that a Private Sewer Lateral has been maintained in accordance with this Regional Ordinance.

3. Section 5, subsection (c) is amended to read as follows:

(c) Public Entities shall maintain Upper Sewer Laterals associated with their parcels in full compliance with the standards of this Section.

4. Section 5 is further amended by adding a new subsection (d) to read as follows:
 - (d) The discharge of wastewater from any Upper Sewer Lateral not in compliance with the standards of this Section is prohibited.
5. Section 6 is amended to read as follows:
 - (a) All Property Owners must obtain a Compliance Certificate at the time and in the manner required by this Section, except for the following:
 - (1) Property Owners entitled to an Exemption Certificate under Section 10;
 - (2) Property Owners within certain Common Interest Developments governed by Section 11; and
 - (3) Property Owners subject to Section 12 pursuant to the provisions of subsection (a) of that Section.
 - (b) Title Transfer. Before completing a Title Transfer associated with a parcel containing any Structure, either the transferor or the transferee, as negotiated between them, shall obtain a Compliance Certificate under Section 7, unless a Time Extension Certificate is obtained as provided in Section 9. Failure to obtain a Compliance Certificate or a Time Extension Certificate before the Title Transfer is complete is a violation of this Regional Ordinance, and after the Title Transfer is complete, the transferee is solely responsible for obtaining a Compliance Certificate. The requirement to obtain a Compliance Certificate before Title Transfer in no way affects the legality of the transfer of title in the underlying property transaction.
 - (c) Construction or Remodeling. Whenever a Property Owner submits an application to a Permitting Authority for any permit or other approval needed for new construction upon a parcel, or for Remodeling of an existing or previously existing Structure, the Property Owner shall obtain a Compliance Certificate under Section 7 before obtaining a final permit or approval from the Permitting Authority. This subsection applies to construction and Remodeling if the cost of the permitted work exceeds \$100,000.00.
 - (d) Change in Water Services. Whenever a Property Owner requests an increase or decrease in size of the Property Owner's water meter, the Property Owner shall obtain a Compliance Certificate under Section 7 before the East Bay Municipal Utility District will perform work on the water meter. The East Bay Municipal Utility District may increase or decrease a water meter's size without first requiring the Property Owner to obtain a Compliance Certificate if the Property Owner holds a permit for construction or Remodeling subject to subsection (c) of this Section.

- (e) Local Ordinance Requirements. A Property Owner must obtain a Compliance Certificate under Section 7 when expressly required to do so by Local Ordinance Requirements.
- (f) Cotenants.
 - (1) Responsibility of Cotenants. Each Cotenant of a parcel is jointly and severally liable for the obligations of each other Cotenant under this Regional Ordinance except where otherwise provided by law. Without limiting the foregoing, whenever an obligation arises for any Cotenant to obtain a Compliance Certificate with respect to a parcel, whether because a Triggering Event has occurred or for any other reason, each and every Cotenant of the parcel is liable to obtain the Compliance Certificate.
 - (2) Exception. The Director may determine that a Cotenant should be excused from any or all obligations under this Regional Ordinance if it is demonstrated that the Cotenant does not hold an ownership interest in a parcel's Private Sewer Lateral. A Cotenant may seek such a determination by submitting a Statement of Responsibility to the District under penalty of perjury which states the relevant facts, includes copies of relevant title documents with citation to specific supporting portions thereof, and represents that a copy has been provided to all other Cotenants. The Director shall consider the information presented in the Statement of Responsibility and other relevant evidence when making the determination.

6. Section 7, subsection (a) is amended to read as follows:

- (a) Whenever a Compliance Certificate is required under this Regional Ordinance, or at any time a Property Owner voluntarily requests a Compliance Certificate, a Property Owner who does not hold a valid Compliance Certificate shall do the following at the Property Owner's expense:
 - (1) Condition Assessment and Repair or Replacement. The Property Owner shall take steps to assess the condition of all Private Sewer Laterals associated with the parcel to determine whether the Private Sewer Laterals comply with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements. If the Private Sewer Laterals are not in compliance, the Property Owner shall obtain any required permits and perform all Repair or Replacement work needed to bring the Private Sewer Laterals into compliance.
 - (2) Verification Testing. After the Property Owner determines through any combination of inspection, Repair and/or Replacement that the Private Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance and applicable Local Ordinance Requirements, and

upon payment of the required Compliance Certificate fee and any other applicable fees, the Property Owner shall perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance, except that Compliance Certificates issued within Common Interest Developments will be issued on the conditions set forth in Section 11.

7. Section 7 is further amended by adding new subsections (f), (g), and (h) as follows:

- (f) Effect of Subsequent Verification Test. A Property Owner who already holds a valid unexpired Compliance Certificate may obtain a new Compliance Certificate from the District by requesting one and obtaining a passing Verification Test result in the presence of the District's authorized representative with respect to all Private Sewer Laterals associated with the parcel and complying with all other requirements of subsection (a) of this Section. A new Compliance Certificate issued by the District under this subsection shall be valid until the later of the following: (i) the expiration of the time period specified in Section 8 applicable to the newly issued Compliance Certificate, or (ii) the expiration date of the previously issued Compliance Certificate. If the Verification Test is performed with respect to less than all Private Sewer Laterals associated with the parcel, the District will provide written evidence of any passing Verification Test result upon request and payment of applicable fees but will not issue a new Compliance Certificate nor modify the expiration date of any existing Compliance Certificate.
- (g) Exception to Verification Test Requirement. The Director may authorize a Compliance Certificate to be issued without the performance of a Verification Test, if a Property Owner submits evidence which, in the Director's judgment, establishes that (i) the Private Sewer Lateral meets the standards set forth in Section 5, and (ii) it is physically infeasible to perform a Verification Test upon the Private Sewer Lateral in accordance with standard District procedures due to its insufficient length or particular configuration (e.g., located entirely beneath a Structure). The Property Owner shall bear all costs associated with producing the required evidence. If the Director finds a portion of the Private Sewer Lateral can feasibly be tested, a Verification Test must be performed with respect to that portion as a precondition of receiving a Compliance Certificate. The validity period of a Compliance Certificate issued under this subsection shall be determined as provided in Section 8.
- (h) Discharge Prohibition. The discharge of wastewater from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance is prohibited.

8. Section 8 is amended to read as follows:

- (a) Term Limit. A Compliance Certificate obtained as a result of Replacement of all Private Sewer Laterals associated with the parcel shall be valid for 20 years from the date of issuance and other Compliance Certificates shall be valid for 7 years from the date of issuance, except as provided in subsections (b), (c) and (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12.
- (b) Effect of General Waiver. A Compliance Certificate obtained by a Property Owner while the Property Owner holds General Waiver status shall be valid for a specified period as follows:
 - (1) A Compliance Certificate obtained as a result of Replacement of the entire Upper Sewer Lateral shall be valid for 20 years from the date the Compliance Certificate is issued; and
 - (2) All other Compliance Certificates shall be valid for 7 years from the date the Compliance Certificate is issued, except as provided in subsection (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12.
- (c) Effect of Limited Waiver. If a Satellite has issued a Limited Waiver for the Lower Sewer Lateral, or a portion of it, the Compliance Certificate shall be valid for the same period as the Limited Waiver and shall expire on the Limited Waiver's expiration date, provided that the Compliance Certificate shall in no case be valid beyond 7 years from the date it is issued.
- (d) Revocation and Modification of Compliance Certificate.
 - (1) Nothing in this Regional Ordinance creates a right or entitlement to a Compliance Certificate obtained by error, omission, fraud, or misrepresentation. If the Director determines a Compliance Certificate was obtained by the error, omission, fraud, or misrepresentation of any person or entity, the Director may do any of the following:
 - (i) require recertification or issue a compliance schedule;
 - (ii) revoke a Compliance Certificate or modify the effective period of the Compliance Certificate if the District provides 30 days prior written notice of the intended revocation or modification; or
 - (iii) immediately revoke the Compliance Certificate if the Director determines the Compliance Certificate was obtained by fraud, misrepresentation, or other intentionally wrongful or misleading means.

- (2) The Director shall mail a written notice to the affected Property Owner notifying such party of the intent to revoke or modify the Compliance Certificate, or of any immediate revocation already made. Within 30 days after the date the revocation notice was mailed, the affected Property Owner may submit a written appeal in accordance with the procedures in this Regional Ordinance challenging the revocation decision and will bear the burden to prove by a preponderance of the evidence that the Compliance Certificate was properly issued. In all other respects, appeals under this subsection will proceed in accordance with the provisions of Section 14. Failure to appeal the revocation within 30 days will result in the revocation or modification described in the notice without further right of administrative appeal.

9. Section 9, subsection (b) is amended to read as follows:

- (b) Deposit. The Time Extension Certificate shall be completed and submitted to the District along with a refundable \$4,500.00 deposit and any nonrefundable fee that the District may require. The deposit will be refunded after a Compliance Certificate is issued. The District may refund a deposit in other circumstances specified by the Director.

10. Section 10, subsection (b)(2) is amended to read as follows:

- (2) Emeryville, Oakland & Piedmont. The Cities of Emeryville, Oakland, and Piedmont did not issue documents similar to Compliance Certificates before this Regional Ordinance became effective in their jurisdictions but did issue final building and sewer permits that, in some cases, indicate the Private Sewer Laterals on the parcel were Replaced or newly constructed. A Property Owner may request an Exemption Certificate from the District if one of these Satellites issued a dated and approved final building or sewer permit indicating that all Private Sewer Laterals associated with the Property Owner's parcel were Replaced or newly constructed. The District will issue an Exemption Certificate upon receiving confirmation from the issuing Satellite of the final permit's validity. The Exemption Certificate expires ten years after the date the Satellite took final action with respect to the permit that provides the basis for the Exemption Certificate. An Exemption Certificate will not be issued unless the Satellite issued the final permit during the ten-year period preceding the Regional Ordinance's effective date within the Satellite sewer service area in which the parcel is located:

Satellite	First Day of Ten-Year Period	Last Day of Ten-Year Period	Regional Ordinance Effective Date
City of Emeryville	8/22/2001	8/21/2011	8/22/2011
City of Oakland	1/16/2002	1/15/2012	1/16/2012
City of Piedmont	8/22/2001	8/21/2011	8/22/2011

11. Section 10, subsection (c)(2) is amended to read as follows:

- (2) Expiration. An Exemption Certificate issued on any grounds provided by subsection (c)(1) will expire as follows:
 - (i) six months after issuance, if issued on the grounds provided in subsection (c)(1)(i) and before the sale or transfer is recorded; and
 - (ii) one month after issuance in all other cases.

12. Section 11 is deleted in its entirety and replaced with a new Section 11 titled "Common Interest Developments" to read as follows:

- (a) Compliance Certificate Requirement. Compliance Certificates must be obtained with respect to Common Interest Developments at the times and in the manner described in this Section. A development not governed or managed by a Homeowners' Association is not a Common Interest Development for purposes of this Regional Ordinance, and the provisions of this Section shall not apply thereto.
- (b) Presumed Responsibility. In accordance with section 4775 of the California Civil Code, whenever a Compliance Certificate is required under this Section, parties within a Common Interest Development shall each be presumed responsible to demonstrate proper maintenance of the Private Sewer Lateral by passing a Verification Test and obtaining a Compliance Certificate in the following manner, unless such presumption is rebutted in the manner provided by this Section:
 - (1) Each Property Owner within a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Separate Interest owned by that Property Owner and within the Exclusive Use Common Area appurtenant to that Separate Interest.
 - (2) The Homeowners' Association which governs or manages a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Common Area.

- (3) These presumptions may be rebutted by a sufficient written Statement of Responsibility provided to the District under penalty of perjury as described in this Section which demonstrates that maintenance responsibility has been allocated in a different manner within a Common Interest Development.

(c) Statement of Responsibility by Homeowners' Association.

- (1) Each Homeowners' Association which governs or manages a Common Interest Development must, not later than 180 days after the effective date of the amended Regional Ordinance or 180 days after the Homeowners' Association first assumes governance or management responsibility for a Common Interest Development, provide a written Statement of Responsibility to the District under penalty of perjury, with a copy to each Property Owner within the Common Interest Development, which describes the manner in which maintenance responsibility is allocated within the Common Interest Development among Property Owners and the Homeowners' Association. The Statement of Responsibility shall include the following information:
- (i) a list of all parcels within the Common Interest Development by Assessor's Parcel Number;
 - (ii) a description of the allocation and boundary of maintenance responsibility as between the Homeowners' Association and the Property Owners. If maintenance responsibility has been allocated with respect to Private Sewer Laterals specifically, the Statement of Responsibility shall describe the manner and boundary of such allocation; otherwise, the Statement of Responsibility shall describe the manner and boundary of allocation of maintenance responsibility with respect to Common Areas, Exclusive Use Common Areas, and Separate Interests or such other manner maintenance responsibility is actually allocated in the development;
 - (iii) a copy of the relevant portions of the declaration of common interest, condominium plan, or other governing documents which describe the Common Interest Development's date of formation and manner of allocating maintenance responsibility for the Private Sewer Lateral(s) or otherwise generally within the development, with citation to supporting provisions thereof;
 - (iv) a map or diagram depicting the parcel boundaries, location of sewer laterals, and extent of each party's responsibility for sewer lateral maintenance; and

- (v) a statement that the information provided is current and complete and that the Homeowners' Association has provided a copy of the Statement of Responsibility to all Property Owners within the Common Interest Development.
 - (2) The Homeowners' Association may omit from its Statement of Responsibility any information it has previously provided to the District, so long as the Statement of Responsibility states that the previously provided information remains correct.
 - (3) The Homeowners' Association must provide an updated written Statement of Responsibility not later than 30 days after any action is taken which has the effect of modifying the allocation of maintenance responsibility between Property Owners and the Homeowners' Association, unless the modification does not affect Private Sewer Lateral maintenance.
- (d) Compliance Certificate of a Homeowners' Association. A Homeowners' Association (except one responsible to maintain over 1,000 feet of Private Sewer Lateral within a single Common Interest Development, in which case the Homeowners' Association is subject to the requirements of Section 12 and not this Section) must pass a Verification Test and obtain a Compliance Certificate at the times and in the manner described below:
- (1) Existing Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development on or before July 12, 2019 must, not later than July 12, 2021, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.
 - (2) New Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development after July 12, 2019 must, within twenty-four (24) months of the date of the date it first assumed such responsibility, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.
 - (3) Increase in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a

Statement of Responsibility to the District takes any action which has the effect of increasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, within twenty-four (24) months of taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area of increased responsibility, provided that the Homeowners' Association must meet any deadline set forth in subsections (d)(1) or (d)(2) with respect to any portion of the Private Sewer Lateral subject to those subsections, and further provided that, if by reason of taking such action the Homeowners' Association becomes subject to Section 12 pursuant to subsection (a) of that Section, then the Homeowners' Association shall comply with the requirements of that Section and thereafter shall have no further obligations or privileges under this Section 11.

- (4) Decrease in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of decreasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, prior to taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area subject to such action unless both of the following are true: (i) the entire portion of the Private Sewer Lateral that is otherwise required to be tested has passed a prior Verification Test, and (ii) a Compliance Certificate was issued based on that passing Verification Test result and remains valid and unexpired.
- (e) Statement of Responsibility by Property Owner. If a Triggering Event occurs with respect to a parcel within a Common Interest Development and the Homeowners' Association has not provided the Statement of Responsibility required of it by this Regional Ordinance or a Property Owner disputes the correctness of a Statement of Responsibility previously provided by the Homeowners' Association, the Property Owner must promptly submit a Statement of Responsibility to the District under penalty of perjury, with a copy to the Homeowners' Association, as follows.

 - (1) If the Property Owner is not responsible to maintain any portion of the Private Sewer Lateral pursuant to the governing documents of the Common Interest Development, the Property Owner's Statement of Responsibility shall so state, and such Statement shall be accompanied by a copy of the portions of the declaration of common interest or other governing documents relevant to the allocation of maintenance responsibility, with citation to supporting provisions thereof.
 - (2) In all other circumstances, the Statement of Responsibility must describe the specific portion of Private Sewer Lateral which is the Property Owner's responsibility to maintain. The Statement of Responsibility must

identify the portion of the Private Sewer Lateral located within the Property Owner's Separate Interest and within any Exclusive Use Common Area appurtenant to the Separate Interest, or such other portion which is the Property Owner's responsibility to maintain pursuant to the governing documents of the Common Interest Development. The Statement of Responsibility must be accompanied by all information required of a Statement of Responsibility submitted by a Homeowners' Association except the Property Owner need not depict or describe parcels other than the Property Owner's parcel nor lengths of Private Sewer Lateral which are not the Property's Owner's responsibility to maintain.

(f) Compliance Certificates of Property Owners in Common Interest Developments.

- (1) A Property Owner within a Common Interest Development must obtain a Compliance Certificate when a Triggering Event occurs with respect to the Property Owner's parcel, unless a sufficient Statement of Responsibility is or has been submitted which evidences the Property Owner's non-responsibility to maintain any portion of the Private Sewer Lateral.
- (2) A Property Owner may obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the following portion of the Private Sewer Lateral:
 - (a) the portion identified in a Statement of Responsibility as within the Property Owner's responsibility to maintain, if a sufficient Statement of Responsibility is or has been provided; or
 - (b) the portion located within the Separate Interest and any Exclusive Use Common Area appurtenant thereto, if no such Statement of Responsibility is or has been provided.

(g) Validity Period of Compliance Certificates in Common Interest Developments.

- (1) A Compliance Certificate issued pursuant to subsection (d) of this Section is valid for twenty (20) years, unless revoked or modified sooner pursuant to subsection (d) of Section 8.
 - (a) Not later than twenty-four (24) months after the expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, the Homeowners' Association must pass a Verification Test for the portion of the Private Sewer Lateral which is designated as its responsibility to maintain in the Statement of Responsibility in effect at the time the Compliance Certificate expires.
 - (b) Upon expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall

become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

- (2) A Compliance Certificate issued pursuant to any provision of this Section other than subsection (d) is valid for either seven (7) or twenty (20) years depending on the nature of work performed as provided in Section 8, unless revoked or modified sooner pursuant to subsection (d) of Section 8. Upon expiration of such Compliance Certificate, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.
- (h) If a Homeowners' Association or a Property Owner within a Common Interest Development does not provide a sufficient Statement of Responsibility when required by this Ordinance, or if any such party disputes any portion of responsibility allocated to it in a written Statement of Responsibility previously submitted by any party, the District may make an administrative determination based on the evidence and subject to the right of appeal by the Homeowners' Association or Property Owner in accordance with Section 14, and/or seek a court order declaring the extent of each party's responsibility to comply with this Regional Ordinance, ordering that such work be done by those responsible, and providing any other available legal or equitable remedy.

13. Section 12 is amended to read as follows:

- (a) Applicability of this Section. A Property Owner other than a Homeowners' Association becomes subject to the requirements of this Section at the earliest time that both of the following are true: (i) the Property Owner holds an ownership interest in a parcel or Parcel Group, and (ii) the Private Sewer Lateral(s) associated with that parcel or Parcel Group collectively exceed 1,000 feet in total combined length. A Homeowners' Association becomes subject to the requirements of this Section at the earliest time it is responsible for managing or governing over 1,000 feet of Private Sewer Laterals within a Common Interest Development. The term "Property Owner," as used in the remainder of this Section, includes a Homeowners' Association that is subject to this Section's requirements.
- (b) Condition Assessment Plan. A Property Owner subject to this Section shall submit a Condition Assessment Plan for District review. The Property Owner must submit a Condition Assessment Plan no later than July 12, 2016 if the Property Owner became subject to this Section before that date, or otherwise no later than the last-occurring of (i) November 20, 2019 or (ii) 180 days after the Property Owner first becomes subject to this Section's requirements. The Condition Assessment Plan shall include (i) a list of all parcels by Assessor's Parcel Number subject to this Section's requirements, (ii) a map drawn to scale (with scale indicated) which shows the approximate location, length, and diameter

of all Private Sewer Laterals and segments thereof associated with the parcel or Parcel Group (or of all Private Sewer Laterals and segments thereof managed or governed by the Homeowners' Association, if the Condition Assessment Plan is submitted by a Homeowners' Association), and (iii) a schedule for the performance of testing to assess the condition of such Private Sewer Laterals. The District will accept a Condition Assessment Plan if it contains all required information and indicates the total combined length of Private Sewer Laterals exceeds 1,000 feet.

(c) Corrective Action Work Plan.

- (1) Requirement and Deadline. After submitting a Condition Assessment Plan to the District and completing the testing described therein, a Property Owner subject to this Section shall submit a Corrective Action Work Plan for District review no later than July 12, 2021, or twenty-four (24) months after the Property Owner first becomes subject to this Section, whichever is later.
- (2) Contents. The Corrective Action Work Plan shall (i) summarize results of the condition assessment of all pipe required to be included in the Condition Assessment Plan (e.g., CCTV or smoke testing results), (ii) identify and describe the location, length, and material of all sewer lateral pipe which requires repair or replacement to meet the standards of this Regional Ordinance, (iii) describe the type of work to be performed to bring the pipe into compliance with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements including the method of pipe replacement (e.g. node-to-node) and method of addressing manholes, (iv) include a schedule for completion of listed tasks, and (v) include a bid price or contractor's estimate for the required work.
- (3) Review and Acceptance. The District shall accept the Corrective Action Work Plan if it contains all required information, appears to address all Private Sewer Laterals requiring work, and specifies a schedule which will result in full compliance within the time allowed by this Regional Ordinance. Upon accepting the Corrective Action Work Plan, the District will determine the Property Owner's deadline to comply with subsection (d) based on the information contained in the Corrective Action Work Plan and the standard set forth in subsection (d)(2)(i), and the Property Owner shall meet such deadline. The District may require a Property Owner to demonstrate adequate progress towards completion by conditioning Corrective Action Work Plan acceptance upon a requirement for the Property Owner to demonstrate completion of discrete tasks or milestones described in the Corrective Action Work Plan within the period of time specified therein.

(d) Compliance Certificate.

- (1) Requirement. A Property Owner subject to this Section's requirements must do all of the following: (i) complete all work described in the Corrective Action Work Plan, (ii) pay the required Compliance Certificate fee and any other applicable fees, (iii) perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative for all Private Sewer Laterals associated with the parcel or Parcel Group owned by the Property Owner, or in the case of a Homeowners' Association all Private Sewer Laterals managed or governed by the Homeowners' Association, and (iv) obtain a Compliance Certificate for each parcel involved. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals required to be tested are in compliance with this Regional Ordinance.

(2) Deadlines.

- (i) A Property Owner who first becomes subject to this Section's requirements on or before July 12, 2019 must comply with all requirements of subsection (d)(1) no later than July 12, 2026, except the Director shall allow until July 12, 2029 if the Director determines the accepted Corrected Action Work Plan demonstrates either of the following: (I) that more than 5,000 feet of Private Sewer Laterals are associated with the parcel or Parcel Group or are managed or governed by a Homeowners' Association, or (II) that more than fifty percent (50%) of the Private Sewer Laterals will need to be replaced.
- (ii) A Property Owner who first becomes subject to this Section's requirements after July 12, 2019 must comply with all requirements of subsection (d)(1) no later than eighty-four (84) months after the date the Property Owner first becomes subject to this Section's requirements, except the Director shall allow one hundred twenty (120) months if the Director makes the determination described in subsection (d)(2)(i) of this Section.
- (iii) A Compliance Agreement may be entered into pursuant to subsection (k) of Section 13 for the purpose of increasing the time allowed for a Property Owner to meet the requirements of this Section, but only if the Director determines, in his or her sole discretion, that (I) additional time is appropriate due to the existence of compelling extenuating circumstances, and (II) a Compliance Agreement appears otherwise appropriate in light of the circumstances and the factors set forth in subsection (k) of Section 13. The Director may include a provision in a Compliance

Agreement conditioning any extension that is granted on a requirement that the Property Owner pass a Verification Test for a specified percentage of Private Sewer Lateral by a specified date, and/or in any other respect provided for in subsection (k) of Section 13.

- (3) Validity Period. The Compliance Certificate(s) shall be valid for 20 years from the date issued unless revoked or modified pursuant to subsection (d) of Section 8, and upon expiration the Property Owner must obtain new Compliance Certificate(s) under Section 7.
 - (4) Reductions Below 1,000 Feet. A Property Owner subject to this Section must pass a Verification Test for all Private Sewer Laterals associated with the Property Owner's parcel or Parcel Group (or, if the Property Owner is a Homeowners' Association, then for all Private Sewer Laterals managed or governed by the Homeowners' Association) prior to taking any action which would have the effect of reducing below 1,000 feet the total combined length of such Private Sewer Laterals.
 - (e) Templates; Additional Information. The Director may require information or plans to be submitted on standard forms or templates provided by the District. The Director may require additional information to be submitted as deemed necessary for the purposes of this Regional Ordinance.
 - (f) Effect of Plan Acceptance. The District reviews Condition Assessment Plans and Corrective Action Work Plans for completeness only, and not for the substantive adequacy of the work proposed, nor for compliance with Local Ordinance Requirements applicable in the Property Owner's jurisdiction. The District's acceptance of a plan in no way warrants that the work described therein will achieve a particular result or meet Local Ordinance Requirements. The District shall not be liable for any costs, damages, or losses incurred to achieve compliance with this Regional Ordinance or with Local Ordinance Requirements.
14. Section 13 is amended to read as follows:
- (a) Enforcement Authority. The Director shall enforce this Regional Ordinance. Enforcement of Local Ordinance Requirements is the responsibility of the Satellite that adopted the Local Ordinance Requirements.
 - (b) Violations. Each of the following acts or omissions is a violation of this Regional Ordinance:
 - (1) Failure to obtain a Compliance Certificate when one is required;

- (2) Failure to obtain a Time Extension Certificate if a Compliance Certificate is not obtained, or failure to timely perform all required work after receiving a Time Extension Certificate;
 - (3) Failure to comply with any of the District's requirements for Repair, Replacement and Verification Testing;
 - (4) Obtaining or seeking an Exemption Certificate or a Compliance Certificate by means of fraud or misrepresentation;
 - (5) Presenting a false Exemption Certificate or Compliance Certificate;
 - (6) Discharging wastewater from any Upper Sewer Lateral which does not meet the standards of Section 5, or from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance;
 - (7) Failure to submit a sufficient Statement of Responsibility when required by this Regional Ordinance;
 - (8) Failure to comply with an order of the Director made in connection with the enforcement of this Regional Ordinance;
 - (9) Failure to comply with any term or condition of a Compliance Agreement entered into pursuant to this Section; and/or
 - (10) Failure to comply with any other requirement of this Regional Ordinance.
- (c) Nuisance. The Board of Directors of the District hereby finds and declares that each discharge of wastewater from a Private Sewer Lateral made by any person or entity not in compliance with this Regional Ordinance, or made from any parcel for which a Compliance Certificate is not obtained when required, is a nuisance.
- (d) Enforcement Action. The Director may take enforcement action against a person or entity who violates the provisions of this Regional Ordinance or fails to perform any act required by this Regional Ordinance. The Director may pursue any and all administrative and judicial remedies available to the District at law or in equity or under this Regional Ordinance.
- (e) Orders. When the Director finds that a person or entity violates or threatens to violate this Regional Ordinance, the Director may issue an order to cease and desist and direct that those persons or entities found to be in violation to (1) comply forthwith, (2) comply in accordance with a time schedule set by the Director, or (3) in the event of a threatened violation, take appropriate remedial or preventative action.

- (f) Judicial Enforcement. Upon authorization by the District's Board of Directors, the Director may initiate a judicial action or proceeding to enforce this Regional Ordinance or any order the Director may issue hereunder. The Director may seek any available remedy in such action or proceeding, including any or all of the following:
- (1) a declaration of the rights and obligations of any person or entity subject to the Regional Ordinance and/or a declaration that the person or entity is in violation of the Regional Ordinance;
 - (2) an injunction restraining the continuance of any discharge made in violation of this Regional Ordinance and/or requiring compliance with the provisions of this Regional Ordinance;
 - (3) civil penalties as authorized by law and by this Section.
- (g) Civil Penalties. The superior court may impose, assess, and recover the following sums as civil penalties in any judicial action or proceeding which the District may initiate under the authority of this Section:
- (1) Any person or entity who fails to comply with any order issued by the District shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the discharge, violation, or refusal occurs.
 - (2) Any person or entity who intentionally or negligently violates any order issued by the District for violation of rules regulating or prohibiting discharge of wastewater which causes or threatens to cause a condition of contamination, pollution, or nuisance may be liable civilly in a sum not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.
- (h) Costs and Fees. The District may recover from any person or entity in violation of this Regional Ordinance the costs it incurs in connection with enforcing this Regional Ordinance, including staff time, and may seek attorneys' fees in any court action or proceeding.
- (i) Availability of Remedies. Remedies under this Section are in addition to and do not supersede or limit any and all other legal or equitable remedies.
- (j) Continuing Violations. Each day that a violation of this Regional Ordinance continues shall constitute a separate violation, and each such violation shall be subject to a separate penalty and to any other remedy available hereunder.

(k) Compliance Agreements.

- (1) Generally. The Director may, in the exercise of his or her sole discretion, offer and enter into an enforceable Compliance Agreement with a person or entity subject to this Regional Ordinance on a voluntary basis which allows additional time to meet Regional Ordinance requirements, modifies ordinance requirements as applied to the person or entity, or includes other terms consistent with the provisions of this subsection (k).
- (2) Availability. In deciding whether to offer or enter into a Compliance Agreement, the Director shall consider the totality of the circumstances and determine, in his or her sole discretion, whether entering into a Compliance Agreement would best further the Regional Ordinance's purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The District will generally offer a Compliance Agreement only when the Director determines that compliance within the time allowed by the Regional Ordinance is infeasible or impossible due to circumstances not arising from the Property Owner's negligence or that strict enforcement of a Regional Ordinance requirement would be unreasonable or contrary to the Regional Ordinance's stated purposes.
- (3) Contents. A Compliance Agreement may include any terms or conditions deemed necessary or desirable by the District, which may include a requirement to perform specified work on a stated schedule, a required cash deposit in any amount necessary to ensure completion of required work, an obligation to indemnify the District, or other provisions. A Compliance Agreement may temporarily modify Regional Ordinance requirements as applied to a given party but must require the party to achieve full compliance with all Regional Ordinance requirements by a date specified in the agreement. While a party remains in strict compliance with all provisions of a Compliance Agreement, the party will not be subject to enforcement for violation of any Regional Ordinance requirement that is modified by such agreement. A Compliance Agreement does not waive the District's right to enforce the Regional Ordinance if the Compliance Agreement is breached, and the District may take immediate enforcement action in the event of a breach. Agreements must be approved as to form by the District's General Counsel or an attorney designee thereof. Compliance Agreements and related records are public records and are subject to public disclosure to the extent required by law.

15. Section 14 is retitled “Appeals” and amended to read as follows:

(a) Grounds.

- (1) A person or entity aggrieved by a decision, action, or determination made by the District in connection with this Regional Ordinance may seek reconsideration by filing an appeal in accordance with this Section no later than 30 days after the occurrence of such decision, action, or determination. For purposes of this Section 14, “occurrence” means either: (i) the date of notice of the decision, action, or determination was personally provided or mailed, whichever is earlier; or (ii) absent evidence of the date of personal or mailed notice, five days after the date the District actually undertook the decision, action, or determination.
- (2) A person or entity aggrieved by the District’s failure to take an action required of it by this Regional Ordinance may make a written request for action. If the District responds to the written request by refusing to act, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 30 days after the refusal to act. If the District does not respond to the written request for action within 30 days, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 60 days after such party made the written request for action.
- (3) A person or entity who believes compliance with any deadline or other requirement of this Regional Ordinance within the time allowed would be impossible, infeasible or unreasonably burdensome due to circumstances not arising from the negligence of the person or entity in light of the particular facts and circumstances applicable to the person or entity or to the relevant property and the Regional Ordinance’s stated purposes may at any time petition for an extension of time to comply or other temporary relief by filing an appeal in accordance with this Section. The deadline to obtain a Compliance Certificate will not be extended if the appellant was eligible to obtain a Time Extension Certificate before filing the appeal but failed to do so.
- (4) Notwithstanding the provisions of this subsection (a), the reconsideration process set forth in subsection (d) is the exclusive means to seek further administrative review of the disposition of an appeal.

- (b) Form and Contents. The appellant must submit a written statement signed under penalty of perjury containing (i) a description of the decision, action, determination, inaction, deadline, or other requirement that is the subject of the appeal, (ii) a description of the specific relief requested, (iii) a detailed statement of facts which the appellant believes entitles the appellant to the relief requested, and (iv) copies of all supporting documentation or other written evidence the

appellant wishes the District to consider. The District may require an appeal to be submitted on a District form.

- (c) Consideration and Disposition. The Director shall designate a District officer or employee with managerial authority who will consider the matter and decide whether to grant relief. The Director's designee may request additional information and the appellant shall provide such requested information within fifteen (15) business days or such other time period authorized in writing by the Director's designee. The evidence before the Director's designee shall consist of the written statement and documentation provided by the appellant in support of the appeal, relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director's designee, should be considered. The Director's designee shall consider the available evidence in light of the Regional Ordinance's stated purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The Director's designee, upon considering the available evidence, may find that the appealed decision, action, determination, or inaction was appropriate and proper, or that it is appropriate to enforce the appealed deadline or other requirement without an extension or other relief, and deny the appeal on that basis. Alternatively, the Director's designee may find the appeal meritorious and grant the appeal unconditionally or upon any conditions which the Director's designee determines are reasonable or necessary to accomplish the Regional Ordinance's stated purposes. The Director's designee may decide the matter within fifteen (15) business days from the receipt of the complete appeal, except if the Director's designee requests additional information the matter may be decided within fifteen (15) business days from the deadline to provide such additional information. If the Director's designee does not decide the matter within the above-stated time period, the appeal shall be deemed denied on the first day following that time period. Notice of any decision will be mailed to the person or entity requesting relief. The Director's designee shall consider appeals without a hearing except as follows: (i) an appellant challenging a revocation or intended revocation of a Compliance Certificate shall receive an in-person hearing unless the appellant waives the right to a hearing at any time before the hearing is held, and (ii) an appellant challenging any other District enforcement order or a notification of intent to modify a previously issued Compliance Certificate may obtain an in-person hearing by requesting one when the appeal is filed.

- (d) Reconsideration of Appeal Decision.

- (1) Within 30 days after the date of mailing of written notice of any District decision granting or denying relief under subsection (c) of this Section, or within 30 days after the date the appeal is deemed denied, any person or entity affected by the decision, action, determination, inaction, deadline, or requirement that was the subject of the appeal may submit to the Director a written request for reconsideration. The Director shall personally consider all requests for reconsideration. The request for reconsideration

must set forth in detail the facts and rationale supporting the request under penalty of perjury.

- (2) The Director may act on the request for reconsideration with or without a hearing in any manner the Director deems reasonable and shall thereafter issue a final written determination concerning the request for reconsideration. The Director may consider the written appeal submitted pursuant to subsections (a) and (b), the decision rendered by his or her designee pursuant to subsection (c), the request for reconsideration submitted pursuant to subsection (d)(1), relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director, should be considered, including any additional information requested by the Director. If the Director fails to act upon the request for reconsideration within fifteen (15) business days after receipt of the request for reconsideration, the request shall be deemed denied.
- (3) The Director's decision shall become final and binding at the time the Director acts on the request or fails to act within the time specified by this subsection. If the Director acts on the request for reconsideration, notice of the Director's action will be mailed to the person or entity requesting reconsideration within five (5) business days after the action.
- (e) Hearings. Whenever a hearing is to be held pursuant to this Section, the District shall notify the appropriate party by mailed or personal notice that a hearing shall be conducted at a date, time, and location specified in the notice. If a party fails to appear at a scheduled hearing, or if a party who is granted the right to a hearing by this Regional Ordinance waives that right before the hearing is held, the District may render a final determination on the appeal without a hearing. Hearings may be held by the Director personally or by any person designated by the Director.
- (f) Effect of Pending Appeal. Any appealed decision, action, determination, deadline, or requirement shall remain in effect and binding upon the appellant while the appeal, including any reconsideration thereof, remains pending.
- (g) Exhaustion. Any person or entity aggrieved by a decision, action, determination, or inaction related to this Regional Ordinance who wishes to appeal or challenge the decision, action, determination, or inaction, or who desires to extend a deadline of this Regional Ordinance or receive other temporary relief from a requirement thereof, must seek review by utilizing all procedures available under this Section, and the failure to do so shall be deemed a failure of the person or entity subject to the decision, action, determination, inaction, deadline, or requirement to exhaust administrative remedies.

16. Section 15 is retitled “Additional Provisions” and amended to read as follows:

- (a) Fees. The District may establish fees in the Water and Wastewater System Schedule of Rates and Charges and Fees for administration of this Regional Ordinance and may modify those fees from time to time. The District may refund fees or deposits for any reason deemed warranted by the Director, including those paid in error.
- (b) Regulations. The Director may develop and maintain written regulations, procedures and guidance materials for administration of this Regional Ordinance and shall make them available on the District’s website and upon request.
- (c) Entry Upon Private Property. To the extent authorized by law, the District may enter upon private property of any person or entity to perform its inspection responsibilities under this Regional Ordinance or to ascertain whether the District’s Private Sewer Lateral regulations are being complied with.
- (d) Communication with Representatives. The District may communicate with a person or entity other than the Property Owner, such as a rental tenant or a contractor, on the Property Owner’s behalf with regard to any transaction arising under this Regional Ordinance, if such person or entity represents to the District that he or she is authorized by the Property Owner to conduct the transaction on the Property Owner’s behalf.
- (e) Ownership of Certificates. Compliance Certificates and Exemption Certificates are issued to a person or entity only with respect to a specific parcel of property and may not be removed to any other parcel, nor conveyed to any other person or entity except if title is subsequently transferred to another person or entity the transferee shall be deemed to acquire any valid unexpired Compliance Certificate or Exemption Certificate from the transferor upon completion of the transfer of title.
- (f) The District may reject any plan, statement or other submittal made under this Regional Ordinance if the District, in its sole discretion, determines the plan, statement or other submittal is inconsistent, invalid, or insufficient for any reason.
- (g) The District may direct a party who makes a submittal under this Regional Ordinance to provide additional information, and if such information is not submitted within a reasonable time as determined by the District, the District may deem the plan, statement or other document insufficient in which case it shall be of no effect.

17. Section 18 is amended to read as follows:

This Regional Ordinance, as amended, shall become effective and in full force at 12:01 a.m. on May 24, 2019.

SECTION III

Except as expressly set forth in this Ordinance, all provisions of Ordinance 359-13 as previously amended by Ordinance No. 362-14 shall remain in full force and effect.

SECTION IV

The General Manager, the Director of Wastewater, and their designees are hereby authorized to publicly distribute the attached document entitled "Consolidated Regional Private Sewer Lateral Ordinance" (hereinafter, the "Consolidated Ordinance"). The Board of Directors finds and declares the following: (i) the Consolidated Ordinance's sole intended purpose is to restate within a single document for the convenience of the public the text of Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance; (ii) the Consolidated Ordinance, as a reference document prepared solely for public convenience, is not part of this Ordinance and is not intended to have any legal effect separate or apart from Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance; and (iii) to the extent the Consolidated Ordinance, or any portion of it, may be inconsistent with or conflict with Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance, it is the express intention of the Board of Directors that full legal effect be given to the provisions of Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance, and not to the Consolidated Ordinance nor any portion thereof.

SECTION V

The phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or section of this Ordinance as the Board hereby declares it would have enacted the remainder of the Ordinance without the invalid portion.

SECTION VI

This Ordinance shall become effective and in full force at 12:01 a.m. on the thirty-first day following its passage.

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 April 9, 2019, 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 April 23, 2019, 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

{00036762}



***EAST BAY
MUNICIPAL UTILITY DISTRICT***

**CONSOLIDATED
REGIONAL
PRIVATE SEWER
LATERAL ORDINANCE**

Effective May 24, 2019

**Adopted by Ordinance No. 359-13
Amended by Ordinance No. 362-14
Amended by Ordinance No. 369-19**

DISCLAIMER

The District's Board of Directors has authorized the public distribution of this document. Its purpose is to restate for the convenience of the public, within a single document, the text of Ordinance No. 359-13 and all subsequent Ordinances which enacted amendments thereto. Although the document was believed to be accurate at the time it was prepared, it has no legal effect separate or apart from Ordinance No. 359-13 and the Board-adopted Ordinances which subsequently amended it. To the extent this document, or any portion of it, may be inconsistent with or conflict with the Ordinances adopted by the Board, the Board-adopted Ordinances will be given full legal effect and not the contrary or inconsistent provision in this document.

CONSOLIDATED REGIONAL PRIVATE SEWER LATERAL ORDINANCE

Effective May 24, 2019

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SECTION 1

SHORT TITLE

This ordinance shall be known as the “Regional Private Sewer Lateral Ordinance” and may be cited accordingly.

(Ord. No. 359-13, 7-23-2013)

SECTION 2

PURPOSE

This Regional Private Sewer Lateral Ordinance establishes regulations for the inspection, testing, repair, replacement, and ongoing maintenance of Private Sewer Laterals. The purpose of this Regional Ordinance is to provide for the operation and maintenance of the District’s wastewater conveyance and treatment facilities in a reliable and serviceable manner and to reduce infiltration and inflow into the regional sanitary sewer system.

(Ord. No. 359-13, 7-23-2013)

SECTION 3

APPLICABILITY OF REGIONAL ORDINANCE

This Regional Ordinance applies only within the sewer service areas of the City of Alameda, City of Albany, City of Emeryville, City of Oakland, City of Piedmont, and Stege Sanitary District.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)



SECTION 4

DEFINITIONS

“Cleanout” means a pipe fitting and associated piping connected to a Private Sewer Lateral that provides access to the Private Sewer Lateral for purposes of flushing, rodding, cleaning, and other maintenance and diagnostic purposes.

“Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Common Interest Development” means a community apartment project, a condominium project, a planned development, or a stock cooperative, created in accordance with applicable provisions of the California Civil Code and managed by a Homeowners’ Association.

“Compliance Agreement” means an agreement which may be entered into by the District and a person or entity subject to this Regional Ordinance on a voluntary basis as described in Section 13, which may allow additional time to meet Regional Ordinance requirements, modify ordinance requirements as applied to the person or entity, and/or include other terms as described in that Section.

“Compliance Certificate” means a certificate issued by the District upon its determination that all Private Sewer Laterals associated with a parcel have demonstrated compliance with applicable standards by passing a Verification Test.

“Cotenant” means a person who owns a present interest in a parcel of real property concurrently with other persons in the form of a tenancy in common, a joint tenancy, a partnership, community property, or any other form of cotenancy, co-ownership, or concurrent ownership recognized by California law. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association.

“Director” means the Director of Wastewater of the East Bay Municipal Utility District. The Director may delegate any privilege or duty conferred by this Regional Ordinance upon him or her to a designated representative except for any privilege or duty which this Regional Ordinance expressly reserves for the Director personally.

“District” means Special District No. 1 of the East Bay Municipal Utility District.



“Exclusive Use Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Exemption Certificate” means a certificate issued by the District as described in Section 10. A Property Owner who holds an Exemption Certificate for a given parcel need not obtain a Compliance Certificate for that parcel during the period the Exemption Certificate remains valid.

“General Waiver” means a status that applies to a Property Owner that relieves the Property Owner from the requirement to perform work on and testing of the Lower Sewer Lateral, or a specified portion of it, where a Satellite presents the District with sufficient evidence that the entire Lower Sewer Lateral was Replaced by the Satellite at any time during the 20 year period preceding a Triggering Event.

“Homeowners’ Association” means a nonprofit corporation or unincorporated association created for the purpose of managing or governing a Common Interest Development and that operates in accordance with governing documents, whether or not the corporation or association is formally designated or commonly referred to as a Homeowners’ Association.

“Limited Waiver” means a document with a definite expiration date issued by a Satellite to a Property Owner for any reason other than the Satellite’s prior Repair or Replacement of the Lower Sewer Lateral that relieves the Property Owner from the requirement to perform work and testing on the Lower Sewer Lateral, or a specified portion of it, until the Limited Waiver’s expiration date.

“Lineal Consanguinity Relationship”. A person is in a Lineal Consanguinity Relationship with another person if, and only if, one person is a direct descendent of the other person. The following are examples of Lineal Consanguinity Relationships: parent and child, grandparent and grandchild, and great-grandparent and great-grandchild. Persons are not in a Lineal Consanguinity Relationship if neither person is directly descended from the other, even if both persons are descended from a common ancestor. The following are not Lineal Consanguinity Relationships: aunt and niece, uncle and nephew, siblings, and cousins of any degree.

“Local Ordinance Requirements” means all standards or requirements duly adopted by a Satellite or a department of a Satellite that relate to the maintenance or condition of Private Sewer Laterals, Lower Sewer Laterals, and/or Upper Sewer Laterals.



“Lower Sewer Lateral” means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Sewer Main, or from the curb line in the street to the Sewer Main if there is no Cleanout near the curb line. The Lower Sewer Lateral includes the connection to the Sewer Main. A Lower Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Lower Sewer Lateral may be associated with an individual parcel.

“Non-Sanitary Sewer Connection” means anything that directly or indirectly conveys storm water, surface water, roof runoff, intercepted groundwater or subsurface drainage into the Sanitary Sewer, including, but not limited to, down spouts, yard drains, sump pumps, or other sources of storm water, run-off or groundwater.

“Parcel Group” means two or more contiguous or directly adjacent parcels of real property under common ownership.

“Permitting Authority” means a city, city department, county or special district, including a Satellite but excluding the District, that regulates buildings, construction, land use, and/or sewers within any portion of the District’s wastewater service area.

“Private Sewer Lateral” means a pipe or pipes and appurtenances that carries sewage and liquid waste from the Structure(s) served, whether the Structure(s) is or are publicly or privately owned, to the Sewer Main. The Private Sewer Lateral includes the Upper Sewer Lateral. The Private Sewer Lateral of a given parcel includes the Lower Sewer Lateral only if applicable Local Ordinance Requirements require the Property Owner to obtain a Compliance Certificate for the Lower Sewer Lateral. A Private Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Private Sewer Lateral may be associated with an individual parcel.

“Property Owner” means a person that owns a present interest in a parcel of real property as a sole owner or as a Cotenant. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association. A Public Entity is not a Property Owner for purposes of this Regional Ordinance. Any person expressly required by applicable Local Ordinance Requirements to obtain a Compliance Certificate from the District or pursuant to this Regional Ordinance is a Property Owner for purposes of this Regional Ordinance.



“Public Entity” means any of the following: (1) a city or county, (2) a special district or agency of the state formed pursuant to general law or special act for the local or regional performance of governmental or proprietary functions within limited boundaries, (3) an agency or entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code, § 6500, et seq.), (4) a school district or community college district, (5) the University of California, (6) the California State University, (7) an air pollution control district or an air quality maintenance district, (8) a housing authority, or (9) any other entity with the capacity to own real property created by any of the above.

“Regional Ordinance” means this Regional Private Sewer Lateral Ordinance.

“Remodeling” means any significant improvement, addition, construction, reconstruction, remodeling, modification or alteration of or to an existing or previously existing Structure.

“Repair” means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the correction of less than the entire Private Sewer Lateral, except a Replacement of the entire Upper Sewer Lateral is a Replacement and not a Repair if the Property Owner holds General Waiver status.

“Replacement” means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the replacement or lining of the complete length of the Private Sewer Lateral, or the complete length of the Upper Sewer Lateral if the Property Owner holds General Waiver status. “Replaced” has the same meaning as “Replacement” where used in this Ordinance.

“Sanitary Sewer” means sewer pipes that convey wastewater from a Structure and to which storm water, groundwater or surface water is not intentionally admitted. The Sanitary Sewer includes Sewer Mains and Private Sewer Laterals.

“Satellite” means a city or special district that owns and operates a sanitary sewer collection system to which a Private Sewer Lateral is connected within the District’s wastewater service area. Satellites include the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District.

“Section” means a section of this Regional Ordinance unless otherwise specified.



“Separate Interest” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Sewer Main” means a publicly owned Sanitary Sewer that receives flows from Private Sewer Laterals. The Sewer Main does not include any portion of a Private Sewer Lateral.

“State of Emergency”. A State of Emergency exists while there is in effect a declaration of emergency within the District’s service area or any portion thereof, made by Board of Directors of the District under the Municipal Utility District Act (Pub. Util. Code, § 11501 et seq.), or by any person to whom the Board of Directors has expressly delegated that authority, or by any person authorized to declare an emergency of any degree under the California Emergency Services Act (Gov. Code, § 8550 et seq.) or under Federal law.

“Statement of Responsibility” means a written statement submitted to the District under penalty of perjury in circumstances required or permitted by this Regional Ordinance which contains all information required by this Regional Ordinance or by the Director and which serves as an evidentiary basis for certain determinations made under this Regional Ordinance in the manner provided herein.

“Structure” means any building or facility that is required to be provided with public sewer service, or that is actually provided with public sewer service, or that is served by a Private Sewer Lateral.

“Time Extension Certificate” means a certificate issued by the District in connection with a Title Transfer transaction to a Property Owner, or to a transferee, that extends the deadline to obtain a Compliance Certificate for 180 days from the date the Time Extension Certificate is issued.

“Title Transfer” means the sale or transfer of an entire real property estate or the fee interest in that real property estate, whether held in sole ownership or concurrently with others in any form of cotenancy, co-ownership, or concurrent ownership recognized by California law. A sale or transfer of an entire interest in a condominium is a Title Transfer. The following are not Title Transfers for purposes of this Regional Ordinance:

- (1) the transfer of a partial interest such as a leasehold;
- (2) a transfer to a beneficiary by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust;
- (3) a transfer from one Cotenant to one or more other existing Cotenants;



(4) a transfer made by a trustor to fund or defund an inter vivos trust, or by an executor to fund a testamentary trust;

(5) a transfer made to a spouse, or to a registered domestic partner as defined in Section 297 of the Family Code, or to a person or persons in a Lineal Consanguinity Relationship with one or more of the transferors;

(6) a transfer between spouses or registered domestic partners resulting from a decree of dissolution of marriage or domestic partnership, or resulting from a decree of legal separation or from a property settlement agreement incidental to a decree;

(7) a transfer from a Property Owner to a financial institution as a result of a foreclosure or similar process, provided that a transfer from a financial institution to a new Property Owner is a Title Transfer for purposes of this Regional Ordinance; and

(8) a transfer in either direction between a business entity and an individual or corporation who or which owns shares or equity securities possessing more than 50 percent of the voting power of the business entity.

“Triggering Event” means any event described in Section 6 that, upon the occurrence of the event and subject to the exceptions listed in that Section, imposes an obligation on a Property Owner to obtain a Compliance Certificate.

“Upper Sewer Lateral” means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Structure(s) served by that Private Sewer Lateral, or from the curb line in the street to the Structure(s) served by that Private Sewer Lateral if there is no Cleanout near the curb line. The Upper Sewer Lateral includes all portions of the Private Sewer Lateral upon the parcel containing the Structure(s) served. If the parcel contains a sewer pipe system or multiple Private Sewer Laterals, the entire sewer pipe system, including manholes and other appurtenances, and all Private Sewer Laterals are part of the Upper Sewer Lateral to the extent they are located on that parcel. If a Private Sewer Lateral connects to a rear or side yard Sewer Main located in an easement, or to a manhole, the entire Private Sewer Lateral, including the connection to the Sewer Main or manhole, is an Upper Sewer Lateral. An Upper Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Upper Sewer Lateral may be associated with an individual parcel.



“Verification Test” means a test witnessed by the District’s authorized representative(s) to verify that a Private Sewer Lateral has been maintained in accordance with this Regional Ordinance.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)

SECTION 5

RESPONSIBILITY AND STANDARDS FOR MAINTENANCE OF UPPER SEWER LATERALS

(a) All Upper Sewer Laterals must meet the following standards:

(1) The Upper Sewer Lateral shall be kept free from roots, grease deposits, and other solids which may impede or obstruct the flow.

(2) All joints shall be watertight and all pipes shall be sound.

(3) The Upper Sewer Lateral shall be free of any structural defects such as fractures, cracks, breaks, openings, or missing portions.

(4) All Cleanouts shall be securely sealed with a proper cap or approved overflow device at all times.

(5) There shall be no Non-Sanitary Sewer Connections to the Upper Sewer Lateral or to any plumbing that connects thereto.

(b) Property Owners must maintain all Upper Sewer Laterals associated with their parcels to the extent necessary to ensure the Upper Sewer Laterals meet the standards of this Section and comply with all other requirements of this Regional Ordinance and all applicable Local Ordinance Requirements. Property Owners must perform any Repair or Replacement necessary to ensure the Upper Sewer Laterals meet those standards and requirements.

(c) Public Entities shall maintain Upper Sewer Laterals associated with their parcels in full compliance with the standards of this Section.



(d) The discharge of wastewater from any Upper Sewer Lateral not in compliance with the standards of this Section is prohibited.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)

SECTION 6

WHEN A COMPLIANCE CERTIFICATE IS REQUIRED

(a) All Property Owners must obtain a Compliance Certificate at the time and in the manner required by this Section, except for the following:

(1) Property Owners entitled to an Exemption Certificate under Section 10;

(2) Property Owners within certain Common Interest Developments governed by Section 11; and

(3) Property Owners subject to Section 12 pursuant to the provisions of subsection (a) of that Section.

(b) Title Transfer. Before completing a Title Transfer associated with a parcel containing any Structure, either the transferor or the transferee, as negotiated between them, shall obtain a Compliance Certificate under Section 7, unless a Time Extension Certificate is obtained as provided in Section 9. Failure to obtain a Compliance Certificate or a Time Extension Certificate before the Title Transfer is complete is a violation of this Regional Ordinance, and after the Title Transfer is complete, the transferee is solely responsible for obtaining a Compliance Certificate. The requirement to obtain a Compliance Certificate before Title Transfer in no way affects the legality of the transfer of title in the underlying property transaction.

(c) Construction or Remodeling. Whenever a Property Owner submits an application to a Permitting Authority for any permit or other approval needed for new construction upon a parcel, or for Remodeling of an existing or previously existing Structure, the Property Owner shall obtain a Compliance Certificate under Section 7 before obtaining a final permit or approval from the Permitting Authority. This subsection applies to construction and Remodeling if the cost of the permitted work exceeds \$100,000.00.



(d) Change in Water Services. Whenever a Property Owner requests an increase or decrease in size of the Property Owner's water meter, the Property Owner shall obtain a Compliance Certificate under Section 7 before the East Bay Municipal Utility District will perform work on the water meter. The East Bay Municipal Utility District may increase or decrease a water meter's size without first requiring the Property Owner to obtain a Compliance Certificate if the Property Owner holds a permit for construction or Remodeling subject to subsection (c) of this Section.

(e) Local Ordinance Requirements. A Property Owner must obtain a Compliance Certificate under Section 7 when expressly required to do so by Local Ordinance Requirements.

(f) Cotenants.

(1) Responsibility of Cotenants. Each Cotenant of a parcel is jointly and severally liable for the obligations of each other Cotenant under this Regional Ordinance except where otherwise provided by law. Without limiting the foregoing, whenever an obligation arises for any Cotenant to obtain a Compliance Certificate with respect to a parcel, whether because a Triggering Event has occurred or for any other reason, each and every Cotenant of the parcel is liable to obtain the Compliance Certificate.

(2) Exception. The Director may determine that a Cotenant should be excused from any or all obligations under this Regional Ordinance if it is demonstrated that the Cotenant does not hold an ownership interest in a parcel's Private Sewer Lateral. A Cotenant may seek such a determination by submitting a Statement of Responsibility to the District under penalty of perjury which states the relevant facts, includes copies of relevant title documents with citation to specific supporting portions thereof, and represents that a copy has been provided to all other Cotenants. The Director shall consider the information presented in the Statement of Responsibility and other relevant evidence when making the determination.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)



SECTION 7

HOW TO OBTAIN A COMPLIANCE CERTIFICATE

(a) Whenever a Compliance Certificate is required under this Regional Ordinance, or at any time a Property Owner voluntarily requests a Compliance Certificate, a Property Owner who does not hold a valid Compliance Certificate shall do the following at the Property Owner's expense:

(1) Condition Assessment and Repair or Replacement. The Property Owner shall take steps to assess the condition of all Private Sewer Laterals associated with the parcel to determine whether the Private Sewer Laterals comply with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements. If the Private Sewer Laterals are not in compliance, the Property Owner shall obtain any required permits and perform all Repair or Replacement work needed to bring the Private Sewer Laterals into compliance.

(2) Verification Testing. After the Property Owner determines through any combination of inspection, Repair and/or Replacement that the Private Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance and applicable Local Ordinance Requirements, and upon payment of the required Compliance Certificate fee and any other applicable fees, the Property Owner shall perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance, except that Compliance Certificates issued within Common Interest Developments will be issued on the conditions set forth in Section 11.

(b) Procedures for Verification Testing of Private Sewer Laterals. The Director will maintain written procedures for Verification Testing. The procedures shall be made available upon request.

(c) Effect of General Waiver. A Property Owner who holds General Waiver status may obtain a Compliance Certificate without performing condition assessment, Repair or Replacement work, or Verification Testing on the Lower Sewer Lateral.



(d) Effect of Limited Waiver. If a Satellite has issued a Limited Waiver for the Lower Sewer Lateral or a portion of it, the Property Owner may obtain a Compliance Certificate without performing condition assessment, Repair or Replacement work or Verification Testing on the Lower Sewer Lateral, except such work and testing is required for any portion of the Lower Sewer Lateral not covered by the Limited Waiver.

(e) Voluntary Certification. The District shall provide a Compliance Certificate to any Property Owner or Public Entity who requests one and passes a Verification Test conducted pursuant to this Section, including but not limited to a Property Owner or Public Entity who receives notice from the District or a Satellite that the Private Sewer Lateral is damaged, deteriorating, defective, or in any other way fails to comply with Section 5 or with applicable Local Ordinance Requirements.

(f) Effect of Subsequent Verification Test. A Property Owner who already holds a valid unexpired Compliance Certificate may obtain a new Compliance Certificate from the District by requesting one and obtaining a passing Verification Test result in the presence of the District's authorized representative with respect to all Private Sewer Laterals associated with the parcel and complying with all other requirements of subsection (a) of this Section. A new Compliance Certificate issued by the District under this subsection shall be valid until the later of the following: (i) the expiration of the time period specified in Section 8 applicable to the newly issued Compliance Certificate, or (ii) the expiration date of the previously issued Compliance Certificate. If the Verification Test is performed with respect to less than all Private Sewer Laterals associated with the parcel, the District will provide written evidence of any passing Verification Test result upon request and payment of applicable fees but will not issue a new Compliance Certificate nor modify the expiration date of any existing Compliance Certificate.

(g) Exception to Verification Test Requirement. The Director may authorize a Compliance Certificate to be issued without the performance of a Verification Test, if a Property Owner submits evidence which, in the Director's judgment, establishes that (i) the Private Sewer Lateral meets the standards set forth in Section 5, and (ii) it is physically infeasible to perform a Verification Test upon the Private Sewer Lateral in accordance with standard District procedures due to its insufficient length or particular configuration (e.g., located entirely beneath a Structure). The Property Owner shall bear all costs associated with producing the required evidence. If the Director finds a portion of the Private Sewer Lateral can feasibly be tested, a Verification Test must be performed with respect to that portion as a precondition of receiving a Compliance Certificate. The validity period of a Compliance Certificate issued under this subsection shall be determined as provided in Section 8.



(h) Discharge Prohibition. The discharge of wastewater from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance is prohibited.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)

SECTION 8

COMPLIANCE CERTIFICATE TERM LIMITS

(a) Term Limit. A Compliance Certificate obtained as a result of Replacement of all Private Sewer Laterals associated with the parcel shall be valid for 20 years from the date of issuance and other Compliance Certificates shall be valid for 7 years from the date of issuance, except as provided in subsections (b), (c) and (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12.

(b) Effect of General Waiver. A Compliance Certificate obtained by a Property Owner while the Property Owner holds General Waiver status shall be valid for a specified period as follows:

(1) A Compliance Certificate obtained as a result of Replacement of the entire Upper Sewer Lateral shall be valid for 20 years from the date the Compliance Certificate is issued; and

(2) All other Compliance Certificates shall be valid for 7 years from the date the Compliance Certificate is issued, except as provided in subsection (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12.

(c) Effect of Limited Waiver. If a Satellite has issued a Limited Waiver for the Lower Sewer Lateral, or a portion of it, the Compliance Certificate shall be valid for the same period as the Limited Waiver and shall expire on the Limited Waiver's expiration date, provided that the Compliance Certificate shall in no case be valid beyond 7 years from the date it is issued.

(d) Revocation and Modification of Compliance Certificate.

(1) Nothing in this Regional Ordinance creates a right or entitlement to a Compliance Certificate obtained by error, omission, fraud, or misrepresentation. If the Director determines a Compliance Certificate was obtained by the error,



omission, fraud, or misrepresentation of any person or entity, the Director may do any of the following:

- (i) require recertification or issue a compliance schedule;
- (ii) revoke a Compliance Certificate or modify the effective period of the Compliance Certificate if the District provides 30 days prior written notice of the intended revocation or modification; or
- (iii) immediately revoke the Compliance Certificate if the Director determines the Compliance Certificate was obtained by fraud, misrepresentation, or other intentionally wrongful or misleading means.

(2) The Director shall mail a written notice to the affected Property Owner notifying such party of the intent to revoke or modify the Compliance Certificate, or of any immediate revocation already made. Within 30 days after the date the revocation notice was mailed, the affected Property Owner may submit a written appeal in accordance with the procedures in this Regional Ordinance challenging the revocation decision and will bear the burden to prove by a preponderance of the evidence that the Compliance Certificate was properly issued. In all other respects, appeals under this subsection will proceed in accordance with the provisions of Section 14. Failure to appeal the revocation within 30 days will result in the revocation or modification described in the notice without further right of administrative appeal.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)

SECTION 9

TIME EXTENSION CERTIFICATES

(a) Availability. If a Compliance Certificate cannot be obtained before Title Transfer, the transferor, transferee, or other interested party or parties may obtain a Time Extension Certificate from the District. Time Extension Certificates are issued in connection with Title Transfer transactions only.

(b) Deposit. The Time Extension Certificate shall be completed and submitted to the District along with a refundable \$4,500.00 deposit and any nonrefundable fee that the District may require. The deposit will be refunded after a Compliance Certificate is



issued. The District may refund a deposit in other circumstances specified by the Director.

(c) Validity Period. A Time Extension Certificate expires 180 days after it is issued.

(d) Obligation of Property Owner or Transferee. During the 180-day validity period of a Time Extension Certificate, the Property Owner or transferee must complete any necessary Repair or Replacement and obtain a Compliance Certificate. Property Owners are responsible for the full cost of compliance with this Regional Ordinance and applicable Local Ordinance Requirements and that cost may exceed the deposit.

(e) Forfeiture of Deposit. If a Compliance Certificate is not obtained before a Time Extension Certificate expires, the deposit may be forfeited and the current Property Owner is subject to enforcement action as provided by this Regional Ordinance. The Property Owner may apply to the District for release of forfeited funds, less the District's costs. The District will not release forfeited funds unless the Property Owner first demonstrates full compliance with this Regional Ordinance.

(f) No Renewal. Time Extension Certificates are not renewable.

(g) Transferability. The Director may authorize and regulate the transferability of Time Extension Certificates. Transfers, if authorized, shall not extend the Time Extension Certificate's expiration date.

(Ord. No. 359-13, 7-23-2013; Ord. No. 369-19, 4-23-2019)

SECTION 10

EXEMPTION CERTIFICATES

(a) Generally. An Exemption Certificate issued in connection with a parcel excuses the Property Owner of that parcel, while the Exemption Certificate remains valid, from any requirement to obtain a Compliance Certificate upon the occurrence of a Triggering Event. An Exemption Certificate also documents to third parties that no Compliance Certificate is required. Grounds for Exemption Certificates are specified in this Section. The District may require a Property Owner to submit specified supporting documentation for review before an Exemption Certificate will be issued.



(b) Exemption for Documented Prior Work on Private Sewer Lateral.

(1) Alameda, Albany & Stege Sanitary District. The City of Alameda, the City of Albany and Stege Sanitary District issued documents similar to Compliance Certificates before this Regional Ordinance became effective in their jurisdictions. A Property Owner may request an Exemption Certificate from the District if one of these Satellites, before the Regional Ordinance became effective in its jurisdiction, issued a valid and un-expired document similar to a Compliance Certificate indicating that all Private Sewer Laterals associated with the Property Owner's parcel met applicable standards at the time the document was issued, and such Exemption Certificate will expire on the same date that the document issued by the Satellite expires.

(2) Emeryville, Oakland & Piedmont. The Cities of Emeryville, Oakland, and Piedmont did not issue documents similar to Compliance Certificates before this Regional Ordinance became effective in their jurisdictions but did issue final building and sewer permits that, in some cases, indicate the Private Sewer Laterals on the parcel were Replaced or newly constructed. A Property Owner may request an Exemption Certificate from the District if one of these Satellites issued a dated and approved final building or sewer permit indicating that all Private Sewer Laterals associated with the Property Owner's parcel were Replaced or newly constructed. The District will issue an Exemption Certificate upon receiving confirmation from the issuing Satellite of the final permit's validity. The Exemption Certificate expires ten years after the date the Satellite took final action with respect to the permit that provides the basis for the Exemption Certificate. An Exemption Certificate will not be issued unless the Satellite issued the final permit during the ten-year period preceding the Regional Ordinance's effective date within the Satellite sewer service area in which the parcel is located:

Satellite	First Day of Ten-Year Period	Last Day of Ten-Year Period	Regional Ordinance Effective Date
City of Emeryville	8/22/2001	8/21/2011	8/22/2011
City of Oakland	1/16/2002	1/15/2012	1/16/2012
City of Piedmont	8/22/2001	8/21/2011	8/22/2011



(c) Other Exemptions.

(1) Grounds. A Property Owner may request a short-term Exemption Certificate on any of the following grounds:

(i) an entire real property estate, or the fee interest in that real property estate, has been sold or transferred, and the District is provided documentation showing the sale or transfer is not a Title Transfer as defined by this Regional Ordinance;

(ii) no Private Sewer Lateral ever existed on the parcel;

(iii) no Private Sewer Lateral associated with the parcel is connected to the public sewer system; or

(iv) all Private Sewer Laterals associated with the parcel are pressurized.

(2) Expiration. An Exemption Certificate issued on any grounds provided by subsection (c)(1) will expire as follows:

(i) six months after issuance, if issued on the grounds provided in subsection (c)(1)(i) and before the sale or transfer is recorded; and

(ii) one month after issuance in all other cases.

(d) Common Interest Developments. A Property Owner of an individual unit within a Common Interest Development need not obtain and will not be issued an Exemption Certificate if the Homeowners' Association has assumed responsibility to maintain all Private Sewer Laterals within the Common Interest Development.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)

SECTION 11

COMMON INTEREST DEVELOPMENTS

(a) Compliance Certificate Requirement. Compliance Certificates must be obtained with respect to Common Interest Developments at the times and in the manner described in this Section. A development not governed or managed by a Homeowners'



Association is not a Common Interest Development for purposes of this Regional Ordinance, and the provisions of this Section shall not apply thereto.

(b) Presumed Responsibility. In accordance with section 4775 of the California Civil Code, whenever a Compliance Certificate is required under this Section, parties within a Common Interest Development shall each be presumed responsible to demonstrate proper maintenance of the Private Sewer Lateral by passing a Verification Test and obtaining a Compliance Certificate in the following manner, unless such presumption is rebutted in the manner provided by this Section:

(1) Each Property Owner within a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Separate Interest owned by that Property Owner and within the Exclusive Use Common Area appurtenant to that Separate Interest.

(2) The Homeowners' Association which governs or manages a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Common Area.

(3) These presumptions may be rebutted by a sufficient written Statement of Responsibility provided to the District under penalty of perjury as described in this Section which demonstrates that maintenance responsibility has been allocated in a different manner within a Common Interest Development.

(c) Statement of Responsibility by Homeowners' Association.

(1) Each Homeowners' Association which governs or manages a Common Interest Development must, not later than 180 days after the effective date of the amended Regional Ordinance or 180 days after the Homeowners' Association first assumes governance or management responsibility for a Common Interest Development, provide a written Statement of Responsibility to the District under penalty of perjury, with a copy to each Property Owner within the Common Interest Development, which describes the manner in which maintenance responsibility is allocated within the Common Interest Development among Property Owners and the Homeowners' Association. The Statement of Responsibility shall include the following information:



(i) a list of all parcels within the Common Interest Development by Assessor's Parcel Number;

(ii) a description of the allocation and boundary of maintenance responsibility as between the Homeowners' Association and the Property Owners. If maintenance responsibility has been allocated with respect to Private Sewer Laterals specifically, the Statement of Responsibility shall describe the manner and boundary of such allocation; otherwise, the Statement of Responsibility shall describe the manner and boundary of allocation of maintenance responsibility with respect to Common Areas, Exclusive Use Common Areas, and Separate Interests or such other manner maintenance responsibility is actually allocated in the development;

(iii) a copy of the relevant portions of the declaration of common interest, condominium plan, or other governing documents which describe the Common Interest Development's date of formation and manner of allocating maintenance responsibility for the Private Sewer Lateral(s) or otherwise generally within the development, with citation to supporting provisions thereof;

(iv) a map or diagram depicting the parcel boundaries, location of sewer laterals, and extent of each party's responsibility for sewer lateral maintenance; and

(v) a statement that the information provided is current and complete and that the Homeowners' Association has provided a copy of the Statement of Responsibility to all Property Owners within the Common Interest Development.

(2) The Homeowners' Association may omit from its Statement of Responsibility any information it has previously provided to the District, so long as the Statement of Responsibility states that the previously provided information remains correct.

(3) The Homeowners' Association must provide an updated written Statement of Responsibility not later than 30 days after any action is taken which has the effect of modifying the allocation of maintenance responsibility between Property Owners and the Homeowners' Association, unless the modification does not affect Private Sewer Lateral maintenance.



(d) Compliance Certificate of a Homeowners' Association. A Homeowners' Association (except one responsible to maintain over 1,000 feet of Private Sewer Lateral within a single Common Interest Development, in which case the Homeowners' Association is subject to the requirements of Section 12 and not this Section) must pass a Verification Test and obtain a Compliance Certificate at the times and in the manner described below:

(1) Existing Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development on or before July 12, 2019 must, not later than July 12, 2021, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.

(2) New Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development after July 12, 2019 must, within twenty-four (24) months of the date of the date it first assumed such responsibility, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.

(3) Increase in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of increasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, within twenty-four (24) months of taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area of increased responsibility, provided that the Homeowners' Association must meet any deadline set forth in subsections (d)(1) or (d)(2) with respect to any portion of the Private Sewer Lateral subject to those subsections, and further provided that, if by reason of taking such action the Homeowners' Association becomes subject to Section 12 pursuant to subsection

(a) of that Section, then the Homeowners' Association shall comply with the requirements of that Section and thereafter shall have no further obligations or privileges under this Section 11.

(4) Decrease in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of decreasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, prior to taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area subject to such action unless both of the following are true: (i) the entire portion of the Private Sewer Lateral that is otherwise required to be tested has passed a prior Verification Test, and (ii) a Compliance Certificate was issued based on that passing Verification Test result and remains valid and unexpired.

(e) Statement of Responsibility by Property Owner. If a Triggering Event occurs with respect to a parcel within a Common Interest Development and the Homeowners' Association has not provided the Statement of Responsibility required of it by this Regional Ordinance or a Property Owner disputes the correctness of a Statement of Responsibility previously provided by the Homeowners' Association, the Property Owner must promptly submit a Statement of Responsibility to the District under penalty of perjury, with a copy to the Homeowners' Association, as follows.

(1) If the Property Owner is not responsible to maintain any portion of the Private Sewer Lateral pursuant to the governing documents of the Common Interest Development, the Property Owner's Statement of Responsibility shall so state, and such Statement shall be accompanied by a copy of the portions of the declaration of common interest or other governing documents relevant to the allocation of maintenance responsibility, with citation to supporting provisions thereof.

(2) In all other circumstances, the Statement of Responsibility must describe the specific portion of Private Sewer Lateral which is the Property Owner's responsibility to maintain. The Statement of Responsibility must identify the portion of the Private Sewer Lateral located within the Property Owner's Separate Interest and within any Exclusive Use Common Area appurtenant to the Separate Interest, or such other portion which is the Property Owner's responsibility to maintain pursuant to the governing documents of the Common



Interest Development. The Statement of Responsibility must be accompanied by all information required of a Statement of Responsibility submitted by a Homeowners' Association except the Property Owner need not depict or describe parcels other than the Property Owner's parcel nor lengths of Private Sewer Lateral which are not the Property's Owner's responsibility to maintain.

(f) Compliance Certificates of Property Owners in Common Interest Developments.

(1) A Property Owner within a Common Interest Development must obtain a Compliance Certificate when a Triggering Event occurs with respect to the Property Owner's parcel, unless a sufficient Statement of Responsibility is or has been submitted which evidences the Property Owner's non-responsibility to maintain any portion of the Private Sewer Lateral.

(2) A Property Owner may obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the following portion of the Private Sewer Lateral:

(a) the portion identified in a Statement of Responsibility as within the Property Owner's responsibility to maintain, if a sufficient Statement of Responsibility is or has been provided; or

(b) the portion located within the Separate Interest and any Exclusive Use Common Area appurtenant thereto, if no such Statement of Responsibility is or has been provided.

(g) Validity Period of Compliance Certificates in Common Interest Developments.

(1) A Compliance Certificate issued pursuant to subsection (d) of this Section is valid for twenty (20) years, unless revoked or modified sooner pursuant to subsection (d) of Section 8.

(a) Not later than twenty-four (24) months after the expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, the Homeowners' Association must pass a Verification Test for the portion of the Private Sewer Lateral which is designated as its responsibility to maintain in the Statement of Responsibility in effect at the time the Compliance Certificate expires.



(b) Upon expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

(2) A Compliance Certificate issued pursuant to any provision of this Section other than subsection (d) is valid for either seven (7) or twenty (20) years depending on the nature of work performed as provided in Section 8, unless revoked or modified sooner pursuant to subsection (d) of Section 8. Upon expiration of such Compliance Certificate, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

(h) If a Homeowners' Association or a Property Owner within a Common Interest Development does not provide a sufficient Statement of Responsibility when required by this Ordinance, or if any such party disputes any portion of responsibility allocated to it in a written Statement of Responsibility previously submitted by any party, the District may make an administrative determination based on the evidence and subject to the right of appeal by the Homeowners' Association or Property Owner in accordance with Section 14, and/or seek a court order declaring the extent of each party's responsibility to comply with this Regional Ordinance, ordering that such work be done by those responsible, and providing any other available legal or equitable remedy.

(Ord. No. 369-19, 4-23-2019)

SECTION 12

PARCELS OR PARCEL GROUPS WITH PRIVATE SEWER LATERALS EXCEEDING 1000 FEET

(a) Applicability of this Section. A Property Owner other than a Homeowners' Association becomes subject to the requirements of this Section at the earliest time that both of the following are true: (i) the Property Owner holds an ownership interest in a parcel or Parcel Group, and (ii) the Private Sewer Lateral(s) associated with that parcel or Parcel Group collectively exceed 1,000 feet in total combined length. A Homeowners' Association becomes subject to the requirements of this Section at the earliest time it is responsible for managing or governing over 1,000



feet of Private Sewer Laterals within a Common Interest Development. The term “Property Owner,” as used in the remainder of this Section, includes a Homeowners’ Association that is subject to this Section’s requirements.

(b) Condition Assessment Plan. A Property Owner subject to this Section shall submit a Condition Assessment Plan for District review. The Property Owner must submit a Condition Assessment Plan no later than July 12, 2016 if the Property Owner became subject to this Section before that date, or otherwise no later than the last-occurring of (i) November 20, 2019 or (ii) 180 days after the Property Owner first becomes subject to this Section’s requirements. The Condition Assessment Plan shall include (i) a list of all parcels by Assessor’s Parcel Number subject to this Section’s requirements, (ii) a map drawn to scale (with scale indicated) which shows the approximate location, length, and diameter of all Private Sewer Laterals and segments thereof associated with the parcel or Parcel Group (or of all Private Sewer Laterals and segments thereof managed or governed by the Homeowners’ Association, if the Condition Assessment Plan is submitted by a Homeowners’ Association), and (iii) a schedule for the performance of testing to assess the condition of such Private Sewer Laterals. The District will accept a Condition Assessment Plan if it contains all required information and indicates the total combined length of Private Sewer Laterals exceeds 1,000 feet.

(c) Corrective Action Work Plan.

(1) Requirement and Deadline. After submitting a Condition Assessment Plan to the District and completing the testing described therein, a Property Owner subject to this Section shall submit a Corrective Action Work Plan for District review no later than July 12, 2021, or twenty-four (24) months after the Property Owner first becomes subject to this Section, whichever is later.

(2) Contents. The Corrective Action Work Plan shall (i) summarize results of the condition assessment of all pipe required to be included in the Condition Assessment Plan (e.g., CCTV or smoke testing results), (ii) identify and describe the location, length, and material of all sewer lateral pipe which requires repair or replacement to meet the standards of this Regional Ordinance, (iii) describe the type of work to be performed to bring the pipe into compliance with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements including the method of pipe replacement (e.g. node-to-node) and method of addressing



manholes, (iv) include a schedule for completion of listed tasks, and (v) include a bid price or contractor's estimate for the required work.

(3) Review and Acceptance. The District shall accept the Corrective Action Work Plan if it contains all required information, appears to address all Private Sewer Laterals requiring work, and specifies a schedule which will result in full compliance within the time allowed by this Regional Ordinance. Upon accepting the Corrective Action Work Plan, the District will determine the Property Owner's deadline to comply with subsection (d) based on the information contained in the Corrective Action Work Plan and the standard set forth in subsection (d)(2)(i), and the Property Owner shall meet such deadline. The District may require a Property Owner to demonstrate adequate progress towards completion by conditioning Corrective Action Work Plan acceptance upon a requirement for the Property Owner to demonstrate completion of discrete tasks or milestones described in the Corrective Action Work Plan within the period of time specified therein.

(d) Compliance Certificate.

(1) Requirement. A Property Owner subject to this Section's requirements must do all of the following: (i) complete all work described in the Corrective Action Work Plan, (ii) pay the required Compliance Certificate fee and any other applicable fees, (iii) perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative for all Private Sewer Laterals associated with the parcel or Parcel Group owned by the Property Owner, or in the case of a Homeowners' Association all Private Sewer Laterals managed or governed by the Homeowners' Association, and (iv) obtain a Compliance Certificate for each parcel involved. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals required to be tested are in compliance with this Regional Ordinance.

(2) Deadlines.

(i) A Property Owner who first becomes subject to this Section's requirements on or before July 12, 2019 must comply with all requirements of subsection (d)(1) no later than July 12, 2026, except the Director shall allow until July 12, 2029 if the Director determines the accepted Corrected Action Work Plan demonstrates either of the following: (I) that more than 5,000 feet of Private Sewer Laterals are



associated with the parcel or Parcel Group or are managed or governed by a Homeowners' Association, or (II) that more than fifty percent (50%) of the Private Sewer Laterals will need to be replaced.

(ii) A Property Owner who first becomes subject to this Section's requirements after July 12, 2019 must comply with all requirements of subsection (d)(1) no later than eighty-four (84) months after the date the Property Owner first becomes subject to this Section's requirements, except the Director shall allow one hundred twenty (120) months if the Director makes the determination described in subsection (d)(2)(i) of this Section.

(iii) A Compliance Agreement may be entered into pursuant to subsection (k) of Section 13 for the purpose of increasing the time allowed for a Property Owner to meet the requirements of this Section, but only if the Director determines, in his or her sole discretion, that (I) additional time is appropriate due to the existence of compelling extenuating circumstances, and (II) a Compliance Agreement appears otherwise appropriate in light of the circumstances and the factors set forth in subsection (k) of Section 13. The Director may include a provision in a Compliance Agreement conditioning any extension that is granted on a requirement that the Property Owner pass a Verification Test for a specified percentage of Private Sewer Lateral by a specified date, and/or in any other respect provided for in subsection (k) of Section 13.

(3) Validity Period. The Compliance Certificate(s) shall be valid for 20 years from the date issued unless revoked or modified pursuant to subsection (d) of Section 8, and upon expiration the Property Owner must obtain new Compliance Certificate(s) under Section 7.

(4) Reductions Below 1,000 Feet. A Property Owner subject to this Section must pass a Verification Test for all Private Sewer Laterals associated with the Property Owner's parcel or Parcel Group (or, if the Property Owner is a Homeowners' Association, then for all Private Sewer Laterals managed or governed by the Homeowners' Association) prior to taking any action which would have the effect of reducing below 1,000 feet the total combined length of such Private Sewer Laterals.

(e) Templates; Additional Information. The Director may require information or plans to be submitted on standard forms or templates provided by the District. The



Director may require additional information to be submitted as deemed necessary for the purposes of this Regional Ordinance.

(f) Effect of Plan Acceptance. The District reviews Condition Assessment Plans and Corrective Action Work Plans for completeness only, and not for the substantive adequacy of the work proposed, nor for compliance with Local Ordinance Requirements applicable in the Property Owner's jurisdiction. The District's acceptance of a plan in no way warrants that the work described therein will achieve a particular result or meet Local Ordinance Requirements. The District shall not be liable for any costs, damages, or losses incurred to achieve compliance with this Regional Ordinance or with Local Ordinance Requirements.

(Ord. No. 359-13, 7-23-2013; Ord. No. 369-19, 4-23-2019)

SECTION 13

ENFORCEMENT

(a) Enforcement Authority. The Director shall enforce this Regional Ordinance. Enforcement of Local Ordinance Requirements is the responsibility of the Satellite that adopted the Local Ordinance Requirements.

(b) Violations. Each of the following acts or omissions is a violation of this Regional Ordinance:

- (1) Failure to obtain a Compliance Certificate when one is required;
- (2) Failure to obtain a Time Extension Certificate if a Compliance Certificate is not obtained, or failure to timely perform all required work after receiving a Time Extension Certificate;
- (3) Failure to comply with any of the District's requirements for Repair, Replacement and Verification Testing;
- (4) Obtaining or seeking an Exemption Certificate or a Compliance Certificate by means of fraud or misrepresentation;
- (5) Presenting a false Exemption Certificate or Compliance Certificate;



(6) Discharging wastewater from any Upper Sewer Lateral which does not meet the standards of Section 5, or from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance;

(7) Failure to submit a sufficient Statement of Responsibility when required by this Regional Ordinance;

(8) Failure to comply with an order of the Director made in connection with the enforcement of this Regional Ordinance;

(9) Failure to comply with any term or condition of a Compliance Agreement entered into pursuant to this Section; and/or

(10) Failure to comply with any other requirement of this Regional Ordinance.

(c) Nuisance. The Board of Directors of the District hereby finds and declares that each discharge of wastewater from a Private Sewer Lateral made by any person or entity not in compliance with this Regional Ordinance, or made from any parcel for which a Compliance Certificate is not obtained when required, is a nuisance.

(d) Enforcement Action. The Director may take enforcement action against a person or entity who violates the provisions of this Regional Ordinance or fails to perform any act required by this Regional Ordinance. The Director may pursue any and all administrative and judicial remedies available to the District at law or in equity or under this Regional Ordinance.

(e) Orders. When the Director finds that a person or entity violates or threatens to violate this Regional Ordinance, the Director may issue an order to cease and desist and direct that those persons or entities found to be in violation to (1) comply forthwith, (2) comply in accordance with a time schedule set by the Director, or (3) in the event of a threatened violation, take appropriate remedial or preventative action.

(f) Judicial Enforcement. Upon authorization by the District's Board of Directors, the Director may initiate a judicial action or proceeding to enforce this Regional Ordinance or any order the Director may issue hereunder. The Director may seek any available remedy in such action or proceeding, including any or all of the following:



(1) a declaration of the rights and obligations of any person or entity subject to the Regional Ordinance and/or a declaration that the person or entity is in violation of the Regional Ordinance;

(2) an injunction restraining the continuance of any discharge made in violation of this Regional Ordinance and/or requiring compliance with the provisions of this Regional Ordinance;

(3) civil penalties as authorized by law and by this Section.

(g) Civil Penalties. The superior court may impose, assess, and recover the following sums as civil penalties in any judicial action or proceeding which the District may initiate under the authority of this Section:

(1) Any person or entity who fails to comply with any order issued by the District shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the discharge, violation, or refusal occurs.

(2) Any person or entity who intentionally or negligently violates any order issued by the District for violation of rules regulating or prohibiting discharge of wastewater which causes or threatens to cause a condition of contamination, pollution, or nuisance may be liable civilly in a sum not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(h) Costs and Fees. The District may recover from any person or entity in violation of this Regional Ordinance the costs it incurs in connection with enforcing this Regional Ordinance, including staff time, and may seek attorneys' fees in any court action or proceeding.

(i) Availability of Remedies. Remedies under this Section are in addition to and do not supersede or limit any and all other legal or equitable remedies.

(j) Continuing Violations. Each day that a violation of this Regional Ordinance continues shall constitute a separate violation, and each such violation shall be subject to a separate penalty and to any other remedy available hereunder.

(k) Compliance Agreements.

(1) Generally. The Director may, in the exercise of his or her sole discretion, offer and enter into an enforceable Compliance Agreement with a person or entity subject to this Regional Ordinance on a voluntary basis which



allows additional time to meet Regional Ordinance requirements, modifies ordinance requirements as applied to the person or entity, or includes other terms consistent with the provisions of this subsection (k).

(2) Availability. In deciding whether to offer or enter into a Compliance Agreement, the Director shall consider the totality of the circumstances and determine, in his or her sole discretion, whether entering into a Compliance Agreement would best further the Regional Ordinance's purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The District will generally offer a Compliance Agreement only when the Director determines that compliance within the time allowed by the Regional Ordinance is infeasible or impossible due to circumstances not arising from the Property Owner's negligence or that strict enforcement of a Regional Ordinance requirement would be unreasonable or contrary to the Regional Ordinance's stated purposes.

(3) Contents. A Compliance Agreement may include any terms or conditions deemed necessary or desirable by the District, which may include a requirement to perform specified work on a stated schedule, a required cash deposit in any amount necessary to ensure completion of required work, an obligation to indemnify the District, or other provisions. A Compliance Agreement may temporarily modify Regional Ordinance requirements as applied to a given party but must require the party to achieve full compliance with all Regional Ordinance requirements by a date specified in the agreement. While a party remains in strict compliance with all provisions of a Compliance Agreement, the party will not be subject to enforcement for violation of any Regional Ordinance requirement that is modified by such agreement. A Compliance Agreement does not waive the District's right to enforce the Regional Ordinance if the Compliance Agreement is breached, and the District may take immediate enforcement action in the event of a breach. Agreements must be approved as to form by the District's General Counsel or an attorney designee thereof. Compliance Agreements and related records are public records and are subject to public disclosure to the extent required by law.

(Ord. No. 359-13, 7-23-2013; Ord. No. 369-19, 4-23-2019)



SECTION 14

APPEALS

(a) Grounds.

(1) A person or entity aggrieved by a decision, action, or determination made by the District in connection with this Regional Ordinance may seek reconsideration by filing an appeal in accordance with this Section no later than 30 days after the occurrence of such decision, action, or determination. For purposes of this Section 14, “occurrence” means either: (i) the date of notice of the decision, action, or determination was personally provided or mailed, whichever is earlier; or (ii) absent evidence of the date of personal or mailed notice, five days after the date the District actually undertook the decision, action, or determination.

(2) A person or entity aggrieved by the District’s failure to take an action required of it by this Regional Ordinance may make a written request for action. If the District responds to the written request by refusing to act, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 30 days after the refusal to act. If the District does not respond to the written request for action within 30 days, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 60 days after such party made the written request for action.

(3) A person or entity who believes compliance with any deadline or other requirement of this Regional Ordinance within the time allowed would be impossible, infeasible or unreasonably burdensome due to circumstances not arising from the negligence of the person or entity in light of the particular facts and circumstances applicable to the person or entity or to the relevant property and the Regional Ordinance’s stated purposes may at any time petition for an extension of time to comply or other temporary relief by filing an appeal in accordance with this Section. The deadline to obtain a Compliance Certificate will not be extended if the appellant was eligible to obtain a Time Extension Certificate before filing the appeal but failed to do so.

(4) Notwithstanding the provisions of this subsection (a), the reconsideration process set forth in subsection (d) is the exclusive means to seek further administrative review of the disposition of an appeal.



(b) Form and Contents. The appellant must submit a written statement signed under penalty of perjury containing (i) a description of the decision, action, determination, inaction, deadline, or other requirement that is the subject of the appeal, (ii) a description of the specific relief requested, (iii) a detailed statement of facts which the appellant believes entitles the appellant to the relief requested, and (iv) copies of all supporting documentation or other written evidence the appellant wishes the District to consider. The District may require an appeal to be submitted on a District form.

(c) Consideration and Disposition. The Director shall designate a District officer or employee with managerial authority who will consider the matter and decide whether to grant relief. The Director's designee may request additional information and the appellant shall provide such requested information within fifteen (15) business days or such other time period authorized in writing by the Director's designee. The evidence before the Director's designee shall consist of the written statement and documentation provided by the appellant in support of the appeal, relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director's designee, should be considered. The Director's designee shall consider the available evidence in light of the Regional Ordinance's stated purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The Director's designee, upon considering the available evidence, may find that the appealed decision, action, determination, or inaction was appropriate and proper, or that it is appropriate to enforce the appealed deadline or other requirement without an extension or other relief, and deny the appeal on that basis. Alternatively, the Director's designee may find the appeal meritorious and grant the appeal unconditionally or upon any conditions which the Director's designee determines are reasonable or necessary to accomplish the Regional Ordinance's stated purposes. The Director's designee may decide the matter within fifteen (15) business days from the receipt of the complete appeal, except if the Director's designee requests additional information the matter may be decided within fifteen (15) business days from the deadline to provide such additional information. If the Director's designee does not decide the matter within the above-stated time period, the appeal shall be deemed denied on the first day following that time period. Notice of any decision will be mailed to the person or entity requesting relief. The Director's designee shall consider appeals without a hearing except as follows: (i) an appellant challenging a revocation or intended revocation of a Compliance Certificate shall receive an in-person hearing unless the appellant waives the right to a hearing at any time before the hearing is held, and (ii) an appellant challenging any other District enforcement order or a notification of intent to modify a previously issued Compliance Certificate may obtain an in-person hearing by requesting one when the appeal is filed.



(d) Reconsideration of Appeal Decision.

(1) Within 30 days after the date of mailing of written notice of any District decision granting or denying relief under subsection (c) of this Section, or within 30 days after the date the appeal is deemed denied, any person or entity affected by the decision, action, determination, inaction, deadline, or requirement that was the subject of the appeal may submit to the Director a written request for reconsideration. The Director shall personally consider all requests for reconsideration. The request for reconsideration must set forth in detail the facts and rationale supporting the request under penalty of perjury.

(2) The Director may act on the request for reconsideration with or without a hearing in any manner the Director deems reasonable and shall thereafter issue a final written determination concerning the request for reconsideration. The Director may consider the written appeal submitted pursuant to subsections (a) and (b), the decision rendered by his or her designee pursuant to subsection (c), the request for reconsideration submitted pursuant to subsection (d)(1), relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director, should be considered, including any additional information requested by the Director. If the Director fails to act upon the request for reconsideration within fifteen (15) business days after receipt of the request for reconsideration, the request shall be deemed denied.

(3) The Director's decision shall become final and binding at the time the Director acts on the request or fails to act within the time specified by this subsection. If the Director acts on the request for reconsideration, notice of the Director's action will be mailed to the person or entity requesting reconsideration within five (5) business days after the action.

(e) Hearings. Whenever a hearing is to be held pursuant to this Section, the District shall notify the appropriate party by mailed or personal notice that a hearing shall be conducted at a date, time, and location specified in the notice. If a party fails to appear at a scheduled hearing, or if a party who is granted the right to a hearing by this Regional Ordinance waives that right before the hearing is held, the District may render a final determination on the appeal without a hearing. Hearings may be held by the Director personally or by any person designated by the Director.



(f) Effect of Pending Appeal. Any appealed decision, action, determination, deadline, or requirement shall remain in effect and binding upon the appellant while the appeal, including any reconsideration thereof, remains pending.

(g) Exhaustion. Any person or entity aggrieved by a decision, action, determination, or inaction related to this Regional Ordinance who wishes to appeal or challenge the decision, action, determination, or inaction, or who desires to extend a deadline of this Regional Ordinance or receive other temporary relief from a requirement thereof, must seek review by utilizing all procedures available under this Section, and the failure to do so shall be deemed a failure of the person or entity subject to the decision, action, determination, inaction, deadline, or requirement to exhaust administrative remedies.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)

SECTION 15

ADDITIONAL PROVISIONS

(a) Fees. The District may establish fees in the Water and Wastewater System Schedule of Rates and Charges and Fees for administration of this Regional Ordinance and may modify those fees from time to time. The District may refund fees or deposits for any reason deemed warranted by the Director, including those paid in error.

(b) Regulations. The Director may develop and maintain written regulations, procedures and guidance materials for administration of this Regional Ordinance and shall make them available on the District's website and upon request.

(c) Entry Upon Private Property. To the extent authorized by law, the District may enter upon private property of any person or entity to perform its inspection responsibilities under this Regional Ordinance or to ascertain whether the District's Private Sewer Lateral regulations are being complied with.

(d) Communication with Representatives. The District may communicate with a person or entity other than the Property Owner, such as a rental tenant or a contractor, on the Property Owner's behalf with regard to any transaction arising under this Regional Ordinance, if such person or entity represents to the District that he or she is authorized by the Property Owner to conduct the transaction on the Property Owner's behalf.



(e) Ownership of Certificates. Compliance Certificates and Exemption Certificates are issued to a person or entity only with respect to a specific parcel of property and may not be removed to any other parcel, nor conveyed to any other person or entity except if title is subsequently transferred to another person or entity the transferee shall be deemed to acquire any valid unexpired Compliance Certificate or Exemption Certificate from the transferor upon completion of the transfer of title.

(f) The District may reject any plan, statement or other submittal made under this Regional Ordinance if the District, in its sole discretion, determines the plan, statement or other submittal is inconsistent, invalid, or insufficient for any reason.

(g) The District may direct a party who makes a submittal under this Regional Ordinance to provide additional information, and if such information is not submitted within a reasonable time as determined by the District, the District may deem the plan, statement or other document insufficient in which case it shall be of no effect.

(Ord. No. 359-13, 7-23-2013; Ord. No. 369-19, 4-23-2019)

SECTION 16

EMERGENCIES

During a State of Emergency, the Director may temporarily suspend any or all provisions of this Regional Ordinance until the next regular or special meeting of the District's Board of Directors. At the regular or special meeting a report shall be made and the Board may consider whether to authorize continued suspension of this Regional Ordinance for the full duration of the State of Emergency, or for any shorter time period the Board finds appropriate.

(Ord. No. 359-13, 7-23-2013)

SECTION 17

SEVERABILITY

If any provision of this Regional Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the Regional Ordinance, or the



application of such provision to other persons or circumstances, shall not be affected thereby.

(Ord. No. 359-13, 7-23-2013)

SECTION 18

EFFECTIVE DATE

This Regional Ordinance, as amended, shall become effective and in full force at 12:01 a.m. on May 24, 2019.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 369-19, 4-23-2019)



ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
15 AND 18 OF ORDINANCE NO. 359-13, AS PREVIOUSLY AMENDED,
WHICH IS THE REGIONAL PRIVATE SEWER LATERAL ORDINANCE

Introduced by Director

; Seconded by Director

BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District:

SECTION I

The Board finds and declares:

1. The District's wastewater treatment and conveyance facilities receive significantly increased wastewater flows during wet weather events. The increased flows are caused by the infiltration and inflow of non-wastewater sources such as stormwater and groundwater into the regional sanitary sewer system. Although many factors affect inflow and infiltration, including the condition of publicly owned sewer collection facilities, a significant percentage of non-wastewater flows present in the regional sanitary sewer system during wet weather originate from defective or improperly maintained Private Sewer Laterals.
2. The District's Main Wastewater Treatment Plant was not originally intended or designed to treat peak wet weather flows of the magnitude presently experienced. The District has constructed and currently operates three additional wet weather facilities which provide primary treatment and disinfection of peak wet weather wastewater flows ("Wet Weather Facilities"). The Wet Weather Facilities cannot feasibly provide the required level of secondary treatment. During wet weather, wastewater is discharged from defective or improperly maintained Private Sewer Laterals in quantities which, together with infiltration and inflow from other sources, collectively exceed the District's secondary wastewater treatment capacity, thereby requiring the District to use the Wet Weather Facilities which do not provide secondary treatment.
3. The District's Wet Weather Facilities National Pollutant Discharge Elimination System permit ("NPDES Permit") was revised in 2009 to prohibit further discharges from the Wet Weather Facilities. Also in 2009, the United States Environmental Protection Agency and others initiated a lawsuit against the District which alleged the District has violated water quality laws by discharging from its Wet Weather Facilities in violation of the NPDES Permit. In July 2009 the Court overseeing the lawsuit entered an interim stipulated order negotiated among the parties which imposed requirements designed to improve the condition of publicly owned infrastructure and of Private Sewer Laterals. With respect to the latter, the stipulated order required the District to enact a Regional Private Sewer Lateral Ordinance ("Regional Ordinance") setting standards for the performance of Private Sewer Laterals. The interim order was replaced in 2014 with a final Consent Decree which requires the District and other agencies

to make continuous progress towards eliminating most discharges from the Wet Weather Facilities by deadlines established in the Consent Decree.

4. As required by Court order, the District enacted Ordinance No. 353 on February 9, 2010, which added Title VIII to the District's Wastewater Control Ordinance, and, under the authority of Title VIII, began implementing a regional Private Sewer Lateral certification program on August 12, 2011 ("Regional Program"). The District amended Title VIII by enacting Ordinance No. 355 on July 12, 2011 and enacted Ordinance No. 359 on July 23, 2013, which repealed Title VIII and reenacted its provisions, as modified, in the separate, stand-alone Regional Ordinance. Ordinance No. 359 was subsequently amended by Ordinance No. 362 on October 28, 2014.

5. The District is unable to consistently comply with the NPDES Permit's discharge prohibition at this time, due in significant part to the continued presence of large volumes of non-wastewater flows in the regional system which originates as infiltration and inflow from defective Private Sewer Laterals. The Regional Program appears to have made a positive contribution towards the legally mandated goal of eventually eliminating most discharges from the Wet Weather Facilities, by reducing stormwater and groundwater infiltration and inflow originating from Private Sewer Laterals. However, there remains a substantial risk that the District will be unable to meet the interim progress benchmarks and final compliance standards of the Consent Decree within the time allowed.

6. The District is authorized by law to regulate sewage disposal within its sewer service area, including the making and enforcement of all regulations necessary to effectuate the control of the quantity, quality and flow of wastewater within its sewer service area. A central purpose of the Regional Program is to exercise this legal authority in a manner expected to reduce the quantity of infiltration and inflow within the District's wastewater conveyance and treatment facilities sufficiently to allow the District to eventually cease discharges from the Wet Weather Facilities consistent with NPDES Permit requirements, and an additional purpose of the Regional Program is to comply with the District's obligations pursuant to Court order.

7. Although many factors affect the rate of infiltration and inflow reduction that is achievable, including the extent, quality, and location of rehabilitation work performed on public sewer collection facilities, it is appropriate to take additional steps at this time to improve the extent and quality of rehabilitation work performed on Private Sewer Laterals. The amendments to the Regional Ordinance set forth herein are necessary to maintain and improve the rate of reduction over time of infiltration and inflow which originates from Private Sewer Laterals, thereby improving the District's ability to comply with the NPDES Permit and the Consent Decree while also providing environmental benefits.

8. Based on the factual findings set forth herein, the Board finds that the discharge of wastewater from Private Sewer Laterals by persons or entities not in compliance with this Regional Ordinance, or from parcels for which Compliance Certificates are not obtained when required, is or could be harmful to and unreasonably affect the District's sewage disposal facilities and the operation and maintenance thereof, and furthermore unreasonably affects or could unreasonably affect the quality of the District's treatment plant effluent in such a manner that receiving water quality requirements established by law cannot be met by the District, and

furthermore violates quantity, quality and flow standards adopted by the District. On that basis, the Board declares such discharges to be a nuisance within the meaning of California Public Utilities Code section 13573 and related legal authorities.

9. It is important to effectively regulate the maintenance of sewer laterals within common interest developments, as such developments may contain defective Private Sewer Laterals which contribute to the infiltration and inflow problem. Common interest developments are unique insofar as property owners and homeowners' associations have legal authority to declare the extent of each party's respective maintenance obligations in any manner they describe in a declaration of common interest. State law requires maintenance responsibility to be allocated in a manner specified by statute, unless a different manner is described in the declaration of common interest. Effective implementation of the Regional Program within common interest developments requires that homeowners' associations and/or their member property owners provide sufficient information to the District to demonstrate how they have allocated maintenance responsibility among themselves. It is the Board's intention that the Regional Ordinance's requirements be applied to individual parties within common interest developments in accordance with the extent of each party's obligation to maintain the Private Sewer Lateral, if the extent of such obligation is adequately demonstrated to the District, or if it is not, then in accordance with a presumed allocation of responsibility which is consistent with applicable law.

10. It is appropriate to continue to maintain separate requirements applicable to those responsible for maintaining at least 1,000 feet of Private Sewer Laterals, due to the relatively greater expected infiltration and inflow contribution of such properties as compared with others, and due to the inherent cost and complexity of performing rehabilitation work on a greater scale. The Board finds the Regional Ordinance's provisions applicable to such persons appropriately balance these competing interests, and that it is equitable to allow more time to complete rehabilitation work for those who are required to maintain over 5,000 feet of sewer laterals or who will replace more than half their laterals.

11. All deadlines established in the amended Regional Ordinance are necessary and appropriate to achieve the purposes of the Regional Ordinance and meet the requirements of the Consent Decree on the schedule it allows. The Board finds that, to the extent deadlines are modified by these amendments, such modifications are necessary at this time to achieve the infiltration and inflow reductions needed to meet Consent Decree performance benchmarks. The District's compliance with such benchmarks will be determined beginning in 2022 based on flow data collected starting in 2020. The Board finds the Regional Ordinance's deadlines are typically reasonably achievable by the parties subject thereto, and that an appropriate degree of discretion may be used in the management of atypical cases to avoid manifestly unreasonable enforcement outcomes.

12. The Board does not intend to distinguish a title transfer of a person's entire interest in a condominium from a title transfer of a parcel owned in fee simple, regardless of whether the condominium ownership is or can be characterized as "fee simple." Condominium sales or transfers should be treated as title transfers for Regional Ordinance purposes, unless an exception applies to the sale or transfer.

13. Persons or entities who own property concurrently or jointly with others are referred to as "Cotenants" in the amended Regional Ordinance. The Regional Ordinance's requirements are intended to apply to Cotenants in a manner that is fair, reasonable, and consistent with applicable law. It is intended that Regional Ordinance requirements should generally apply to each Cotenant in the same manner as such requirements would apply to those who own property in a sole and exclusive capacity.

14. Title transfers between a business entity and the controlling owner of that entity should not be considered "title transfers" for purposes of invoking Regional Ordinance requirements. The Board finds that making exception for such transfers furthers the Board's general intent to exempt certain transfers that are typically undertaken to retitle property and are often not the result of an arms-length financial transaction.

15. Certain estate planning and inheritance related transactions are currently not considered "title transfers" for purposes of invoking Regional Ordinance requirements. To effectuate the Board's longstanding intent to generally exempt such transactions from ordinance requirements, it is appropriate to clarify and expand the scope of the existing estate planning and inheritance related exceptions in the manner provided by these amendments.

16. A property owner may request a voluntary recertification of a parcel that has already been certified as meeting Regional Ordinance requirements. Similarly, a public agency which operates a sewer collection system may require a property owner to recertify a parcel at specific times established by that agency. The Board finds that providing for recertification will help permanently remove infiltration and inflow from sanitary sewers by promoting continuous maintenance of Private Sewer Laterals, and will facilitate effective cooperation with fellow public agencies.

17. The Board has never intended for any person to have a right or entitlement to a certificate obtained by error, omission, fraud, or misrepresentation. The Board desires to expressly authorize District staff to revoke or adjust the validity period of certificates found to have been obtained in such manner, while providing legally appropriate due process in connection therewith.

18. It is the Board's intention to delegate full authority to take all actions necessary or desirable to implement and enforce this Regional Ordinance, except the initiation of litigation, to the Director of Wastewater and his or her designees (except where action is reserved for the Director of Wastewater personally by the Regional Ordinance). Such authority should be exercised in a manner not inconsistent with the Regional Ordinance.

19. To provide for the effective enforcement of the Regional Ordinance, it is necessary and appropriate to clarify the availability of enforcement remedies provided for by applicable law. The related amendments are intended to expand and clarify the District's enforcement authority, and not to waive, diminish or abrogate any applicable enforcement authority in any way.

20. It is the intention of the Board that District decisions arising under this Regional Ordinance, including enforcement related decisions, be undertaken in a fair and lawful manner

which provides legally appropriate due process and takes into consideration the need to achieve the Regional Ordinance's purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance.

21. It is the intention of the Board for the Regional Ordinance to be enforced reasonably and with an appropriate degree of discretion and flexibility, in light of the Regional Ordinance's stated purposes, the public's interest in its fair, equitable, and consistent implementation, and the facts and circumstances of a particular enforcement situation. In furtherance of this intention, the amended Regional Ordinance authorizes District staff to enter into a compliance agreement, in the sole exercise of prosecutorial discretion, to allow additional time to meet Regional Ordinance requirements or otherwise modify requirements in a given case. However, the Board does not intend to waive any enforcement rights by authorizing compliance agreements nor require a compliance agreement to be offered in any particular circumstances.

22. Additional clarifying or minor amendments to certain provisions of the Regional Ordinance not described above are necessary or desirable to further purposes of the Regional Program.

SECTION II

Ordinance No. 359-13, as previously amended by Ordinance No. 362-14, is hereby further amended as follows:

1. Section 3 is amended to read as follows:

This Regional Ordinance applies only within the sewer service areas of the City of Alameda, City of Albany, City of Emeryville, City of Oakland, City of Piedmont, and Stege Sanitary District. ~~This Regional Ordinance also applies within the sewer service areas of the City of Alameda and City of Albany effective January 1, 2015.~~

2. Section 4 is amended to read as follows:

(a) —“Cleanout” means a .A pipe fitting and associated piping connected to a Private Sewer Lateral that provides access to the Private Sewer Lateral for purposes of flushing, rodding, cleaning, and other maintenance and diagnostic purposes.

“Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

(b) —“Common Interest Development” means a community apartment project, a condominium project, a planned development, or a stock cooperative, created in accordance with applicable provisions of the California Civil Code and managed by a Homeowners' Association. A development managed or governed by a Homeowners' Association. Examples of Common Interest Developments may include condominium projects, planned unit developments, community apartment projects (in which the individual units are owned), and stock cooperatives.

“Compliance Agreement” means an agreement which may be entered into by the District and a person or entity subject to this Regional Ordinance on a voluntary basis as described in Section 13, which may allow additional time to meet Regional Ordinance requirements, modify ordinance requirements as applied to the person or entity, and/or include other terms as described in that Section.

(e) — **“Compliance Certificate”**—A **means a** certificate issued by the District upon its determination that all Private Sewer Laterals associated with a parcel have demonstrated compliance with applicable standards by passing a Verification Test.

“Cotenant” means a person who owns a present interest in a parcel of real property concurrently with other persons in the form of a tenancy in common, a joint tenancy, a partnership, community property, or any other form of cotenancy, co-ownership, or concurrent ownership recognized by California law. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association.

———(d) — **“Director”**—The **means the** Director of Wastewater of the East Bay Municipal Utility District, ~~or his or~~ **The Director may delegate any privilege or duty conferred by this Regional Ordinance upon him or her to a her-designated representative except for any privilege or duty which this Regional Ordinance expressly reserves for the Director personally.**

———(e) — **“District”**— **means** Special District No. 1 of the East Bay Municipal Utility District.

“Exclusive Use Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

———(f) — **“Exemption Certificate”**—A **means a** certificate issued by the District as described in Section 10. A Property Owner who holds an Exemption Certificate for a given parcel need not obtain a Compliance Certificate for that parcel during the period the Exemption Certificate remains valid.

———(g) — **“General Waiver”**—A **means a** status that applies to a Property Owner that relieves the Property Owner from the requirement to perform work on and testing of the Lower Sewer Lateral, or a specified portion of it, where a Satellite presents the District with sufficient evidence that the entire Lower Sewer Lateral was Replaced by the Satellite at any time during the 20 year period preceding a Triggering Event.

———(h) — **“Homeowners’ Association”**—A **means a** nonprofit corporation or unincorporated association created for the purpose of managing or governing a Common Interest Development and that operates in accordance with governing documents, whether or not the corporation or association is formally designated or commonly referred to as a Homeowners’ Association.

(i) —“Limited Waiver”—A means a document with a definite expiration date issued by a Satellite to a Property Owner for any reason other than the Satellite’s prior Repair or Replacement of the Lower Sewer Lateral that relieves the Property Owner from the requirement to perform work and testing on the Lower Sewer Lateral, or a specified portion of it, until the Limited Waiver’s expiration date.

(j) —“Lineal Consanguinity Relationship”. A person is in a Lineal Consanguinity Relationship with another person if, and only if, one person is a direct descendent of the other person. The following are examples of Lineal Consanguinity Relationships: parent and child, grandparent and grandchild, and great-grandparent and great-grandchild. Persons are not in a Lineal Consanguinity Relationship if neither person is directly descended from the other, even if both persons are descended from a common ancestor. The following are not Lineal Consanguinity Relationships: aunt and niece, uncle and nephew, siblings, and cousins of any degree.

(k) —“Local Ordinance Requirements”—All means all standards or requirements duly adopted by a Satellite or a department of a Satellite that relate to the maintenance or condition of Private Sewer Laterals, Lower Sewer Laterals, and/or Upper Sewer Laterals.

(l) —“Lower Sewer Lateral”—The means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Sewer Main, or from the curb line in the street to the Sewer Main if there is no Cleanout near the curb line. The Lower Sewer Lateral includes the connection to the Sewer Main. A Lower Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Lower Sewer Lateral may be associated with an individual parcel.

(m) —“Non-Sanitary Sewer Connection”—Anything means anything that directly or indirectly conveys storm water, surface water, roof runoff, intercepted groundwater or subsurface drainage into the Sanitary Sewer, including, but not limited to, down spouts, yard drains, sump pumps, or other sources of storm water, run-off or groundwater.

(n) —“Parcel Group”—Two means two or more contiguous or directly adjacent parcels of real property under common ownership.

(o) —“Permitting Authority”—A means a city, city department, county or special district, including a Satellite but excluding the District, that regulates buildings, construction, land use, and/or sewers within any portion of the District’s wastewater service area.

(p) —“Private Sewer Lateral”—A means a pipe or pipes and appurtenances that carries sewage and liquid waste from the Structure(s) served, whether the Structure(s) is or are publicly or privately owned, to the Sewer Main. The Private Sewer Lateral includes the Upper Sewer Lateral. The Private Sewer Lateral of a given parcel includes the Lower Sewer Lateral only if applicable Local Ordinance Requirements require the Property

Owner to obtain a Compliance Certificate for the Lower Sewer Lateral. A Private Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Private Sewer Lateral may be associated with an individual parcel.

(q) — “Property Owner”. — A means a person that owns a present interest in a parcel of real property as a sole owner or as a Cotenant, ~~or that person’s authorized representative including a tenant or contractor.~~ As used in this ~~paragraph~~definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association. A Public Entity is not a Property Owner for purposes of this Regional Ordinance. Any person expressly required by applicable Local Ordinance Requirements to obtain a Compliance Certificate from the District or pursuant to this Regional Ordinance is a Property Owner for purposes of this Regional Ordinance.

(r) — ~~PSL. Has the same meaning as “Private Sewer Lateral” and is used interchangeably with that term.~~

(s) — “Public Entity”. — Any means any of the following: (1) a city or county, (2) a special district or agency of the state formed pursuant to general law or special act for the local or regional performance of governmental or proprietary functions within limited boundaries, (3) an agency or entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code, § 6500, et seq.), (4) a school district or community college district, (5) the University of California, (6) the California State University, (7) an air pollution control district or an air quality maintenance district, (8) a housing authority, or (9) any other entity with the capacity to own real property created by any of the above.

(t) — “Regional Ordinance”. — This means this Regional Private Sewer Lateral Ordinance.

(u) — “Remodeling”. — Any means any significant improvement, addition, construction, reconstruction, remodeling, modification or alteration of or to an existing or previously existing Structure.

(v) — “Repair”. — ~~Construction~~ means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the correction of less than the entire Private Sewer Lateral, except a Replacement of the entire Upper Sewer Lateral is a Replacement and not a Repair if the Property Owner holds General Waiver status.

(w) — “Replacement”. — ~~Construction~~ means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the replacement or lining of the complete length of the Private Sewer Lateral, or the complete length of the Upper Sewer Lateral if the Property Owner holds General Waiver status. “Replaced” has the same meaning as “Replacement” where used in this Ordinance.

(x) —“Sanitary Sewer”. Sewer means sewer pipes that convey wastewater from a Structure and to which storm water, groundwater or surface water is not intentionally admitted. The Sanitary Sewer includes Sewer Mains and Private Sewer Laterals.

(y) —“Satellite”. A means a city or special district that owns and operates a sanitary sewer collection system to which a Private Sewer Lateral is connected within the District’s wastewater service area. Satellites include the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District.

(z) —“Section”. A means a section of this Regional Ordinance unless otherwise specified.

“Separate Interest” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

(aa) —“Sewer Main”. A means a publicly owned Sanitary Sewer that receives flows from Private Sewer Laterals. The Sewer Main does not include any portion of a Private Sewer Lateral.

(bb) —“State of Emergency”. A State of Emergency exists while there is in effect a declaration of emergency within the District’s service area or any portion thereof, made by Board of Directors of the District under the Municipal Utility District Act (Pub. Util. Code, § 11501 et seq.), or by any person to whom the Board of Directors has expressly delegated that authority, or by any person authorized to declare an emergency of any degree under the California Emergency Services Act (Gov. Code, § 8550 et seq.) or under Federal law.

“Statement of Responsibility” means a written statement submitted to the District under penalty of perjury in circumstances required or permitted by this Regional Ordinance which contains all information required by this Regional Ordinance or by the Director and which serves as an evidentiary basis for certain determinations made under this Regional Ordinance in the manner provided herein.

(cc) —“Structure”. Any means any building or facility that is required to be provided with public sewer service, or that is actually provided with public sewer service, or that is served by a Private Sewer Lateral.

(dd) —“Time Extension Certificate”. A means a certificate issued by the District in connection with a Title Transfer transaction to a Property Owner, or to a transferee, that extends the deadline to obtain a Compliance Certificate for 180 days from the date the Time Extension Certificate is issued.

(ee) —“Title Transfer”. The means the sale or transfer of an entire real property estate or the fee interest in that real property estate, whether held in sole ownership or concurrently with others in any form of cotenancy, co-ownership, or concurrent ownership recognized by California law. A sale or transfer of an entire interest in a

condominium is a Title Transfer. ~~excluding the sale or transfer of partial interest such as a leasehold.~~ The following are not Title Transfers for purposes of this Regional Ordinance:

(1) the transfer of a partial interest such as a leasehold;

~~(1)~~**(2)** a transfer to ~~an heir~~ **a beneficiary** by a fiduciary in the course of the administration of a decedent's ~~estates~~**estate**, guardianship, conservatorship, or trust;

~~(2)~~**(3)** a transfer from one co-owner **Cotenant** to one or more other co-owners **existing Cotenants**, ~~or from one or more co-owners into or from a revocable trust, if the trust is for the benefit of the grantor or grantors;~~

~~(3)~~**(4)** a transfer made by a trustor to fund **or defund** an inter vivos trust, **or by an executor to fund a testamentary trust;**

~~(4)~~**(5)** a transfer made to a spouse, or to a registered domestic partner as defined in Section 297 of the Family Code, or to a person or persons in a Lineal Consanguinity Relationship with one or more of the transferors;

~~(5)~~**(6)** a transfer between spouses or registered domestic partners resulting from a decree of dissolution of marriage or domestic partnership, or resulting from a decree of legal separation or from a property settlement agreement incidental to a decree; ~~and~~

~~(6)~~**(7)** a transfer from a Property Owner to a financial institution as a result of a foreclosure or similar process. ~~A,~~ **provided that a** transfer from a financial institution to a new Property Owner is a Title Transfer for purposes of this Regional Ordinance; **and**

(8) a transfer in either direction between a business entity and an individual or corporation who or which owns shares or equity securities possessing more than 50 percent of the voting power of the business entity.

(ff) — “Triggering Event”. Any **means any** event described in Section 6 that, upon the occurrence of the event and subject to the exceptions listed in that Section, imposes an obligation on a Property Owner to obtain a Compliance Certificate.

(gg) — “Upper Sewer Lateral”. ~~The~~ **means the** portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Structure(s) served by that Private Sewer Lateral, or from the curb line in the street to the Structure(s) served by that Private Sewer Lateral if there is no Cleanout near the curb line. The Upper Sewer Lateral includes all portions of the Private Sewer Lateral upon the parcel containing the Structure(s) served. If the parcel contains a sewer pipe system or multiple Private Sewer Laterals, the entire sewer pipe system, including manholes and other appurtenances, and

all Private Sewer Laterals are part of the Upper Sewer Lateral to the extent they are located on that parcel. If a Private Sewer Lateral connects to a rear or side yard Sewer Main located in an easement, or to a manhole, the entire Private Sewer Lateral, including the connection to the Sewer Main or manhole, is an Upper Sewer Lateral. An Upper Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Upper Sewer Lateral may be associated with an individual parcel.

~~(hh) —“Verification Test”. A~~ **means a** test witnessed by the District’s authorized representative(s) to verify that ~~all PSLs associated with the parcel comply~~ **a Private Sewer Lateral has been maintained in accordance** with this Regional Ordinance ~~and applicable Local Ordinance Requirements.~~

3. Section 5, subsection (c) is amended to read as follows:

(c) Public Entities shall maintain Upper Sewer Laterals **associated with their parcels** in full compliance with the standards of this Section.

4. Section 5 is further amended by adding a new subsection (d) to read as follows:

(d) The discharge of wastewater from any Upper Sewer Lateral not in compliance with the standards of this Section is prohibited.

5. Section 6 is amended to read as follows:

(a) All Property Owners must obtain a Compliance Certificate at the time and in the manner required by this Section, except for the following:

(1) Property Owners entitled to an Exemption Certificate under Section 10;

(2) Property Owners within certain Common Interest Developments governed by Section 11; and

(3) Property Owners ~~subject to of any parcel or Parcel Group with Private Sewer Laterals totaling greater than 1000 feet, which are governed by~~ **Section 12 pursuant to the provisions of subsection (a) of that Section.**

(b) **Title Transfer.** Before completing a Title Transfer associated with a parcel containing any Structure, either the transferor or the transferee, as negotiated between them, shall obtain a Compliance Certificate under Section 7, unless a Time Extension Certificate is obtained as provided in Section 9. **Failure to obtain a Compliance Certificate or a Time Extension Certificate before the Title Transfer is complete is a violation of this Regional Ordinance, and after** After the Title Transfer is complete, the transferee is solely responsible for obtaining a Compliance Certificate. The requirement to obtain a Compliance Certificate before Title Transfer in no way affects the legality of the transfer of title in the underlying property transaction.

- (c) Construction or Remodeling. Whenever a Property Owner submits an application to a Permitting Authority for any permit or other approval needed for new construction upon a parcel, or for Remodeling of an existing or previously existing Structure, the Property Owner shall obtain a Compliance Certificate under Section 7 before obtaining a final permit or approval from the Permitting Authority. This ~~paragraph~~ subsection applies to construction and Remodeling if the cost of the permitted work exceeds \$100,000.00.
- (d) Change in Water Services. Whenever a Property Owner requests an increase or decrease in size of the Property Owner's water meter, the Property Owner shall obtain a Compliance Certificate under Section 7 before the East Bay Municipal Utility District will perform work on the water meter. The East Bay Municipal Utility District may increase or decrease a water meter's size without first requiring the Property Owner to obtain a Compliance Certificate if the Property Owner holds a permit for construction or Remodeling subject to ~~paragraph~~ subsection (c) of this Section.
- (e) Local Ordinance Requirements. A Property Owner must obtain a Compliance Certificate under Section 7 when expressly required to do so by Local Ordinance Requirements.

(f) **Cotenants.**

- (1) **Responsibility of Cotenants. Each Cotenant of a parcel is jointly and severally liable for the obligations of each other Cotenant under this Regional Ordinance except where otherwise provided by law. Without limiting the foregoing, whenever an obligation arises for any Cotenant to obtain a Compliance Certificate with respect to a parcel, whether because a Triggering Event has occurred or for any other reason, each and every Cotenant of the parcel is liable to obtain the Compliance Certificate.**
- (2) **Exception. The Director may determine that a Cotenant should be excused from any or all obligations under this Regional Ordinance if it is demonstrated that the Cotenant does not hold an ownership interest in a parcel's Private Sewer Lateral. A Cotenant may seek such a determination by submitting a Statement of Responsibility to the District under penalty of perjury which states the relevant facts, includes copies of relevant title documents with citation to specific supporting portions thereof, and represents that a copy has been provided to all other Cotenants. The Director shall consider the information presented in the Statement of Responsibility and other relevant evidence when making the determination.**

6. Section 7, subsection (a) is amended to read as follows:

(a) Whenever a Compliance Certificate is required under this Regional Ordinance, or at any time a Property Owner voluntarily requests a Compliance Certificate, a Property Owner who does not hold a valid Compliance Certificate shall do the following at the Property Owner's expense:

- (1) Condition Assessment and Repair or Replacement. The Property Owner shall take steps to assess the condition of all Private Sewer Laterals associated with the parcel to determine whether the PSLsPrivate Sewer Laterals comply with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements. If the PSLsPrivate Sewer Laterals are not in compliance, the Property Owner shall obtain any required permits and perform all Repair or Replacement work needed to bring the PSLsPrivate Sewer Laterals into compliance.
- (2) Verification Testing. After the Property Owner determines through any combination of inspection, Repair and/or Replacement that the PSLsPrivate Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance and applicable Local Ordinance Requirements, and upon payment of the required Compliance Certificate fee and any other applicable fees, the Property Owner shall perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all PSLsPrivate Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance and applicable Local Ordinance Requirements, except that Compliance Certificates issued within ~~certain~~ Common Interest Developments under ~~Section 11(b)(3)~~ will be issued on the conditions set forth in ~~that~~ Section 11.

7. Section 7 is further amended by adding new subsections (f), (g), and (h) as follows:

(f) Effect of Subsequent Verification Test. A Property Owner who already holds a valid unexpired Compliance Certificate may obtain a new Compliance Certificate from the District by requesting one and obtaining a passing Verification Test result in the presence of the District's authorized representative with respect to all Private Sewer Laterals associated with the parcel and complying with all other requirements of subsection (a) of this Section. A new Compliance Certificate issued by the District under this subsection shall be valid until the later of the following: (i) the expiration of the time period specified in Section 8 applicable to the newly issued Compliance Certificate, or (ii) the expiration date of the previously issued Compliance Certificate. If the Verification Test is performed with respect to less than all Private Sewer Laterals associated with the parcel, the District will provide written evidence of any passing Verification Test result upon request and payment of applicable fees but will not issue a new Compliance

Certificate nor modify the expiration date of any existing Compliance Certificate.

- (g) Exception to Verification Test Requirement. The Director may authorize a Compliance Certificate to be issued without the performance of a Verification Test, if a Property Owner submits evidence which, in the Director's judgment, establishes that (i) the Private Sewer Lateral meets the standards set forth in Section 5, and (ii) it is physically infeasible to perform a Verification Test upon the Private Sewer Lateral in accordance with standard District procedures due to its insufficient length or particular configuration (e.g., located entirely beneath a Structure). The Property Owner shall bear all costs associated with producing the required evidence. If the Director finds a portion of the Private Sewer Lateral can feasibly be tested, a Verification Test must be performed with respect to that portion as a precondition of receiving a Compliance Certificate. The validity period of a Compliance Certificate issued under this subsection shall be determined as provided in Section 8.**
- (h) Discharge Prohibition. The discharge of wastewater from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance is prohibited.**

8. Section 8 is amended to read as follows:

- (a) Term Limit. A Compliance Certificate obtained as a result of Replacement of all PSLs Private Sewer Laterals associated with the parcel shall be valid for 20 years from the date of issuance. All and other Compliance Certificates shall be valid for 7 years from the date of issuance, except as provided in paragraphs subsections (b), and (c) and (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12, and in Sections 11(e) and 12(e).**
- (b) Effect of General Waiver. A Compliance Certificate obtained by a Property Owner while the Property Owner holds General Waiver status shall be valid for a specified period as follows:**
- (1) A Compliance Certificate obtained as a result of Replacement of the entire Upper Sewer Lateral shall be valid for 20 years from the date the Compliance Certificate is issued; and**
 - (2) All other Compliance Certificates shall be valid for 7 years from the date the Compliance Certificate is issued, except as provided in subsection (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12, Sections 11(e) and 12(e).**
- (c) Effect of Limited Waiver. If a Satellite has issued a Limited Waiver for the Lower Sewer Lateral, or a portion of it, the Compliance Certificate shall be valid for the same period as the Limited Waiver and shall expire on the Limited Waiver's**

expiration date, provided that the Compliance Certificate shall in no case be valid beyond 7 years from the date it is issued.

(d) Revocation and Modification of Compliance Certificate.

(1) Nothing in this Regional Ordinance creates a right or entitlement to a Compliance Certificate obtained by error, omission, fraud, or misrepresentation. If the Director determines a Compliance Certificate was obtained by the error, omission, fraud, or misrepresentation of any person or entity, the Director may do any of the following:

- (i) require recertification or issue a compliance schedule;**
- (ii) revoke a Compliance Certificate or modify the effective period of the Compliance Certificate if the District provides 30 days prior written notice of the intended revocation or modification; or**
- (iii) immediately revoke the Compliance Certificate if the Director determines the Compliance Certificate was obtained by fraud, misrepresentation, or other intentionally wrongful or misleading means.**

(2) The Director shall mail a written notice to the affected Property Owner notifying such party of the intent to revoke or modify the Compliance Certificate, or of any immediate revocation already made. Within 30 days after the date the revocation notice was mailed, the affected Property Owner may submit a written appeal in accordance with the procedures in this Regional Ordinance challenging the revocation decision and will bear the burden to prove by a preponderance of the evidence that the Compliance Certificate was properly issued. In all other respects, appeals under this subsection will proceed in accordance with the provisions of Section 14. Failure to appeal the revocation within 30 days will result in the revocation or modification described in the notice without further right of administrative appeal.

9. Section 9, subsection (b) is amended to read as follows:

- (b) Deposit.** The Time Extension Certificate shall be completed and submitted to the District along with a refundable \$4,500.00 deposit and any nonrefundable fee that the District may require. The deposit will be refunded after a Compliance Certificate is issued. **The District may refund a deposit in other circumstances specified by the Director.**

10. Section 10, subsection (b)(2) is amended to read as follows:

- (2) Emeryville, Oakland & Piedmont. The Cities of Emeryville, Oakland, and Piedmont did not issue documents similar to Compliance Certificates before this Regional Ordinance became effective in their jurisdictions but did issue final building and sewer permits that, in some cases, indicate the Private Sewer Laterals on the parcel were Replaced or newly constructed. A Property Owner may request an Exemption Certificate from the District if one of these Satellites issued a dated and approved final building or sewer permit indicating that all Private Sewer Laterals associated with the Property Owner's parcel were Replaced or newly constructed. The District will issue an Exemption Certificate upon receiving confirmation from the issuing Satellite of the final permit's validity. The Exemption Certificate expires ten years after the date the Satellite ~~issued the~~ took final action with respect to the permit that provides the basis for the Exemption Certificate. An Exemption Certificate will not be issued unless the Satellite issued the final permit during the ten-year period preceding the Regional Ordinance's effective date within the Satellite sewer service area in which the parcel is located:

Satellite	First Day of Ten-Year Period	Last Day of Ten-Year Period	Regional Ordinance Effective Date
City of Emeryville	8/22/2001	8/21/2011	8/22/2011
City of Oakland	1/16/2002	1/15/2012	1/16/2012
City of Piedmont	8/22/2001	8/21/2011	8/22/2011

11. Section 10, subsection (c)(2) is amended to read as follows:

- (2) Expiration. An Exemption Certificate issued on any grounds provided by ~~paragraph~~ subsection (c)(1) will expire as follows:
- (i) six months after issuance, if issued on the grounds provided in ~~paragraph~~ subsection (c)(1)(i) and before the sale or transfer is recorded; and
 - (ii) one month after issuance in all other cases.

12. Section 11 is deleted in its entirety and replaced with a new Section 11 titled "Common Interest Developments" to read as follows:

- (a) Compliance Certificate Requirement. Compliance Certificates must be obtained with respect to Common Interest Developments at the times and in the manner described in this Section. A development not governed or

managed by a Homeowners' Association is not a Common Interest Development for purposes of this Regional Ordinance, and the provisions of this Section shall not apply thereto.

(b) Presumed Responsibility. In accordance with section 4775 of the California Civil Code, whenever a Compliance Certificate is required under this Section, parties within a Common Interest Development shall each be presumed responsible to demonstrate proper maintenance of the Private Sewer Lateral by passing a Verification Test and obtaining a Compliance Certificate in the following manner, unless such presumption is rebutted in the manner provided by this Section:

(1) Each Property Owner within a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Separate Interest owned by that Property Owner and within the Exclusive Use Common Area appurtenant to that Separate Interest.

(2) The Homeowners' Association which governs or manages a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Common Area.

(3) These presumptions may be rebutted by a sufficient written Statement of Responsibility provided to the District under penalty of perjury as described in this Section which demonstrates that maintenance responsibility has been allocated in a different manner within a Common Interest Development.

(c) Statement of Responsibility by Homeowners' Association.

(1) Each Homeowners' Association which governs or manages a Common Interest Development must, not later than 180 days after the effective date of the amended Regional Ordinance or 180 days after the Homeowners' Association first assumes governance or management responsibility for a Common Interest Development, provide a written Statement of Responsibility to the District under penalty of perjury, with a copy to each Property Owner within the Common Interest Development, which describes the manner in which maintenance responsibility is allocated within the Common Interest Development among Property Owners and the Homeowners' Association. The Statement of Responsibility shall include the following information:

(i) a list of all parcels within the Common Interest Development by Assessor's Parcel Number;

(ii) a description of the allocation and boundary of maintenance

responsibility as between the Homeowners' Association and the Property Owners. If maintenance responsibility has been allocated with respect to Private Sewer Laterals specifically, the Statement of Responsibility shall describe the manner and boundary of such allocation; otherwise, the Statement of Responsibility shall describe the manner and boundary of allocation of maintenance responsibility with respect to Common Areas, Exclusive Use Common Areas, and Separate Interests or such other manner maintenance responsibility is actually allocated in the development;

(iii) a copy of the relevant portions of the declaration of common interest, condominium plan, or other governing documents which describe the Common Interest Development's date of formation and manner of allocating maintenance responsibility for the Private Sewer Lateral(s) or otherwise generally within the development, with citation to supporting provisions thereof;

(iv) a map or diagram depicting the parcel boundaries, location of sewer laterals, and extent of each party's responsibility for sewer lateral maintenance; and

(v) a statement that the information provided is current and complete and that the Homeowners' Association has provided a copy of the Statement of Responsibility to all Property Owners within the Common Interest Development.

(2) The Homeowners' Association may omit from its Statement of Responsibility any information it has previously provided to the District, so long as the Statement of Responsibility states that the previously provided information remains correct.

(3) The Homeowners' Association must provide an updated written Statement of Responsibility not later than 30 days after any action is taken which has the effect of modifying the allocation of maintenance responsibility between Property Owners and the Homeowners' Association, unless the modification does not affect Private Sewer Lateral maintenance.

(d) Compliance Certificate of a Homeowners' Association. A Homeowners' Association (except one responsible to maintain over 1,000 feet of Private Sewer Lateral within a single Common Interest Development, in which case the Homeowners' Association is subject to the requirements of Section 12 and not this Section) must pass a Verification Test and obtain a Compliance Certificate at the times and in the manner described below:

- (1) Existing Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development on or before July 12, 2019 must, not later than July 12, 2021, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.
- (2) New Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development after July 12, 2019 must, within twenty-four (24) months of the date of the date it first assumed such responsibility, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.
- (3) Increase in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of increasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, within twenty-four (24) months of taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area of increased responsibility, provided that the Homeowners' Association must meet any deadline set forth in subsections (d)(1) or (d)(2) with respect to any portion of the Private Sewer Lateral subject to those subsections, and further provided that, if by reason of taking such action the Homeowners' Association becomes subject to Section 12 pursuant to subsection (a) of that Section, then the Homeowners' Association shall comply with the requirements of that Section and thereafter shall have no further obligations or privileges under this Section 11.
- (4) Decrease in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of decreasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, prior to taking such action, pass a Verification

Test for the portion of the Private Sewer Lateral within the physical area subject to such action unless both of the following are true: (i) the entire portion of the Private Sewer Lateral that is otherwise required to be tested has passed a prior Verification Test, and (ii) a Compliance Certificate was issued based on that passing Verification Test result and remains valid and unexpired.

- (e) Statement of Responsibility by Property Owner. If a Triggering Event occurs with respect to a parcel within a Common Interest Development and the Homeowners' Association has not provided the Statement of Responsibility required of it by this Regional Ordinance or a Property Owner disputes the correctness of a Statement of Responsibility previously provided by the Homeowners' Association, the Property Owner must promptly submit a Statement of Responsibility to the District under penalty of perjury, with a copy to the Homeowners' Association, as follows.
- (1) If the Property Owner is not responsible to maintain any portion of the Private Sewer Lateral pursuant to the governing documents of the Common Interest Development, the Property Owner's Statement of Responsibility shall so state, and such Statement shall be accompanied by a copy of the portions of the declaration of common interest or other governing documents relevant to the allocation of maintenance responsibility, with citation to supporting provisions thereof.
- (2) In all other circumstances, the Statement of Responsibility must describe the specific portion of Private Sewer Lateral which is the Property Owner's responsibility to maintain. The Statement of Responsibility must identify the portion of the Private Sewer Lateral located within the Property Owner's Separate Interest and within any Exclusive Use Common Area appurtenant to the Separate Interest, or such other portion which is the Property Owner's responsibility to maintain pursuant to the governing documents of the Common Interest Development. The Statement of Responsibility must be accompanied by all information required of a Statement of Responsibility submitted by a Homeowners' Association except the Property Owner need not depict or describe parcels other than the Property Owner's parcel nor lengths of Private Sewer Lateral which are not the Property's Owner's responsibility to maintain.
- (f) Compliance Certificates of Property Owners in Common Interest Developments.
- (1) A Property Owner within a Common Interest Development must obtain a Compliance Certificate when a Triggering Event occurs with respect to the Property Owner's parcel, unless a sufficient Statement of Responsibility is or has been submitted which evidences the Property Owner's non-responsibility to maintain any portion of the

Private Sewer Lateral.

(2) A Property Owner may obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the following portion of the Private Sewer Lateral:

(a) the portion identified in a Statement of Responsibility as within the Property Owner's responsibility to maintain, if a sufficient Statement of Responsibility is or has been provided; or

(b) the portion located within the Separate Interest and any Exclusive Use Common Area appurtenant thereto, if no such Statement of Responsibility is or has been provided.

(g) Validity Period of Compliance Certificates in Common Interest Developments.

(1) A Compliance Certificate issued pursuant to subsection (d) of this Section is valid for twenty (20) years, unless revoked or modified sooner pursuant to subsection (d) of Section 8.

(a) Not later than twenty-four (24) months after the expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, the Homeowners' Association must pass a Verification Test for the portion of the Private Sewer Lateral which is designated as its responsibility to maintain in the Statement of Responsibility in effect at the time the Compliance Certificate expires.

(b) Upon expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

(2) A Compliance Certificate issued pursuant to any provision of this Section other than subsection (d) is valid for either seven (7) or twenty (20) years depending on the nature of work performed as provided in Section 8, unless revoked or modified sooner pursuant to subsection (d) of Section 8. Upon expiration of such Compliance Certificate, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

(h) If a Homeowners' Association or a Property Owner within a Common Interest Development does not provide a sufficient Statement of

Responsibility when required by this Ordinance, or if any such party disputes any portion of responsibility allocated to it in a written Statement of Responsibility previously submitted by any party, the District may make an administrative determination based on the evidence and subject to the right of appeal by the Homeowners' Association or Property Owner in accordance with Section 14, and/or seek a court order declaring the extent of each party's responsibility to comply with this Regional Ordinance, ordering that such work be done by those responsible, and providing any other available legal or equitable remedy.

13. Section 12 is amended to read as follows:

(a) Applicability of this Section. A Property Owner other than a Homeowners' Association becomes subject to the requirements of this Section at the earliest time that both of the following are true: (i) the Property Owner holds an ownership interest in a parcel or Parcel Group, and (ii) the Private Sewer Lateral(s) associated with that parcel or Parcel Group collectively exceed 1,000 feet in total combined length. A Homeowners' Association becomes subject to the requirements of this Section at the earliest time it is responsible for managing or governing over 1,000 feet of Private Sewer Laterals within a Common Interest Development. The term "Property Owner," as used in the remainder of this Section, includes a Homeowners' Association that is subject to this Section's requirements.

~~(b)~~ Condition Assessment Plan. On or before July 12, 2016, the A Property Owner of any parcel or any Parcel Group with Private Sewer Laterals exceeding 1000 feet in total combined length within the parcel or Parcel Group subject to this Section shall submit for District approval a Condition Assessment Plan for District review. The Property Owner must submit a Condition Assessment Plan no later than July 12, 2016 if the Property Owner became subject to this Section before that date, or otherwise no later than the last-occurring of (i) November 20, 2019 or (ii) 180 days after the Property Owner first becomes subject to this Section's requirements. The Condition Assessment Plan shall include (i) a list of all parcels by Assessor's Parcel Number subject to this Section's requirements, (ii) a map drawn to scale (with scale indicated) which shows the approximate location, length, and diameter of all Private Sewer Laterals and segments thereof associated with the parcel or Parcel Group (or of all Private Sewer Laterals and segments thereof managed or governed by the Homeowners' Association, if the Condition Assessment Plan is submitted by a Homeowners' Association), and (iii) a schedule for the performance of testing to assess the condition of such Private Sewer Laterals. The District will accept a Condition Assessment Plan if it contains all required information and indicates the total combined length of Private Sewer Laterals exceeds 1,000 feet. ~~all PSLs associated with the parcel or Parcel Group.~~

~~(b)(c)~~ Corrective Action Work Plan.

- (1) **Requirement and Deadline.** ~~On or before July 12, 2021, a~~After submitting a Condition Assessment Plan to the District and completing the testing described therein, a Property Owner subject to this Section shall ~~complete all condition assessment testing and submit a Corrective Action Work Plan for District approval~~review no later than July 12, 2021, or twenty-four (24) months after the Property Owner first becomes subject to this Section, whichever is later.
- (2) **Contents.** The Corrective Action Work Plan shall (i) summarize results of the condition assessment of all pipe required to be included in the Condition Assessment Plan (e.g., CCTV or smoke testing results), (ii) identify and describe the location, length, and material of all sewer lateral pipe which requires repair or replacement to meet the standards of this Regional Ordinance, (iii) describe the type, quantity and schedule of work to be performed to bring the pipe needed to bring all PSLs associated with the parcel or Parcel Group into compliance with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements including the method of pipe replacement (e.g. node-to-node) and method of addressing manholes, (iv) include a schedule for completion of listed tasks, and (v) include a bid price or contractor's estimate for the required work.
- (3) **Review and Acceptance.** The District shall ~~approve~~accept the Corrective Action Work Plan if it contains all required information, appears to address all Private Sewer Laterals requiring work, and specifies a schedule which will result in full compliance within the time allowed by this Regional Ordinance. Upon accepting the Corrective Action Work Plan, the District will determine the Property Owner's deadline to comply with subsection (d) based on the information contained in the Corrective Action Work Plan and the standard set forth in subsection (d)(2)(i), and the Property Owner shall meet such deadline. ~~it determines the proposed work will result in full compliance within a reasonable time.~~ The District may require a Property Owner to demonstrate adequate progress towards completion by conditioning Corrective Action Work Plan acceptance upon a requirement for the Property Owner to demonstrate completion of discrete tasks or milestones described in the Corrective Action Work Plan within the period of time specified therein.

~~(c)~~(d) Compliance Certificate.

- (1) **Requirement.** A Property Owner subject to this Section's requirements must do all of the following: (i) complete all work described in the Corrective Action Work Plan, (ii) pay the required Compliance Certificate fee and any other applicable fees, (iii) perform

a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative for all Private Sewer Laterals associated with the parcel or Parcel Group owned by the Property Owner, or in the case of a Homeowners' Association all Private Sewer Laterals managed or governed by the Homeowners' Association, and (iv) After the Property Owner completes the work described in the approved Corrective Action Plan, the Property Owner must obtain a Compliance Certificate under Section 7(a)(2) for the each parcel or parcels involved. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals required to be tested are in compliance with this Regional Ordinance.

(2) Deadlines.

(i) A Property Owner who first becomes subject to this Section's requirements on or before July 12, 2019 must comply with all requirements of subsection (d)(1) no later than July 12, 2026, except the Director shall allow until July 12, 2029 if the Director determines the accepted Corrected Action Work Plan demonstrates either of the following: (I) that more than 5,000 feet of Private Sewer Laterals are associated with the parcel or Parcel Group or are managed or governed by a Homeowners' Association, or (II) that more than fifty percent (50%) of the Private Sewer Laterals will need to be replaced.

(ii) A Property Owner who first becomes subject to this Section's requirements after July 12, 2019 must comply with all requirements of subsection (d)(1) no later than eighty-four (84) months after the date the Property Owner first becomes subject to this Section's requirements, except the Director shall allow one hundred twenty (120) months if the Director makes the determination described in subsection (d)(2)(i) of this Section.

(iii) A Compliance Agreement may be entered into pursuant to subsection (k) of Section 13 for the purpose of increasing the time allowed for a Property Owner to meet the requirements of this Section, but only if the Director determines, in his or her sole discretion, that (I) additional time is appropriate due to the existence of compelling extenuating circumstances, and (II) a Compliance Agreement appears otherwise appropriate in light of the circumstances and the factors set forth in subsection (k) of Section 13. The Director may include a provision in a Compliance Agreement conditioning any extension that is granted on a requirement that the Property

Owner pass a Verification Test for a specified percentage of Private Sewer Lateral by a specified date, and/or in any other respect provided for in subsection (k) of Section 13.

(3) **Validity Period.** The Compliance Certificate(s) shall be valid for 20 years from the date issued **unless revoked or modified pursuant to subsection (d) of Section 8**, and upon expiration the Property Owner must obtain new Compliance Certificate(s) under Section 7.

(4) **Reductions Below 1,000 Feet. A Property Owner subject to this Section must pass a Verification Test for all Private Sewer Laterals associated with the Property Owner's parcel or Parcel Group (or, if the Property Owner is a Homeowners' Association, then for all Private Sewer Laterals managed or governed by the Homeowners' Association) prior to taking any action which would have the effect of reducing below 1,000 feet the total combined length of such Private Sewer Laterals.**

(e) **Templates; Additional Information.** The Director may require information or plans to be submitted on standard forms or templates provided by the District. The Director may require additional information to be submitted as deemed necessary for the purposes of this Regional Ordinance.

(f) **Effect of Plan Acceptance.** The District reviews Condition Assessment Plans and Corrective Action Work Plans for completeness only, and not for the substantive adequacy of the work proposed, nor for compliance with Local Ordinance Requirements applicable in the Property Owner's jurisdiction. The District's acceptance of a plan in no way warrants that the work described therein will achieve a particular result or meet Local Ordinance Requirements. The District shall not be liable for any costs, damages, or losses incurred to achieve compliance with this Regional Ordinance or with Local Ordinance Requirements.

14. Section 13 is amended to read as follows:

(a) **Enforcement Authority.** The Director shall enforce this Regional Ordinance. Enforcement of Local Ordinance Requirements is the responsibility of the Satellite that adopted the Local Ordinance Requirements.

(b) **Violations.** ~~Violations~~ **Each of the following acts or omissions is a violation** of this Regional Ordinance ~~include, but are not limited to:~~

(1) Failure to obtain a Compliance Certificate when one is required, ~~including after the expiration of a Time Extension Certificate;~~

(2) Failure to obtain a Time Extension Certificate if a Compliance Certificate

is not obtained, or **failure** to timely perform all required work after receiving a Time Extension Certificate;

- (3) Failure to comply with **any of** the District's requirements for Repair, Replacement and Verification Testing;
- (4) ~~Falsifying facts to obtain~~ **Obtaining or seeking** an Exemption Certificate or a Compliance Certificate **by means of fraud or misrepresentation**; and/or
- (5) Presenting a false Exemption Certificate or Compliance Certificate;
- (6) **Discharging wastewater from any Upper Sewer Lateral which does not meet the standards of Section 5, or from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance;**
- (7) **Failure to submit a sufficient Statement of Responsibility when required by this Regional Ordinance;**
- (8) **Failure to comply with an order of the Director made in connection with the enforcement of this Regional Ordinance;**
- (9) **Failure to comply with any term or condition of a Compliance Agreement entered into pursuant to this Section; and/or**
- (10) **Failure to comply with any other requirement of this Regional Ordinance.**

(c) **Nuisance. The Board of Directors of the District hereby finds and declares that each discharge of wastewater from a Private Sewer Lateral made by any person or entity not in compliance with this Regional Ordinance, or made from any parcel for which a Compliance Certificate is not obtained when required, is a nuisance.**

(e) — Enforcement

- (1) — When the Director finds that a person violates or threatens to violate this Regional Ordinance, the Director may notify the person in writing. Within 30 days of the mailing of that notification, the notified person must submit for approval by the Director a detailed time schedule of specific actions the person shall take in order to correct or prevent a violation of this Regional Ordinance. The person must take the actions within 90 days of the mailing date of the Director's notification.

(2)(d) **Enforcement Action.** The Director may take enforcement action against a person **or entity** who violates the provisions of this Regional Ordinance or fails to

perform any act required by this Regional Ordinance, including but not limited to initiating court action to obtain an injunction requiring the work to be done and/or terminating water service. The Director may pursue any and all administrative and judicial remedies available to the District at law or in equity or under this Regional Ordinance.

(e) Orders. When the Director finds that a person or entity violates or threatens to violate this Regional Ordinance, the Director may issue an order to cease and desist and direct that those persons or entities found to be in violation to (1) comply forthwith, (2) comply in accordance with a time schedule set by the Director, or (3) in the event of a threatened violation, take appropriate remedial or preventative action.

(f) Judicial Enforcement. Upon authorization by the District's Board of Directors, the Director may initiate a judicial action or proceeding to enforce this Regional Ordinance or any order the Director may issue hereunder. The Director may seek any available remedy in such action or proceeding, including any or all of the following:

- (1) a declaration of the rights and obligations of any person or entity subject to the Regional Ordinance and/or a declaration that the person or entity is in violation of the Regional Ordinance;
- (2) an injunction restraining the continuance of any discharge made in violation of this Regional Ordinance and/or requiring compliance with the provisions of this Regional Ordinance;
- (3) civil penalties as authorized by law and by this Section.

(g) Civil Penalties. The superior court may impose, assess, and recover the following sums as civil penalties in any judicial action or proceeding which the District may initiate under the authority of this Section:

- (1) Any person or entity who fails to comply with any order issued by the District shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the discharge, violation, or refusal occurs.
- (2) Any person or entity who intentionally or negligently violates any order issued by the District for violation of rules regulating or prohibiting discharge of wastewater which causes or threatens to cause a condition of contamination, pollution, or nuisance may be liable civilly in a sum not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(h) Costs and Fees. The District may recover from any person or entity in violation

of this Regional Ordinance the costs it incurs in connection with enforcing this Regional Ordinance, including staff time, and may seek attorneys' fees in any court action or proceeding.

(i) Availability of Remedies. Remedies under this Section are in addition to and do not supersede or limit any and all other legal or equitable remedies.

(j) Continuing Violations. Each day that a violation of this Regional Ordinance continues shall constitute a separate violation, and each such violation shall be subject to a separate penalty and to any other remedy available hereunder.

(k) Compliance Agreements.

(1) Generally. The Director may, in the exercise of his or her sole discretion, offer and enter into an enforceable Compliance Agreement with a person or entity subject to this Regional Ordinance on a voluntary basis which allows additional time to meet Regional Ordinance requirements, modifies ordinance requirements as applied to the person or entity, or includes other terms consistent with the provisions of this subsection (k).

(2) Availability. In deciding whether to offer or enter into a Compliance Agreement, the Director shall consider the totality of the circumstances and determine, in his or her sole discretion, whether entering into a Compliance Agreement would best further the Regional Ordinance's purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The District will generally offer a Compliance Agreement only when the Director determines that compliance within the time allowed by the Regional Ordinance is infeasible or impossible due to circumstances not arising from the Property Owner's negligence or that strict enforcement of a Regional Ordinance requirement would be unreasonable or contrary to the Regional Ordinance's stated purposes.

(3) Contents. A Compliance Agreement may include any terms or conditions deemed necessary or desirable by the District, which may include a requirement to perform specified work on a stated schedule, a required cash deposit in any amount necessary to ensure completion of required work, an obligation to indemnify the District, or other provisions. A Compliance Agreement may temporarily modify Regional Ordinance requirements as applied to a given party but must require the party to achieve full compliance with all Regional Ordinance requirements by a date specified in the agreement. While a party remains in strict compliance with all provisions of a Compliance

Agreement, the party will not be subject to enforcement for violation of any Regional Ordinance requirement that is modified by such agreement. A Compliance Agreement does not waive the District's right to enforce the Regional Ordinance if the Compliance Agreement is breached, and the District may take immediate enforcement action in the event of a breach. Agreements must be approved as to form by the District's General Counsel or an attorney designee thereof. Compliance Agreements and related records are public records and are subject to public disclosure to the extent required by law.

15. Section 14 is retitled "Appeals" and amended to read as follows:

(a) Grounds.

- (1) A person or entity aggrieved by a decision, action, or determination made by the District in connection with this Regional Ordinance may seek reconsideration by filing an appeal in accordance with this Section no later than 30 days after the occurrence of such decision, action, or determination. For purposes of this Section 14, "occurrence" means either: (i) the date of notice of the decision, action, or determination was personally provided or mailed, whichever is earlier; or (ii) absent evidence of the date of personal or mailed notice, five days after the date the District actually undertook the decision, action, or determination.
- (2) A person or entity aggrieved by the District's failure to take an action required of it by this Regional Ordinance may make a written request for action. If the District responds to the written request by refusing to act, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 30 days after the refusal to act. If the District does not respond to the written request for action within 30 days, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 60 days after such party made the written request for action.
- (3) A person or entity who believes compliance with any deadline or other requirement of this Regional Ordinance within the time allowed would be impossible, infeasible or unreasonably burdensome due to circumstances not arising from the negligence of the person or entity in light of the particular facts and circumstances applicable to the person or entity or to the relevant property and the Regional Ordinance's stated purposes may at any time petition for an extension of time to comply or other temporary relief by filing an appeal in accordance with this Section. The deadline to obtain a Compliance Certificate will not be extended if the appellant was eligible to obtain a Time Extension Certificate before filing the appeal but failed to do so.

- (4) Notwithstanding the provisions of this subsection (a), the reconsideration process set forth in subsection (d) is the exclusive means to seek further administrative review of the disposition of an appeal.
- (b) Form and Contents. The appellant must submit a written statement signed under penalty of perjury containing (i) a description of the decision, action, determination, inaction, deadline, or other requirement that is the subject of the appeal, (ii) a description of the specific relief requested, (iii) a detailed statement of facts which the appellant believes entitles the appellant to the relief requested, and (iv) copies of all supporting documentation or other written evidence the appellant wishes the District to consider. The District may require an appeal to be submitted on a District form.
- (c) Consideration and Disposition. (a) Requests for Relief. Any person or entity unable to comply with the requirements of this Regional Ordinance, or any person affected by any District decision, action, or determination related to this Regional Ordinance, may submit to the District a written request for relief setting forth in detail the facts supporting the request. The Director shall designate a District officer or employee with managerial authority who will consider the matter without a hearing and decide whether to grant relief. The Director's designee may request additional information and the appellant shall provide such requested information within fifteen (15) business days or such other time period authorized in writing by the Director's designee. The evidence before the Director's designee shall consist of the written statement and documentation provided by the appellant in support of the appeal, relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director's designee, should be considered. The Director's designee shall consider the available evidence in light of the Regional Ordinance's stated purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The Director's designee, upon considering the available evidence, may find that the appealed decision, action, determination, or inaction was appropriate and proper, or that it is appropriate to enforce the appealed deadline or other requirement without an extension or other relief, and deny the appeal on that basis. Alternatively, the Director's designee may find the appeal meritorious and grant the appeal unconditionally or upon any conditions which the Director's designee determines are reasonable or necessary to accomplish the Regional Ordinance's stated purposes. The Director's designee may decide the matter within fifteen (15) business days from the receipt of the request complete appeal, except, or, if the Director's designee requests additional information the matter may be decided is requested and received within fifteen (15) business days from the receipt of the request, then fifteen (15) business days from the deadline to provide such date the District receives all additional requested information. If the Director's designee does not decide the matter within the above-stated time period, the request for relief appeal shall be

deemed denied on the first day following that time period. Notice of any decision will be mailed to the person or entity requesting relief. The Director's designee shall consider appeals without a hearing except as follows: (i) an appellant challenging a revocation or intended revocation of a Compliance Certificate shall receive an in-person hearing unless the appellant waives the right to a hearing at any time before the hearing is held, and (ii) an appellant challenging any other District enforcement order or a notification of intent to modify a previously issued Compliance Certificate may obtain an in-person hearing by requesting one when the appeal is filed.

(d) Reconsideration of Appeal Decision.~~(b) Requests for Reconsideration.~~

- (1) Within 30 days after the date of mailing of written notice of any District decision granting or denying relief under ~~paragraph (a)~~ subsection (c) of this Section, or within 30 days after the date the ~~request for relief~~ appeal is deemed denied, any person or entity affected by the ~~requirements, decision, action, or determination,~~ inaction, deadline, or requirement that was the subject of the ~~request for relief~~ appeal may submit to the Director a written request for reconsideration. The Director shall personally consider all requests for reconsideration. The request for reconsideration must set forth in detail the facts and rationale supporting the request under penalty of perjury.
- (2) The Director may act on the request for reconsideration with or without a hearing in any manner the Director deems reasonable and shall thereafter issue a final written determination concerning the request for reconsideration. The Director may consider the written appeal submitted pursuant to subsections (a) and (b), the decision rendered by his or her designee pursuant to subsection (c), the request for reconsideration submitted pursuant to subsection (d)(1), relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director, should be considered, including any additional information requested by the Director. If the Director fails to act upon the request for reconsideration within fifteen (15) business days of ~~after~~ receipt of the request for reconsideration, the request shall be deemed denied. ~~The decision, action or determination shall remain in effect during the period of review by the Director.~~
- (3) The Director's decision shall become final and binding at the time the Director acts on the request or fails to act within the time specified by this ~~paragraph (b)~~ subsection. If the Director acts on the request for reconsideration, notice of the Director's action will be mailed to the person or entity requesting reconsideration within five (5) business days of after the action.

- (e) Hearings. Whenever a hearing is to be held pursuant to this Section, the District shall notify the appropriate party by mailed or personal notice that a hearing shall be conducted at a date, time, and location specified in the notice. If a party fails to appear at a scheduled hearing, or if a party who is granted the right to a hearing by this Regional Ordinance waives that right before the hearing is held, the District may render a final determination on the appeal without a hearing. Hearings may be held by the Director personally or by any person designated by the Director.
- (f) Effect of Pending Appeal. Any appealed decision, action, determination, deadline, or requirement shall remain in effect and binding upon the appellant while the appeal, including any reconsideration thereof, remains pending.
- (4)(g) Exhaustion. Any person or entity affected-aggrieved by a decision, action, or determination, or inaction related to this Regional Ordinance who wishes to appeal or challenge the decision, action, or determination, or inaction, or who desires to extend a deadline of this Regional Ordinance or receive other temporary relief from a requirement thereof, must seek review by utilizing all procedures available under this Section, and the request reconsideration using the process specified in this paragraph (b). This requirement is jurisdictional. The failure to do so seek reconsideration shall be deemed a failure of the person or entity subject to the decision, action, or determination, inaction, deadline, or requirement to exhaust administrative remedies.

16. Section 15 is retitled “Additional Provisions” and amended to read as follows:

- (a) Fees. The District may establish fees in the Water and Wastewater System Schedule of Rates and Charges and Fees for administration of this Regional Ordinance and may modify those fees from time to time. The District may refund fees or deposits for any reason deemed warranted by the Director, including those paid in error.
- (b) Regulations. The Director may develop and maintain written regulations, procedures and guidance materials for administration of this Regional Ordinance and shall make them available on the District’s website and upon request.
- (c) Entry Upon Private Property. To the extent authorized by law, the District may enter upon private property of any person or entity to perform its inspection responsibilities under this Regional Ordinance or to ascertain whether the District’s Private Sewer Lateral regulations are being complied with.
- (d) Communication with Representatives. The District may communicate with a person or entity other than the Property Owner, such as a rental tenant or a contractor, on the Property Owner’s behalf with regard to any transaction arising under this Regional Ordinance, if such person or entity represents to

the District that he or she is authorized by the Property Owner to conduct the transaction on the Property Owner's behalf.

- (e) Ownership of Certificates. Compliance Certificates and Exemption Certificates are issued to a person or entity only with respect to a specific parcel of property and may not be removed to any other parcel, nor conveyed to any other person or entity except if title is subsequently transferred to another person or entity the transferee shall be deemed to acquire any valid unexpired Compliance Certificate or Exemption Certificate from the transferor upon completion of the transfer of title.
- (f) The District may reject any plan, statement or other submittal made under this Regional Ordinance if the District, in its sole discretion, determines the plan, statement or other submittal is inconsistent, invalid, or insufficient for any reason.
- (g) The District may direct a party who makes a submittal under this Regional Ordinance to provide additional information, and if such information is not submitted within a reasonable time as determined by the District, the District may deem the plan, statement or other document insufficient in which case it shall be of no effect.

17. Section 18 is amended to read as follows:

This Regional Ordinance, as amended, shall become effective and in full force at 12:01 a.m. on the thirty-first day following its passage May 24, 2019.

SECTION III

Except as expressly set forth in this Ordinance, all provisions of Ordinance 359-13 as previously amended by Ordinance No. 362-14 shall remain in full force and effect.

SECTION IV

The General Manager, the Director of Wastewater, and their designees are hereby authorized to publicly distribute the attached document entitled "Consolidated Regional Private Sewer Lateral Ordinance" (hereinafter, the "Consolidated Ordinance"). The Board of Directors finds and declares the following: (i) the Consolidated Ordinance's sole intended purpose is to restate within a single document for the convenience of the public the text of Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance; (ii) the Consolidated Ordinance, as a reference document prepared solely for public convenience, is not part of this Ordinance and is not intended to have any legal effect separate or apart from Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance; and (iii) to the extent the Consolidated Ordinance, or any portion of it, may be inconsistent with or conflict with Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance, it is the express intention of the Board of Directors that full legal effect be given to the provisions of Ordinance No. 359-13 as subsequently amended by Ordinance No. 362-14 and this Ordinance,

and not to the Consolidated Ordinance nor any portion thereof.

SECTION V

The phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or section of this Ordinance as the Board hereby declares it would have enacted the remainder of the Ordinance without the invalid portion.

SECTION VI

This Ordinance shall become effective and in full force at 12:01 a.m. on the thirty-first day following its passage.

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 April 9, 2019, 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 April 23, 2019, 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

{00036314}



CONSOLIDATED REGIONAL PRIVATE SEWER LATERAL ORDINANCE

[Public Review Draft]

Effective **[MONTH DAY]**, 2019

Adopted by Ordinance No. 359-13
Amended by Ordinance No. 362-14
[Amended by Ordinance No. 3xx-19]

DISCLAIMER

The District's Board of Directors has authorized the public distribution of this document. Its purpose is to restate for the convenience of the public, within a single document, the text of Ordinance No. 359-13 and all subsequent Ordinances which enacted amendments thereto. Although the document was believed to be accurate at the time it was prepared, it has no legal effect separate or apart from Ordinance No. 359-13 and the Board-adopted Ordinances which subsequently amended it. To the extent this document, or any portion of it, may be inconsistent with or conflict with the Ordinances adopted by the Board, the Board-adopted Ordinances will be given full legal effect and not the contrary or inconsistent provision in this document.

[PUBLIC REVIEW DRAFT] CONSOLIDATED REGIONAL PRIVATE SEWER LATERAL ORDINANCE

Effective **[MONTH DAY]**, 2019

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SECTION 1

SHORT TITLE

This ordinance shall be known as the “Regional Private Sewer Lateral Ordinance” and may be cited accordingly.

(Ord. No. 359-13, 7-23-2013)

SECTION 2

PURPOSE

This Regional Private Sewer Lateral Ordinance establishes regulations for the inspection, testing, repair, replacement, and ongoing maintenance of Private Sewer Laterals. The purpose of this Regional Ordinance is to provide for the operation and maintenance of the District’s wastewater conveyance and treatment facilities in a reliable and serviceable manner and to reduce infiltration and inflow into the regional sanitary sewer system.

(Ord. No. 359-13, 7-23-2013)

SECTION 3

APPLICABILITY OF REGIONAL ORDINANCE

This Regional Ordinance applies only within the sewer service areas of the City of Alameda, City of Albany, City of Emeryville, City of Oakland, City of Piedmont, and Stege Sanitary District.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)



SECTION 4

DEFINITIONS

“Cleanout” means a pipe fitting and associated piping connected to a Private Sewer Lateral that provides access to the Private Sewer Lateral for purposes of flushing, rodding, cleaning, and other maintenance and diagnostic purposes.

“Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Common Interest Development” means a community apartment project, a condominium project, a planned development, or a stock cooperative, created in accordance with applicable provisions of the California Civil Code and managed by a Homeowners’ Association.

“Compliance Agreement” means an agreement which may be entered into by the District and a person or entity subject to this Regional Ordinance on a voluntary basis as described in Section 13, which may allow additional time to meet Regional Ordinance requirements, modify ordinance requirements as applied to the person or entity, and/or include other terms as described in that Section.

“Compliance Certificate” means a certificate issued by the District upon its determination that all Private Sewer Laterals associated with a parcel have demonstrated compliance with applicable standards by passing a Verification Test.

“Cotenant” means a person who owns a present interest in a parcel of real property concurrently with other persons in the form of a tenancy in common, a joint tenancy, a partnership, community property, or any other form of cotenancy, co-ownership, or concurrent ownership recognized by California law. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association.

“Director” means the Director of Wastewater of the East Bay Municipal Utility District. The Director may delegate any privilege or duty conferred by this Regional Ordinance upon him or her to a designated representative except for any privilege or duty which this Regional Ordinance expressly reserves for the Director personally.

“District” means Special District No. 1 of the East Bay Municipal Utility District.



“Exclusive Use Common Area” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Exemption Certificate” means a certificate issued by the District as described in Section 10. A Property Owner who holds an Exemption Certificate for a given parcel need not obtain a Compliance Certificate for that parcel during the period the Exemption Certificate remains valid.

“General Waiver” means a status that applies to a Property Owner that relieves the Property Owner from the requirement to perform work on and testing of the Lower Sewer Lateral, or a specified portion of it, where a Satellite presents the District with sufficient evidence that the entire Lower Sewer Lateral was Replaced by the Satellite at any time during the 20 year period preceding a Triggering Event.

“Homeowners’ Association” means a nonprofit corporation or unincorporated association created for the purpose of managing or governing a Common Interest Development and that operates in accordance with governing documents, whether or not the corporation or association is formally designated or commonly referred to as a Homeowners’ Association.

“Limited Waiver” means a document with a definite expiration date issued by a Satellite to a Property Owner for any reason other than the Satellite’s prior Repair or Replacement of the Lower Sewer Lateral that relieves the Property Owner from the requirement to perform work and testing on the Lower Sewer Lateral, or a specified portion of it, until the Limited Waiver’s expiration date.

“Lineal Consanguinity Relationship”. A person is in a Lineal Consanguinity Relationship with another person if, and only if, one person is a direct descendent of the other person. The following are examples of Lineal Consanguinity Relationships: parent and child, grandparent and grandchild, and great-grandparent and great-grandchild. Persons are not in a Lineal Consanguinity Relationship if neither person is directly descended from the other, even if both persons are descended from a common ancestor. The following are not Lineal Consanguinity Relationships: aunt and niece, uncle and nephew, siblings, and cousins of any degree.

“Local Ordinance Requirements” means all standards or requirements duly adopted by a Satellite or a department of a Satellite that relate to the maintenance or condition of Private Sewer Laterals, Lower Sewer Laterals, and/or Upper Sewer Laterals.



“Lower Sewer Lateral” means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Sewer Main, or from the curb line in the street to the Sewer Main if there is no Cleanout near the curb line. The Lower Sewer Lateral includes the connection to the Sewer Main. A Lower Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Lower Sewer Lateral may be associated with an individual parcel.

“Non-Sanitary Sewer Connection” means anything that directly or indirectly conveys storm water, surface water, roof runoff, intercepted groundwater or subsurface drainage into the Sanitary Sewer, including, but not limited to, down spouts, yard drains, sump pumps, or other sources of storm water, run-off or groundwater.

“Parcel Group” means two or more contiguous or directly adjacent parcels of real property under common ownership.

“Permitting Authority” means a city, city department, county or special district, including a Satellite but excluding the District, that regulates buildings, construction, land use, and/or sewers within any portion of the District’s wastewater service area.

“Private Sewer Lateral” means a pipe or pipes and appurtenances that carries sewage and liquid waste from the Structure(s) served, whether the Structure(s) is or are publicly or privately owned, to the Sewer Main. The Private Sewer Lateral includes the Upper Sewer Lateral. The Private Sewer Lateral of a given parcel includes the Lower Sewer Lateral only if applicable Local Ordinance Requirements require the Property Owner to obtain a Compliance Certificate for the Lower Sewer Lateral. A Private Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Private Sewer Lateral may be associated with an individual parcel.

“Property Owner” means a person that owns a present interest in a parcel of real property as a sole owner or as a Cotenant. As used in this definition, “person” means an individual, trust, corporation, nonprofit organization, Homeowners’ Association, partnership, firm, joint venture, limited liability company, or association. A Public Entity is not a Property Owner for purposes of this Regional Ordinance. Any person expressly required by applicable Local Ordinance Requirements to obtain a Compliance Certificate from the District or pursuant to this Regional Ordinance is a Property Owner for purposes of this Regional Ordinance.



“Public Entity” means any of the following: (1) a city or county, (2) a special district or agency of the state formed pursuant to general law or special act for the local or regional performance of governmental or proprietary functions within limited boundaries, (3) an agency or entity created pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code, § 6500, et seq.), (4) a school district or community college district, (5) the University of California, (6) the California State University, (7) an air pollution control district or an air quality maintenance district, (8) a housing authority, or (9) any other entity with the capacity to own real property created by any of the above.

“Regional Ordinance” means this Regional Private Sewer Lateral Ordinance.

“Remodeling” means any significant improvement, addition, construction, reconstruction, remodeling, modification or alteration of or to an existing or previously existing Structure.

“Repair” means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the correction of less than the entire Private Sewer Lateral, except a Replacement of the entire Upper Sewer Lateral is a Replacement and not a Repair if the Property Owner holds General Waiver status.

“Replacement” means construction activities performed to bring a Private Sewer Lateral into compliance with this Regional Ordinance and/or applicable Local Ordinance Requirements consisting of the replacement or lining of the complete length of the Private Sewer Lateral, or the complete length of the Upper Sewer Lateral if the Property Owner holds General Waiver status. “Replaced” has the same meaning as “Replacement” where used in this Ordinance.

“Sanitary Sewer” means sewer pipes that convey wastewater from a Structure and to which storm water, groundwater or surface water is not intentionally admitted. The Sanitary Sewer includes Sewer Mains and Private Sewer Laterals.

“Satellite” means a city or special district that owns and operates a sanitary sewer collection system to which a Private Sewer Lateral is connected within the District’s wastewater service area. Satellites include the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District.

“Section” means a section of this Regional Ordinance unless otherwise specified.



“Separate Interest” has the meaning defined in Article 2, Chapter 1, Part 5, Division 4 of the Civil Code.

“Sewer Main” means a publicly owned Sanitary Sewer that receives flows from Private Sewer Laterals. The Sewer Main does not include any portion of a Private Sewer Lateral.

“State of Emergency”. A State of Emergency exists while there is in effect a declaration of emergency within the District’s service area or any portion thereof, made by Board of Directors of the District under the Municipal Utility District Act (Pub. Util. Code, § 11501 et seq.), or by any person to whom the Board of Directors has expressly delegated that authority, or by any person authorized to declare an emergency of any degree under the California Emergency Services Act (Gov. Code, § 8550 et seq.) or under Federal law.

“Statement of Responsibility” means a written statement submitted to the District under penalty of perjury in circumstances required or permitted by this Regional Ordinance which contains all information required by this Regional Ordinance or by the Director and which serves as an evidentiary basis for certain determinations made under this Regional Ordinance in the manner provided herein.

“Structure” means any building or facility that is required to be provided with public sewer service, or that is actually provided with public sewer service, or that is served by a Private Sewer Lateral.

“Time Extension Certificate” means a certificate issued by the District in connection with a Title Transfer transaction to a Property Owner, or to a transferee, that extends the deadline to obtain a Compliance Certificate for 180 days from the date the Time Extension Certificate is issued.

“Title Transfer” means the sale or transfer of an entire real property estate or the fee interest in that real property estate, whether held in sole ownership or concurrently with others in any form of cotenancy, co-ownership, or concurrent ownership recognized by California law. A sale or transfer of an entire interest in a condominium is a Title Transfer. The following are not Title Transfers for purposes of this Regional Ordinance:

- (1) the transfer of a partial interest such as a leasehold;
- (2) a transfer to a beneficiary by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust;
- (3) a transfer from one Cotenant to one or more other existing Cotenants;



(4) a transfer made by a trustor to fund or defund an inter vivos trust, or by an executor to fund a testamentary trust;

(5) a transfer made to a spouse, or to a registered domestic partner as defined in Section 297 of the Family Code, or to a person or persons in a Lineal Consanguinity Relationship with one or more of the transferors;

(6) a transfer between spouses or registered domestic partners resulting from a decree of dissolution of marriage or domestic partnership, or resulting from a decree of legal separation or from a property settlement agreement incidental to a decree;

(7) a transfer from a Property Owner to a financial institution as a result of a foreclosure or similar process, provided that a transfer from a financial institution to a new Property Owner is a Title Transfer for purposes of this Regional Ordinance; and

(8) a transfer in either direction between a business entity and an individual or corporation who or which owns shares or equity securities possessing more than 50 percent of the voting power of the business entity.

“Triggering Event” means any event described in Section 6 that, upon the occurrence of the event and subject to the exceptions listed in that Section, imposes an obligation on a Property Owner to obtain a Compliance Certificate.

“Upper Sewer Lateral” means the portion of the Private Sewer Lateral extending from the Cleanout near the curb line to the Structure(s) served by that Private Sewer Lateral, or from the curb line in the street to the Structure(s) served by that Private Sewer Lateral if there is no Cleanout near the curb line. The Upper Sewer Lateral includes all portions of the Private Sewer Lateral upon the parcel containing the Structure(s) served. If the parcel contains a sewer pipe system or multiple Private Sewer Laterals, the entire sewer pipe system, including manholes and other appurtenances, and all Private Sewer Laterals are part of the Upper Sewer Lateral to the extent they are located on that parcel. If a Private Sewer Lateral connects to a rear or side yard Sewer Main located in an easement, or to a manhole, the entire Private Sewer Lateral, including the connection to the Sewer Main or manhole, is an Upper Sewer Lateral. An Upper Sewer Lateral is associated with a parcel if it, or any portion of it, is located upon the parcel or conveys sewage and liquid waste from any Structure located on that parcel. More than one Upper Sewer Lateral may be associated with an individual parcel.



“Verification Test” means a test witnessed by the District’s authorized representative(s) to verify that a Private Sewer Lateral has been maintained in accordance with this Regional Ordinance.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)

SECTION 5

RESPONSIBILITY AND STANDARDS FOR MAINTENANCE OF UPPER SEWER LATERALS

(a) All Upper Sewer Laterals must meet the following standards:

(1) The Upper Sewer Lateral shall be kept free from roots, grease deposits, and other solids which may impede or obstruct the flow.

(2) All joints shall be watertight and all pipes shall be sound.

(3) The Upper Sewer Lateral shall be free of any structural defects such as fractures, cracks, breaks, openings, or missing portions.

(4) All Cleanouts shall be securely sealed with a proper cap or approved overflow device at all times.

(5) There shall be no Non-Sanitary Sewer Connections to the Upper Sewer Lateral or to any plumbing that connects thereto.

(b) Property Owners must maintain all Upper Sewer Laterals associated with their parcels to the extent necessary to ensure the Upper Sewer Laterals meet the standards of this Section and comply with all other requirements of this Regional Ordinance and all applicable Local Ordinance Requirements. Property Owners must perform any Repair or Replacement necessary to ensure the Upper Sewer Laterals meet those standards and requirements.

(c) Public Entities shall maintain Upper Sewer Laterals associated with their parcels in full compliance with the standards of this Section.



(d) The discharge of wastewater from any Upper Sewer Lateral not in compliance with the standards of this Section is prohibited.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)

SECTION 6

WHEN A COMPLIANCE CERTIFICATE IS REQUIRED

(a) All Property Owners must obtain a Compliance Certificate at the time and in the manner required by this Section, except for the following:

(1) Property Owners entitled to an Exemption Certificate under Section 10;

(2) Property Owners within certain Common Interest Developments governed by Section 11; and

(3) Property Owners subject to Section 12 pursuant to the provisions of subsection (a) of that Section.

(b) Title Transfer. Before completing a Title Transfer associated with a parcel containing any Structure, either the transferor or the transferee, as negotiated between them, shall obtain a Compliance Certificate under Section 7, unless a Time Extension Certificate is obtained as provided in Section 9. Failure to obtain a Compliance Certificate or a Time Extension Certificate before the Title Transfer is complete is a violation of this Regional Ordinance, and after the Title Transfer is complete, the transferee is solely responsible for obtaining a Compliance Certificate. The requirement to obtain a Compliance Certificate before Title Transfer in no way affects the legality of the transfer of title in the underlying property transaction.

(c) Construction or Remodeling. Whenever a Property Owner submits an application to a Permitting Authority for any permit or other approval needed for new construction upon a parcel, or for Remodeling of an existing or previously existing Structure, the Property Owner shall obtain a Compliance Certificate under Section 7 before obtaining a final permit or approval from the Permitting Authority. This subsection applies to construction and Remodeling if the cost of the permitted work exceeds \$100,000.00.



(d) Change in Water Services. Whenever a Property Owner requests an increase or decrease in size of the Property Owner's water meter, the Property Owner shall obtain a Compliance Certificate under Section 7 before the East Bay Municipal Utility District will perform work on the water meter. The East Bay Municipal Utility District may increase or decrease a water meter's size without first requiring the Property Owner to obtain a Compliance Certificate if the Property Owner holds a permit for construction or Remodeling subject to subsection (c) of this Section.

(e) Local Ordinance Requirements. A Property Owner must obtain a Compliance Certificate under Section 7 when expressly required to do so by Local Ordinance Requirements.

(f) Cotenants.

(1) Responsibility of Cotenants. Each Cotenant of a parcel is jointly and severally liable for the obligations of each other Cotenant under this Regional Ordinance except where otherwise provided by law. Without limiting the foregoing, whenever an obligation arises for any Cotenant to obtain a Compliance Certificate with respect to a parcel, whether because a Triggering Event has occurred or for any other reason, each and every Cotenant of the parcel is liable to obtain the Compliance Certificate.

(2) Exception. The Director may determine that a Cotenant should be excused from any or all obligations under this Regional Ordinance if it is demonstrated that the Cotenant does not hold an ownership interest in a parcel's Private Sewer Lateral. A Cotenant may seek such a determination by submitting a Statement of Responsibility to the District under penalty of perjury which states the relevant facts, includes copies of relevant title documents with citation to specific supporting portions thereof, and represents that a copy has been provided to all other Cotenants. The Director shall consider the information presented in the Statement of Responsibility and other relevant evidence when making the determination.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)



SECTION 7

HOW TO OBTAIN A COMPLIANCE CERTIFICATE

(a) Whenever a Compliance Certificate is required under this Regional Ordinance, or at any time a Property Owner voluntarily requests a Compliance Certificate, a Property Owner who does not hold a valid Compliance Certificate shall do the following at the Property Owner's expense:

(1) Condition Assessment and Repair or Replacement. The Property Owner shall take steps to assess the condition of all Private Sewer Laterals associated with the parcel to determine whether the Private Sewer Laterals comply with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements. If the Private Sewer Laterals are not in compliance, the Property Owner shall obtain any required permits and perform all Repair or Replacement work needed to bring the Private Sewer Laterals into compliance.

(2) Verification Testing. After the Property Owner determines through any combination of inspection, Repair and/or Replacement that the Private Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance and applicable Local Ordinance Requirements, and upon payment of the required Compliance Certificate fee and any other applicable fees, the Property Owner shall perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals associated with the parcel are in compliance with this Regional Ordinance, except that Compliance Certificates issued within Common Interest Developments will be issued on the conditions set forth in Section 11.

(b) Procedures for Verification Testing of Private Sewer Laterals. The Director will maintain written procedures for Verification Testing. The procedures shall be made available upon request.

(c) Effect of General Waiver. A Property Owner who holds General Waiver status may obtain a Compliance Certificate without performing condition assessment, Repair or Replacement work, or Verification Testing on the Lower Sewer Lateral.



(d) Effect of Limited Waiver. If a Satellite has issued a Limited Waiver for the Lower Sewer Lateral or a portion of it, the Property Owner may obtain a Compliance Certificate without performing condition assessment, Repair or Replacement work or Verification Testing on the Lower Sewer Lateral, except such work and testing is required for any portion of the Lower Sewer Lateral not covered by the Limited Waiver.

(e) Voluntary Certification. The District shall provide a Compliance Certificate to any Property Owner or Public Entity who requests one and passes a Verification Test conducted pursuant to this Section, including but not limited to a Property Owner or Public Entity who receives notice from the District or a Satellite that the Private Sewer Lateral is damaged, deteriorating, defective, or in any other way fails to comply with Section 5 or with applicable Local Ordinance Requirements.

(f) Effect of Subsequent Verification Test. A Property Owner who already holds a valid unexpired Compliance Certificate may obtain a new Compliance Certificate from the District by requesting one and obtaining a passing Verification Test result in the presence of the District's authorized representative with respect to all Private Sewer Laterals associated with the parcel and complying with all other requirements of subsection (a) of this Section. A new Compliance Certificate issued by the District under this subsection shall be valid until the later of the following: (i) the expiration of the time period specified in Section 8 applicable to the newly issued Compliance Certificate, or (ii) the expiration date of the previously issued Compliance Certificate. If the Verification Test is performed with respect to less than all Private Sewer Laterals associated with the parcel, the District will provide written evidence of any passing Verification Test result upon request and payment of applicable fees but will not issue a new Compliance Certificate nor modify the expiration date of any existing Compliance Certificate.

(g) Exception to Verification Test Requirement. The Director may authorize a Compliance Certificate to be issued without the performance of a Verification Test, if a Property Owner submits evidence which, in the Director's judgment, establishes that (i) the Private Sewer Lateral meets the standards set forth in Section 5, and (ii) it is physically infeasible to perform a Verification Test upon the Private Sewer Lateral in accordance with standard District procedures due to its insufficient length or particular configuration (e.g., located entirely beneath a Structure). The Property Owner shall bear all costs associated with producing the required evidence. If the Director finds a portion of the Private Sewer Lateral can feasibly be tested, a Verification Test must be performed with respect to that portion as a precondition of receiving a Compliance Certificate. The validity period of a Compliance Certificate issued under this subsection shall be determined as provided in Section 8.



(h) Discharge Prohibition. The discharge of wastewater from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance is prohibited.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)

SECTION 8

COMPLIANCE CERTIFICATE TERM LIMITS

(a) Term Limit. A Compliance Certificate obtained as a result of Replacement of all Private Sewer Laterals associated with the parcel shall be valid for 20 years from the date of issuance and other Compliance Certificates shall be valid for 7 years from the date of issuance, except as provided in subsections (b), (c) and (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12.

(b) Effect of General Waiver. A Compliance Certificate obtained by a Property Owner while the Property Owner holds General Waiver status shall be valid for a specified period as follows:

(1) A Compliance Certificate obtained as a result of Replacement of the entire Upper Sewer Lateral shall be valid for 20 years from the date the Compliance Certificate is issued; and

(2) All other Compliance Certificates shall be valid for 7 years from the date the Compliance Certificate is issued, except as provided in subsection (d) of this Section, subsection (g) of Section 11, and subsection (d)(3) of Section 12.

(c) Effect of Limited Waiver. If a Satellite has issued a Limited Waiver for the Lower Sewer Lateral, or a portion of it, the Compliance Certificate shall be valid for the same period as the Limited Waiver and shall expire on the Limited Waiver's expiration date, provided that the Compliance Certificate shall in no case be valid beyond 7 years from the date it is issued.

(d) Revocation and Modification of Compliance Certificate.

(1) Nothing in this Regional Ordinance creates a right or entitlement to a Compliance Certificate obtained by error, omission, fraud, or misrepresentation. If the Director determines a Compliance Certificate was obtained by the error,



omission, fraud, or misrepresentation of any person or entity, the Director may do any of the following:

- (i) require recertification or issue a compliance schedule;
- (ii) revoke a Compliance Certificate or modify the effective period of the Compliance Certificate if the District provides 30 days prior written notice of the intended revocation or modification; or
- (iii) immediately revoke the Compliance Certificate if the Director determines the Compliance Certificate was obtained by fraud, misrepresentation, or other intentionally wrongful or misleading means.

(2) The Director shall mail a written notice to the affected Property Owner notifying such party of the intent to revoke or modify the Compliance Certificate, or of any immediate revocation already made. Within 30 days after the date the revocation notice was mailed, the affected Property Owner may submit a written appeal in accordance with the procedures in this Regional Ordinance challenging the revocation decision and will bear the burden to prove by a preponderance of the evidence that the Compliance Certificate was properly issued. In all other respects, appeals under this subsection will proceed in accordance with the provisions of Section 14. Failure to appeal the revocation within 30 days will result in the revocation or modification described in the notice without further right of administrative appeal.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)

SECTION 9

TIME EXTENSION CERTIFICATES

(a) Availability. If a Compliance Certificate cannot be obtained before Title Transfer, the transferor, transferee, or other interested party or parties may obtain a Time Extension Certificate from the District. Time Extension Certificates are issued in connection with Title Transfer transactions only.

(b) Deposit. The Time Extension Certificate shall be completed and submitted to the District along with a refundable \$4,500.00 deposit and any nonrefundable fee that the District may require. The deposit will be refunded after a Compliance Certificate is



issued. The District may refund a deposit in other circumstances specified by the Director.

(c) Validity Period. A Time Extension Certificate expires 180 days after it is issued.

(d) Obligation of Property Owner or Transferee. During the 180-day validity period of a Time Extension Certificate, the Property Owner or transferee must complete any necessary Repair or Replacement and obtain a Compliance Certificate. Property Owners are responsible for the full cost of compliance with this Regional Ordinance and applicable Local Ordinance Requirements and that cost may exceed the deposit.

(e) Forfeiture of Deposit. If a Compliance Certificate is not obtained before a Time Extension Certificate expires, the deposit may be forfeited and the current Property Owner is subject to enforcement action as provided by this Regional Ordinance. The Property Owner may apply to the District for release of forfeited funds, less the District's costs. The District will not release forfeited funds unless the Property Owner first demonstrates full compliance with this Regional Ordinance.

(f) No Renewal. Time Extension Certificates are not renewable.

(g) Transferability. The Director may authorize and regulate the transferability of Time Extension Certificates. Transfers, if authorized, shall not extend the Time Extension Certificate's expiration date.

(Ord. No. 359-13, 7-23-2013; Ord. No. 3xx-19, xx-xx-2019)

SECTION 10

EXEMPTION CERTIFICATES

(a) Generally. An Exemption Certificate issued in connection with a parcel excuses the Property Owner of that parcel, while the Exemption Certificate remains valid, from any requirement to obtain a Compliance Certificate upon the occurrence of a Triggering Event. An Exemption Certificate also documents to third parties that no Compliance Certificate is required. Grounds for Exemption Certificates are specified in this Section. The District may require a Property Owner to submit specified supporting documentation for review before an Exemption Certificate will be issued.



(b) Exemption for Documented Prior Work on Private Sewer Lateral.

(1) Alameda, Albany & Stege Sanitary District. The City of Alameda, the City of Albany and Stege Sanitary District issued documents similar to Compliance Certificates before this Regional Ordinance became effective in their jurisdictions. A Property Owner may request an Exemption Certificate from the District if one of these Satellites, before the Regional Ordinance became effective in its jurisdiction, issued a valid and un-expired document similar to a Compliance Certificate indicating that all Private Sewer Laterals associated with the Property Owner's parcel met applicable standards at the time the document was issued, and such Exemption Certificate will expire on the same date that the document issued by the Satellite expires.

(2) Emeryville, Oakland & Piedmont. The Cities of Emeryville, Oakland, and Piedmont did not issue documents similar to Compliance Certificates before this Regional Ordinance became effective in their jurisdictions but did issue final building and sewer permits that, in some cases, indicate the Private Sewer Laterals on the parcel were Replaced or newly constructed. A Property Owner may request an Exemption Certificate from the District if one of these Satellites issued a dated and approved final building or sewer permit indicating that all Private Sewer Laterals associated with the Property Owner's parcel were Replaced or newly constructed. The District will issue an Exemption Certificate upon receiving confirmation from the issuing Satellite of the final permit's validity. The Exemption Certificate expires ten years after the date the Satellite took final action with respect to the permit that provides the basis for the Exemption Certificate. An Exemption Certificate will not be issued unless the Satellite issued the final permit during the ten-year period preceding the Regional Ordinance's effective date within the Satellite sewer service area in which the parcel is located:

Satellite	First Day of Ten-Year Period	Last Day of Ten-Year Period	Regional Ordinance Effective Date
City of Emeryville	8/22/2001	8/21/2011	8/22/2011
City of Oakland	1/16/2002	1/15/2012	1/16/2012
City of Piedmont	8/22/2001	8/21/2011	8/22/2011



(c) Other Exemptions.

(1) Grounds. A Property Owner may request a short-term Exemption Certificate on any of the following grounds:

(i) an entire real property estate, or the fee interest in that real property estate, has been sold or transferred, and the District is provided documentation showing the sale or transfer is not a Title Transfer as defined by this Regional Ordinance;

(ii) no Private Sewer Lateral ever existed on the parcel;

(iii) no Private Sewer Lateral associated with the parcel is connected to the public sewer system; or

(iv) all Private Sewer Laterals associated with the parcel are pressurized.

(2) Expiration. An Exemption Certificate issued on any grounds provided by subsection (c)(1) will expire as follows:

(i) six months after issuance, if issued on the grounds provided in subsection (c)(1)(i) and before the sale or transfer is recorded; and

(ii) one month after issuance in all other cases.

(d) Common Interest Developments. A Property Owner of an individual unit within a Common Interest Development need not obtain and will not be issued an Exemption Certificate if the Homeowners' Association has assumed responsibility to maintain all Private Sewer Laterals within the Common Interest Development.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)

SECTION 11

COMMON INTEREST DEVELOPMENTS

(a) Compliance Certificate Requirement. Compliance Certificates must be obtained with respect to Common Interest Developments at the times and in the manner described in this Section. A development not governed or managed by a Homeowners'



Association is not a Common Interest Development for purposes of this Regional Ordinance, and the provisions of this Section shall not apply thereto.

(b) Presumed Responsibility. In accordance with section 4775 of the California Civil Code, whenever a Compliance Certificate is required under this Section, parties within a Common Interest Development shall each be presumed responsible to demonstrate proper maintenance of the Private Sewer Lateral by passing a Verification Test and obtaining a Compliance Certificate in the following manner, unless such presumption is rebutted in the manner provided by this Section:

(1) Each Property Owner within a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Separate Interest owned by that Property Owner and within the Exclusive Use Common Area appurtenant to that Separate Interest.

(2) The Homeowners' Association which governs or manages a Common Interest Development is presumed to be responsible to pass a Verification Test and obtain a Compliance Certificate for the length of Private Sewer Lateral located within the Common Area.

(3) These presumptions may be rebutted by a sufficient written Statement of Responsibility provided to the District under penalty of perjury as described in this Section which demonstrates that maintenance responsibility has been allocated in a different manner within a Common Interest Development.

(c) Statement of Responsibility by Homeowners' Association.

(1) Each Homeowners' Association which governs or manages a Common Interest Development must, not later than 180 days after the effective date of the amended Regional Ordinance or 180 days after the Homeowners' Association first assumes governance or management responsibility for a Common Interest Development, provide a written Statement of Responsibility to the District under penalty of perjury, with a copy to each Property Owner within the Common Interest Development, which describes the manner in which maintenance responsibility is allocated within the Common Interest Development among Property Owners and the Homeowners' Association. The Statement of Responsibility shall include the following information:



(i) a list of all parcels within the Common Interest Development by Assessor's Parcel Number;

(ii) a description of the allocation and boundary of maintenance responsibility as between the Homeowners' Association and the Property Owners. If maintenance responsibility has been allocated with respect to Private Sewer Laterals specifically, the Statement of Responsibility shall describe the manner and boundary of such allocation; otherwise, the Statement of Responsibility shall describe the manner and boundary of allocation of maintenance responsibility with respect to Common Areas, Exclusive Use Common Areas, and Separate Interests or such other manner maintenance responsibility is actually allocated in the development;

(iii) a copy of the relevant portions of the declaration of common interest, condominium plan, or other governing documents which describe the Common Interest Development's date of formation and manner of allocating maintenance responsibility for the Private Sewer Lateral(s) or otherwise generally within the development, with citation to supporting provisions thereof;

(iv) a map or diagram depicting the parcel boundaries, location of sewer laterals, and extent of each party's responsibility for sewer lateral maintenance; and

(v) a statement that the information provided is current and complete and that the Homeowners' Association has provided a copy of the Statement of Responsibility to all Property Owners within the Common Interest Development.

(2) The Homeowners' Association may omit from its Statement of Responsibility any information it has previously provided to the District, so long as the Statement of Responsibility states that the previously provided information remains correct.

(3) The Homeowners' Association must provide an updated written Statement of Responsibility not later than 30 days after any action is taken which has the effect of modifying the allocation of maintenance responsibility between Property Owners and the Homeowners' Association, unless the modification does not affect Private Sewer Lateral maintenance.



(d) Compliance Certificate of a Homeowners' Association. A Homeowners' Association (except one responsible to maintain over 1,000 feet of Private Sewer Lateral within a single Common Interest Development, in which case the Homeowners' Association is subject to the requirements of Section 12 and not this Section) must pass a Verification Test and obtain a Compliance Certificate at the times and in the manner described below:

(1) Existing Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development on or before July 12, 2019 must, not later than July 12, 2021, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.

(2) New Homeowners' Association. A Homeowners' Association which first assumed responsibility to govern or manage a Common Interest Development after July 12, 2019 must, within twenty-four (24) months of the date of the date it first assumed such responsibility, obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the portion of the Private Sewer Lateral within the Homeowners' Association's maintenance responsibility as evidenced in the Statement of Responsibility submitted by the Homeowners Association, or if a sufficient Statement of Responsibility has not been provided then for the portion within the Common Area.

(3) Increase in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of increasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, within twenty-four (24) months of taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area of increased responsibility, provided that the Homeowners' Association must meet any deadline set forth in subsections (d)(1) or (d)(2) with respect to any portion of the Private Sewer Lateral subject to those subsections, and further provided that, if by reason of taking such action the Homeowners' Association becomes subject to Section 12 pursuant to subsection

(a) of that Section, then the Homeowners' Association shall comply with the requirements of that Section and thereafter shall have no further obligations or privileges under this Section 11.

(4) Decrease in Responsibility. A Homeowners' Association, regardless of the date it first assumed responsibility to govern or manage a Common Interest Development, which at any time after the deadline for providing a Statement of Responsibility to the District takes any action which has the effect of decreasing the physical extent of the Homeowners' Association's Private Sewer Lateral maintenance responsibility must, prior to taking such action, pass a Verification Test for the portion of the Private Sewer Lateral within the physical area subject to such action unless both of the following are true: (i) the entire portion of the Private Sewer Lateral that is otherwise required to be tested has passed a prior Verification Test, and (ii) a Compliance Certificate was issued based on that passing Verification Test result and remains valid and unexpired.

(e) Statement of Responsibility by Property Owner. If a Triggering Event occurs with respect to a parcel within a Common Interest Development and the Homeowners' Association has not provided the Statement of Responsibility required of it by this Regional Ordinance or a Property Owner disputes the correctness of a Statement of Responsibility previously provided by the Homeowners' Association, the Property Owner must promptly submit a Statement of Responsibility to the District under penalty of perjury, with a copy to the Homeowners' Association, as follows.

(1) If the Property Owner is not responsible to maintain any portion of the Private Sewer Lateral pursuant to the governing documents of the Common Interest Development, the Property Owner's Statement of Responsibility shall so state, and such Statement shall be accompanied by a copy of the portions of the declaration of common interest or other governing documents relevant to the allocation of maintenance responsibility, with citation to supporting provisions thereof.

(2) In all other circumstances, the Statement of Responsibility must describe the specific portion of Private Sewer Lateral which is the Property Owner's responsibility to maintain. The Statement of Responsibility must identify the portion of the Private Sewer Lateral located within the Property Owner's Separate Interest and within any Exclusive Use Common Area appurtenant to the Separate Interest, or such other portion which is the Property Owner's responsibility to maintain pursuant to the governing documents of the Common



Interest Development. The Statement of Responsibility must be accompanied by all information required of a Statement of Responsibility submitted by a Homeowners' Association except the Property Owner need not depict or describe parcels other than the Property Owner's parcel nor lengths of Private Sewer Lateral which are not the Property's Owner's responsibility to maintain.

(f) Compliance Certificates of Property Owners in Common Interest Developments.

(1) A Property Owner within a Common Interest Development must obtain a Compliance Certificate when a Triggering Event occurs with respect to the Property Owner's parcel, unless a sufficient Statement of Responsibility is or has been submitted which evidences the Property Owner's non-responsibility to maintain any portion of the Private Sewer Lateral.

(2) A Property Owner may obtain a Compliance Certificate by paying applicable fees and passing a Verification Test for the following portion of the Private Sewer Lateral:

(a) the portion identified in a Statement of Responsibility as within the Property Owner's responsibility to maintain, if a sufficient Statement of Responsibility is or has been provided; or

(b) the portion located within the Separate Interest and any Exclusive Use Common Area appurtenant thereto, if no such Statement of Responsibility is or has been provided.

(g) Validity Period of Compliance Certificates in Common Interest Developments.

(1) A Compliance Certificate issued pursuant to subsection (d) of this Section is valid for twenty (20) years, unless revoked or modified sooner pursuant to subsection (d) of Section 8.

(a) Not later than twenty-four (24) months after the expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, the Homeowners' Association must pass a Verification Test for the portion of the Private Sewer Lateral which is designated as its responsibility to maintain in the Statement of Responsibility in effect at the time the Compliance Certificate expires.



(b) Upon expiration of a Compliance Certificate issued pursuant to subsection (d) of this Section, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

(2) A Compliance Certificate issued pursuant to any provision of this Section other than subsection (d) is valid for either seven (7) or twenty (20) years depending on the nature of work performed as provided in Section 8, unless revoked or modified sooner pursuant to subsection (d) of Section 8. Upon expiration of such Compliance Certificate, each Property Owner of a parcel previously covered by such expired Compliance Certificate shall become subject to subsection (f) of this Section and shall be required to comply with the requirements of that subsection thereafter.

(h) If a Homeowners' Association or a Property Owner within a Common Interest Development does not provide a sufficient Statement of Responsibility when required by this Ordinance, or if any such party disputes any portion of responsibility allocated to it in a written Statement of Responsibility previously submitted by any party, the District may make an administrative determination based on the evidence and subject to the right of appeal by the Homeowners' Association or Property Owner in accordance with Section 14, and/or seek a court order declaring the extent of each party's responsibility to comply with this Regional Ordinance, ordering that such work be done by those responsible, and providing any other available legal or equitable remedy.

(Ord. No. 3xx-19, xx-xx-2019)

SECTION 12

PARCELS OR PARCEL GROUPS WITH PRIVATE SEWER LATERALS EXCEEDING 1000 FEET

(a) Applicability of this Section. A Property Owner other than a Homeowners' Association becomes subject to the requirements of this Section at the earliest time that both of the following are true: (i) the Property Owner holds an ownership interest in a parcel or Parcel Group, and (ii) the Private Sewer Lateral(s) associated with that parcel or Parcel Group collectively exceed 1,000 feet in total combined length. A Homeowners' Association becomes subject to the requirements of this Section at the earliest time it is responsible for managing or governing over 1,000



feet of Private Sewer Laterals within a Common Interest Development. The term “Property Owner,” as used in the remainder of this Section, includes a Homeowners’ Association that is subject to this Section’s requirements.

(b) Condition Assessment Plan. A Property Owner subject to this Section shall submit a Condition Assessment Plan for District review. The Property Owner must submit a Condition Assessment Plan no later than July 12, 2016 if the Property Owner became subject to this Section before that date, or otherwise no later than the last-occurring of (i) November 20, 2019 or (ii) 180 days after the Property Owner first becomes subject to this Section’s requirements. The Condition Assessment Plan shall include (i) a list of all parcels by Assessor’s Parcel Number subject to this Section’s requirements, (ii) a map drawn to scale (with scale indicated) which shows the approximate location, length, and diameter of all Private Sewer Laterals and segments thereof associated with the parcel or Parcel Group (or of all Private Sewer Laterals and segments thereof managed or governed by the Homeowners’ Association, if the Condition Assessment Plan is submitted by a Homeowners’ Association), and (iii) a schedule for the performance of testing to assess the condition of such Private Sewer Laterals. The District will accept a Condition Assessment Plan if it contains all required information and indicates the total combined length of Private Sewer Laterals exceeds 1,000 feet.

(c) Corrective Action Work Plan.

(1) Requirement and Deadline. After submitting a Condition Assessment Plan to the District and completing the testing described therein, a Property Owner subject to this Section shall submit a Corrective Action Work Plan for District review no later than July 12, 2021, or twenty-four (24) months after the Property Owner first becomes subject to this Section, whichever is later.

(2) Contents. The Corrective Action Work Plan shall (i) summarize results of the condition assessment of all pipe required to be included in the Condition Assessment Plan (e.g., CCTV or smoke testing results), (ii) identify and describe the location, length, and material of all sewer lateral pipe which requires repair or replacement to meet the standards of this Regional Ordinance, (iii) describe the type of work to be performed to bring the pipe into compliance with the standards set forth in Section 5, all other requirements of this Regional Ordinance, and all applicable Local Ordinance Requirements including the method of pipe replacement (e.g. node-to-node) and method of addressing



manholes, (iv) include a schedule for completion of listed tasks, and (v) include a bid price or contractor's estimate for the required work.

(3) Review and Acceptance. The District shall accept the Corrective Action Work Plan if it contains all required information, appears to address all Private Sewer Laterals requiring work, and specifies a schedule which will result in full compliance within the time allowed by this Regional Ordinance. Upon accepting the Corrective Action Work Plan, the District will determine the Property Owner's deadline to comply with subsection (d) based on the information contained in the Corrective Action Work Plan and the standard set forth in subsection (d)(2)(i), and the Property Owner shall meet such deadline. The District may require a Property Owner to demonstrate adequate progress towards completion by conditioning Corrective Action Work Plan acceptance upon a requirement for the Property Owner to demonstrate completion of discrete tasks or milestones described in the Corrective Action Work Plan within the period of time specified therein.

(d) Compliance Certificate.

(1) Requirement. A Property Owner subject to this Section's requirements must do all of the following: (i) complete all work described in the Corrective Action Work Plan, (ii) pay the required Compliance Certificate fee and any other applicable fees, (iii) perform a Verification Test in accordance with the District's procedures in the presence of the District's authorized representative for all Private Sewer Laterals associated with the parcel or Parcel Group owned by the Property Owner, or in the case of a Homeowners' Association all Private Sewer Laterals managed or governed by the Homeowners' Association, and (iv) obtain a Compliance Certificate for each parcel involved. The District will issue a Compliance Certificate if its authorized representative determines that the Verification Test confirms that all Private Sewer Laterals required to be tested are in compliance with this Regional Ordinance.

(2) Deadlines.

(i) A Property Owner who first becomes subject to this Section's requirements on or before July 12, 2019 must comply with all requirements of subsection (d)(1) no later than July 12, 2026, except the Director shall allow until July 12, 2029 if the Director determines the accepted Corrected Action Work Plan demonstrates either of the following: (I) that more than 5,000 feet of Private Sewer Laterals are



associated with the parcel or Parcel Group or are managed or governed by a Homeowners' Association, or (II) that more than fifty percent (50%) of the Private Sewer Laterals will need to be replaced.

(ii) A Property Owner who first becomes subject to this Section's requirements after July 12, 2019 must comply with all requirements of subsection (d)(1) no later than eighty-four (84) months after the date the Property Owner first becomes subject to this Section's requirements, except the Director shall allow one hundred twenty (120) months if the Director makes the determination described in subsection (d)(2)(i) of this Section.

(iii) A Compliance Agreement may be entered into pursuant to subsection (k) of Section 13 for the purpose of increasing the time allowed for a Property Owner to meet the requirements of this Section, but only if the Director determines, in his or her sole discretion, that (I) additional time is appropriate due to the existence of compelling extenuating circumstances, and (II) a Compliance Agreement appears otherwise appropriate in light of the circumstances and the factors set forth in subsection (k) of Section 13. The Director may include a provision in a Compliance Agreement conditioning any extension that is granted on a requirement that the Property Owner pass a Verification Test for a specified percentage of Private Sewer Lateral by a specified date, and/or in any other respect provided for in subsection (k) of Section 13.

(3) Validity Period. The Compliance Certificate(s) shall be valid for 20 years from the date issued unless revoked or modified pursuant to subsection (d) of Section 8, and upon expiration the Property Owner must obtain new Compliance Certificate(s) under Section 7.

(4) Reductions Below 1,000 Feet. A Property Owner subject to this Section must pass a Verification Test for all Private Sewer Laterals associated with the Property Owner's parcel or Parcel Group (or, if the Property Owner is a Homeowners' Association, then for all Private Sewer Laterals managed or governed by the Homeowners' Association) prior to taking any action which would have the effect of reducing below 1,000 feet the total combined length of such Private Sewer Laterals.

(e) Templates; Additional Information. The Director may require information or plans to be submitted on standard forms or templates provided by the District. The



Director may require additional information to be submitted as deemed necessary for the purposes of this Regional Ordinance.

(f) Effect of Plan Acceptance. The District reviews Condition Assessment Plans and Corrective Action Work Plans for completeness only, and not for the substantive adequacy of the work proposed, nor for compliance with Local Ordinance Requirements applicable in the Property Owner's jurisdiction. The District's acceptance of a plan in no way warrants that the work described therein will achieve a particular result or meet Local Ordinance Requirements. The District shall not be liable for any costs, damages, or losses incurred to achieve compliance with this Regional Ordinance or with Local Ordinance Requirements.

(Ord. No. 359-13, 7-23-2013; Ord. No. 3xx-19, xx-xx-2019)

SECTION 13

ENFORCEMENT

(a) Enforcement Authority. The Director shall enforce this Regional Ordinance. Enforcement of Local Ordinance Requirements is the responsibility of the Satellite that adopted the Local Ordinance Requirements.

(b) Violations. Each of the following acts or omissions is a violation of this Regional Ordinance:

- (1) Failure to obtain a Compliance Certificate when one is required;
- (2) Failure to obtain a Time Extension Certificate if a Compliance Certificate is not obtained, or failure to timely perform all required work after receiving a Time Extension Certificate;
- (3) Failure to comply with any of the District's requirements for Repair, Replacement and Verification Testing;
- (4) Obtaining or seeking an Exemption Certificate or a Compliance Certificate by means of fraud or misrepresentation;
- (5) Presenting a false Exemption Certificate or Compliance Certificate;



(6) Discharging wastewater from any Upper Sewer Lateral which does not meet the standards of Section 5, or from any Private Sewer Lateral which has not passed a Verification Test when required by this Regional Ordinance;

(7) Failure to submit a sufficient Statement of Responsibility when required by this Regional Ordinance;

(8) Failure to comply with an order of the Director made in connection with the enforcement of this Regional Ordinance;

(9) Failure to comply with any term or condition of a Compliance Agreement entered into pursuant to this Section; and/or

(10) Failure to comply with any other requirement of this Regional Ordinance.

(c) Nuisance. The Board of Directors of the District hereby finds and declares that each discharge of wastewater from a Private Sewer Lateral made by any person or entity not in compliance with this Regional Ordinance, or made from any parcel for which a Compliance Certificate is not obtained when required, is a nuisance.

(d) Enforcement Action. The Director may take enforcement action against a person or entity who violates the provisions of this Regional Ordinance or fails to perform any act required by this Regional Ordinance. The Director may pursue any and all administrative and judicial remedies available to the District at law or in equity or under this Regional Ordinance.

(e) Orders. When the Director finds that a person or entity violates or threatens to violate this Regional Ordinance, the Director may issue an order to cease and desist and direct that those persons or entities found to be in violation to (1) comply forthwith, (2) comply in accordance with a time schedule set by the Director, or (3) in the event of a threatened violation, take appropriate remedial or preventative action.

(f) Judicial Enforcement. Upon authorization by the District's Board of Directors, the Director may initiate a judicial action or proceeding to enforce this Regional Ordinance or any order the Director may issue hereunder. The Director may seek any available remedy in such action or proceeding, including any or all of the following:



(1) a declaration of the rights and obligations of any person or entity subject to the Regional Ordinance and/or a declaration that the person or entity is in violation of the Regional Ordinance;

(2) an injunction restraining the continuance of any discharge made in violation of this Regional Ordinance and/or requiring compliance with the provisions of this Regional Ordinance;

(3) civil penalties as authorized by law and by this Section.

(g) Civil Penalties. The superior court may impose, assess, and recover the following sums as civil penalties in any judicial action or proceeding which the District may initiate under the authority of this Section:

(1) Any person or entity who fails to comply with any order issued by the District shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the discharge, violation, or refusal occurs.

(2) Any person or entity who intentionally or negligently violates any order issued by the District for violation of rules regulating or prohibiting discharge of wastewater which causes or threatens to cause a condition of contamination, pollution, or nuisance may be liable civilly in a sum not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(h) Costs and Fees. The District may recover from any person or entity in violation of this Regional Ordinance the costs it incurs in connection with enforcing this Regional Ordinance, including staff time, and may seek attorneys' fees in any court action or proceeding.

(i) Availability of Remedies. Remedies under this Section are in addition to and do not supersede or limit any and all other legal or equitable remedies.

(j) Continuing Violations. Each day that a violation of this Regional Ordinance continues shall constitute a separate violation, and each such violation shall be subject to a separate penalty and to any other remedy available hereunder.

(k) Compliance Agreements.

(1) Generally. The Director may, in the exercise of his or her sole discretion, offer and enter into an enforceable Compliance Agreement with a person or entity subject to this Regional Ordinance on a voluntary basis which



allows additional time to meet Regional Ordinance requirements, modifies ordinance requirements as applied to the person or entity, or includes other terms consistent with the provisions of this subsection (k).

(2) Availability. In deciding whether to offer or enter into a Compliance Agreement, the Director shall consider the totality of the circumstances and determine, in his or her sole discretion, whether entering into a Compliance Agreement would best further the Regional Ordinance's purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The District will generally offer a Compliance Agreement only when the Director determines that compliance within the time allowed by the Regional Ordinance is infeasible or impossible due to circumstances not arising from the Property Owner's negligence or that strict enforcement of a Regional Ordinance requirement would be unreasonable or contrary to the Regional Ordinance's stated purposes.

(3) Contents. A Compliance Agreement may include any terms or conditions deemed necessary or desirable by the District, which may include a requirement to perform specified work on a stated schedule, a required cash deposit in any amount necessary to ensure completion of required work, an obligation to indemnify the District, or other provisions. A Compliance Agreement may temporarily modify Regional Ordinance requirements as applied to a given party but must require the party to achieve full compliance with all Regional Ordinance requirements by a date specified in the agreement. While a party remains in strict compliance with all provisions of a Compliance Agreement, the party will not be subject to enforcement for violation of any Regional Ordinance requirement that is modified by such agreement. A Compliance Agreement does not waive the District's right to enforce the Regional Ordinance if the Compliance Agreement is breached, and the District may take immediate enforcement action in the event of a breach. Agreements must be approved as to form by the District's General Counsel or an attorney designee thereof. Compliance Agreements and related records are public records and are subject to public disclosure to the extent required by law.

(Ord. No. 359-13, 7-23-2013; Ord. No. 3xx-19, xx-xx-2019)



SECTION 14

APPEALS

(a) Grounds.

(1) A person or entity aggrieved by a decision, action, or determination made by the District in connection with this Regional Ordinance may seek reconsideration by filing an appeal in accordance with this Section no later than 30 days after the occurrence of such decision, action, or determination. For purposes of this Section 14, “occurrence” means either: (i) the date of notice of the decision, action, or determination was personally provided or mailed, whichever is earlier; or (ii) absent evidence of the date of personal or mailed notice, five days after the date the District actually undertook the decision, action, or determination.

(2) A person or entity aggrieved by the District’s failure to take an action required of it by this Regional Ordinance may make a written request for action. If the District responds to the written request by refusing to act, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 30 days after the refusal to act. If the District does not respond to the written request for action within 30 days, the aggrieved party may seek review by filing an appeal in accordance with this Section no later than 60 days after such party made the written request for action.

(3) A person or entity who believes compliance with any deadline or other requirement of this Regional Ordinance within the time allowed would be impossible, infeasible or unreasonably burdensome due to circumstances not arising from the negligence of the person or entity in light of the particular facts and circumstances applicable to the person or entity or to the relevant property and the Regional Ordinance’s stated purposes may at any time petition for an extension of time to comply or other temporary relief by filing an appeal in accordance with this Section. The deadline to obtain a Compliance Certificate will not be extended if the appellant was eligible to obtain a Time Extension Certificate before filing the appeal but failed to do so.

(4) Notwithstanding the provisions of this subsection (a), the reconsideration process set forth in subsection (d) is the exclusive means to seek further administrative review of the disposition of an appeal.



(b) Form and Contents. The appellant must submit a written statement signed under penalty of perjury containing (i) a description of the decision, action, determination, inaction, deadline, or other requirement that is the subject of the appeal, (ii) a description of the specific relief requested, (iii) a detailed statement of facts which the appellant believes entitles the appellant to the relief requested, and (iv) copies of all supporting documentation or other written evidence the appellant wishes the District to consider. The District may require an appeal to be submitted on a District form.

(c) Consideration and Disposition. The Director shall designate a District officer or employee with managerial authority who will consider the matter and decide whether to grant relief. The Director's designee may request additional information and the appellant shall provide such requested information within fifteen (15) business days or such other time period authorized in writing by the Director's designee. The evidence before the Director's designee shall consist of the written statement and documentation provided by the appellant in support of the appeal, relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director's designee, should be considered. The Director's designee shall consider the available evidence in light of the Regional Ordinance's stated purposes and the public's interest in the fair, equitable, and consistent implementation of the Regional Ordinance. The Director's designee, upon considering the available evidence, may find that the appealed decision, action, determination, or inaction was appropriate and proper, or that it is appropriate to enforce the appealed deadline or other requirement without an extension or other relief, and deny the appeal on that basis. Alternatively, the Director's designee may find the appeal meritorious and grant the appeal unconditionally or upon any conditions which the Director's designee determines are reasonable or necessary to accomplish the Regional Ordinance's stated purposes. The Director's designee may decide the matter within fifteen (15) business days from the receipt of the complete appeal, except if the Director's designee requests additional information the matter may be decided within fifteen (15) business days from the deadline to provide such additional information. If the Director's designee does not decide the matter within the above-stated time period, the appeal shall be deemed denied on the first day following that time period. Notice of any decision will be mailed to the person or entity requesting relief. The Director's designee shall consider appeals without a hearing except as follows: (i) an appellant challenging a revocation or intended revocation of a Compliance Certificate shall receive an in-person hearing unless the appellant waives the right to a hearing at any time before the hearing is held, and (ii) an appellant challenging any other District enforcement order or a notification of intent to modify a previously issued Compliance Certificate may obtain an in-person hearing by requesting one when the appeal is filed.



(d) Reconsideration of Appeal Decision.

(1) Within 30 days after the date of mailing of written notice of any District decision granting or denying relief under subsection (c) of this Section, or within 30 days after the date the appeal is deemed denied, any person or entity affected by the decision, action, determination, inaction, deadline, or requirement that was the subject of the appeal may submit to the Director a written request for reconsideration. The Director shall personally consider all requests for reconsideration. The request for reconsideration must set forth in detail the facts and rationale supporting the request under penalty of perjury.

(2) The Director may act on the request for reconsideration with or without a hearing in any manner the Director deems reasonable and shall thereafter issue a final written determination concerning the request for reconsideration. The Director may consider the written appeal submitted pursuant to subsections (a) and (b), the decision rendered by his or her designee pursuant to subsection (c), the request for reconsideration submitted pursuant to subsection (d)(1), relevant information in the District's files pertaining to the matter, and any other relevant evidence which, in the judgment of the Director, should be considered, including any additional information requested by the Director. If the Director fails to act upon the request for reconsideration within fifteen (15) business days after receipt of the request for reconsideration, the request shall be deemed denied.

(3) The Director's decision shall become final and binding at the time the Director acts on the request or fails to act within the time specified by this subsection. If the Director acts on the request for reconsideration, notice of the Director's action will be mailed to the person or entity requesting reconsideration within five (5) business days after the action.

(e) Hearings. Whenever a hearing is to be held pursuant to this Section, the District shall notify the appropriate party by mailed or personal notice that a hearing shall be conducted at a date, time, and location specified in the notice. If a party fails to appear at a scheduled hearing, or if a party who is granted the right to a hearing by this Regional Ordinance waives that right before the hearing is held, the District may render a final determination on the appeal without a hearing. Hearings may be held by the Director personally or by any person designated by the Director.



(f) Effect of Pending Appeal. Any appealed decision, action, determination, deadline, or requirement shall remain in effect and binding upon the appellant while the appeal, including any reconsideration thereof, remains pending.

(g) Exhaustion. Any person or entity aggrieved by a decision, action, determination, or inaction related to this Regional Ordinance who wishes to appeal or challenge the decision, action, determination, or inaction, or who desires to extend a deadline of this Regional Ordinance or receive other temporary relief from a requirement thereof, must seek review by utilizing all procedures available under this Section, and the failure to do so shall be deemed a failure of the person or entity subject to the decision, action, determination, inaction, deadline, or requirement to exhaust administrative remedies.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)

SECTION 15

ADDITIONAL PROVISIONS

(a) Fees. The District may establish fees in the Water and Wastewater System Schedule of Rates and Charges and Fees for administration of this Regional Ordinance and may modify those fees from time to time. The District may refund fees or deposits for any reason deemed warranted by the Director, including those paid in error.

(b) Regulations. The Director may develop and maintain written regulations, procedures and guidance materials for administration of this Regional Ordinance and shall make them available on the District's website and upon request.

(c) Entry Upon Private Property. To the extent authorized by law, the District may enter upon private property of any person or entity to perform its inspection responsibilities under this Regional Ordinance or to ascertain whether the District's Private Sewer Lateral regulations are being complied with.

(d) Communication with Representatives. The District may communicate with a person or entity other than the Property Owner, such as a rental tenant or a contractor, on the Property Owner's behalf with regard to any transaction arising under this Regional Ordinance, if such person or entity represents to the District that he or she is authorized by the Property Owner to conduct the transaction on the Property Owner's behalf.



(e) Ownership of Certificates. Compliance Certificates and Exemption Certificates are issued to a person or entity only with respect to a specific parcel of property and may not be removed to any other parcel, nor conveyed to any other person or entity except if title is subsequently transferred to another person or entity the transferee shall be deemed to acquire any valid unexpired Compliance Certificate or Exemption Certificate from the transferor upon completion of the transfer of title.

(f) The District may reject any plan, statement or other submittal made under this Regional Ordinance if the District, in its sole discretion, determines the plan, statement or other submittal is inconsistent, invalid, or insufficient for any reason.

(g) The District may direct a party who makes a submittal under this Regional Ordinance to provide additional information, and if such information is not submitted within a reasonable time as determined by the District, the District may deem the plan, statement or other document insufficient in which case it shall be of no effect.

(Ord. No. 359-13, 7-23-2013; Ord. No. 3xx-19, xx-xx-2019)

SECTION 16

EMERGENCIES

During a State of Emergency, the Director may temporarily suspend any or all provisions of this Regional Ordinance until the next regular or special meeting of the District's Board of Directors. At the regular or special meeting a report shall be made and the Board may consider whether to authorize continued suspension of this Regional Ordinance for the full duration of the State of Emergency, or for any shorter time period the Board finds appropriate.

(Ord. No. 359-13, 7-23-2013)

SECTION 17

SEVERABILITY

If any provision of this Regional Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the Regional Ordinance, or the



application of such provision to other persons or circumstances, shall not be affected thereby.

(Ord. No. 359-13, 7-23-2013)

SECTION 18

EFFECTIVE DATE

This Regional Ordinance, as amended, shall become effective and in full force at 12:01 a.m. on May 24, 2019.

(Ord. No. 359-13, 7-23-2013; Ord. No. 362-14, 10-28-2014; Ord. No. 3xx-19, xx-xx-2019)





AGENDA NO.
MEETING DATE

10.
April 23, 2019

TITLE **ORDINANCE AMENDING RETIREMENT ORDINANCE NO. 40**

☐ MOTION ☐ RESOLUTION ☒ ORDINANCE

RECOMMENDED ACTION

Introduction and first reading on an ordinance amending Section 21 of the EBMUD Employees' Retirement System Ordinance (Ordinance No. 40) to update the actuarially assumed rate of return (ROR) from 7.25 percent to 7.00 percent.

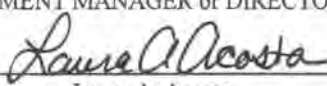

SUMMARY

Section 21 of the Retirement Ordinance provides for an optional modification of a member's retirement allowance. Optional benefits are calculated using the actuarial equivalent of the member's retirement allowance, which is determined using the actuarially assumed ROR and mortality tables. The actuarially assumed ROR is also used to determine the value of cash-outs, the posting of interest to employee accounts, and the actuarial valuation and impacts to employer contribution rates. The actuarially assumed ROR has been updated pursuant to the recommendation of the Retirement System's actuary. It is recommended that Section 21 of the Retirement Ordinance be amended to reflect the adopted actuarially assumed ROR, in compliance with the 2010 Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) rules which clarified that the actuarially assumed ROR used to determine optional forms of benefits be specified.

DISCUSSION

Section 21 of the Retirement Ordinance provides members with the option to receive the actuarial equivalent of his or her retirement allowance in the form of a lesser retirement allowance in order to provide for a greater benefit to a beneficiary. One factor used to determine the actuarial equivalent of the allowance is the actuarially assumed ROR.

Since 2011, the actuarially assumed ROR has been lowered four times in quarter percent steps (from 8.25 to 8.0, 7.75, 7.50 and 7.25). At its September 20, 2018 meeting, the Retirement Board adopted the actuaries' recommendation to change the actuarially assumed ROR from 7.25 percent to 7.00 percent. The reduction in the actuarially assumed ROR reflects the expectations that investment returns may be lower in the future. This reduction was recommended to the Retirement Board as part of the June 30, 2018 Actuarial Evaluation.

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING Human Resources	DEPARTMENT MANAGER or DIRECTOR  Laura A. Acosta	APPROVED  General Manager

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Staff recommends the Board amend the Retirement Ordinance to reflect the change in the actuarially assumed ROR to 7.00 percent.

SCHEDULE

The amendments to the Retirement Ordinance to update the actuarially assumed ROR to 7.00 percent must take effect on July 1, 2019. To meet this deadline, the first reading of this Ordinance is to occur at the meeting of the Board of Directors on April 23, 2019. The final action is scheduled with the second reading at the meeting of the Board of Directors on May 14, 2019. The ordinance amendments take effect 30 days after the revised ordinance's passage, and the Municipal Utility District Act requires the amendments be published once a week for two successive weeks in a newspaper of general circulation published in the district.

SUSTAINABILITY

Economic

The action of the Retirement Board to follow the recommendation of the actuaries to lower the actuarially assumed ROR helps to ensure the long-term stability of the Retirement System. Approval of this Ordinance will allow the Retirement Ordinance to be updated and remain in compliance with Internal Revenue Service Regulations, lowering the risk of fines or other economic risks related to non-compliance.

Social

The unions were notified of the change to the actuarially assumed ROR referenced in the proposed Retirement Ordinance amendment at the Retirement Board meeting on September 20, 2018, followed by an email notification on April 9, 2019. To date, the unions have not expressed any concerns.

ALTERNATIVE

Do not approve amendments to the Ordinance. This alternative is not recommended because the Retirement Ordinance would non-compliant without this update.

ORDINANCE NO. _____

AN ORDINANCE, EFFECTIVE AS OF JULY 1, 2019, AMENDING SECTION 21, "OPTIONAL MODIFICATION OF RETIREMENT ALLOWANCE," TO ORDINANCE NO. 40, WHICH IS THE EMPLOYEES' RETIREMENT SYSTEM ORDINANCE

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 21 of this Ordinance, entitled "Optional Modification of Retirement Allowance," shall be amended as follows:

(a) Within sixty (60) days prior to the date of retirement for disability, a Member may elect to receive the actuarial equivalent of his or her Retirement Allowance as of the date of retirement in the form of a lesser Retirement Allowance payable throughout life with the following option:

If he or she dies before he or she receives in Annuity payments the amount of his or her Accumulated Retirement Contributions as it stood at his or her retirement, the balance of such Accumulated Contributions shall be paid to his or her Beneficiary or, in the absence of a named Beneficiary then living, to his or her estate.

(b) Within sixty (60) days prior to the date of retirement for service, a Member may elect to receive the actuarial equivalent of his or her Retirement Allowance as of the date of retirement in the form of a lesser Retirement Allowance payable throughout life, with one of the following options:

Option 1: If he or she dies before he or she receives in Annuity payments the amount of his or her Accumulated Retirement Contributions as it stood at his or her retirement, the balance of such Accumulated Contributions shall be paid to his or her Beneficiary or, in the absence of a named Beneficiary then living, to his or her estate.

Option 2: Upon his or her death, his or her lesser Retirement Allowance shall be continued throughout the life of and paid to the person nominated by him or her, effective with the first day of the month following the date of his or her death.

Option 3: Upon his or her death, one-half of his or her lesser Retirement Allowance shall be continued throughout the life of and paid to the person nominated by him or her, effective with the first day of the month following the date of his or her death.

Option 4: Upon his or her death, one-fourth of his or her lesser Retirement Allowance shall be continued throughout the life of and paid to the person nominated by him or her, effective with the first day of the month following the date of his or her death.

(c) Election of any option must be in writing signed by the Member and filed with the Secretary of the Retirement Board within sixty (60) days prior to his or her retirement. A Member shall have no right to change the basis of his or her Retirement Allowance after the effective date of his or her retirement, except as provided in Subsections (d) and (f).

(d) If a Member has elected to receive a Retirement Allowance under this Section, and the named Beneficiary dies before the Member's first Retirement Allowance payment is due, said Member may elect to receive a Retirement Allowance computed in accordance with provisions of this Section or provisions of Section 15.

(e) Where no option is selected, a Member, upon retirement for service or disability, shall be entitled to receive a Retirement Allowance during his or her lifetime only, and all rights of said Member or of any other person or persons claiming under him or her, except the right to his or her Retirement Allowance which is payable for the month in which his or her death occurred, and the right to a survivorship benefit as provided in Section 20(c) shall cease with his or her death; provided, however, that if the Retired Member dies before his or her first Retirement Allowance is due, his or her Accumulated Contributions shall be paid to his or her Beneficiary or, in the absence of a named Beneficiary then living, to his or her estate.

(f) Upon the death of a Retired Member, or upon the death of a person receiving an allowance under Option 2, Option 3, or Option 4, the full amount of the Retirement Allowance covering the month in which he or she died shall be paid to his or her Beneficiary or, in the absence of a named Beneficiary then living, to his or her estate.

(g) For purposes of this Section, the term "actuarial equivalent" means two or more optional forms of distribution that have the same present value as determined using the actuarial assumptions approved from time to time by the Retirement Board upon the recommendation of the Retirement System's actuary for determining System liabilities and incorporated into this Section.

The actuarial assumptions are the following:

- (1) Rate of Return: ~~7.75% effective July 1, 2013 and 7.50% effective as of July 1, 2015; and 7.50% effective July 1, 2015 and 7.25% effective as of July 1, 2017~~7.00% effective July 1, 2019; and
- (2) Mortality Table:
 - (A) Service Retirement:
 - (i) Member: Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional improvement scale MP-2015, set forward two years for males weighted 75% and set forward one year for females and weighted 25%; and
 - (ii) Beneficiary: Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional improvement scale MP-2015, set forward two years for males and weighted 25% and set forward one year for females and weighted 75%; and
 - (B) Disability Retirement:
 - (i) Member: Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional improvement scale MP-2015, set forward nine years for males and weighted 75% and set forward nine years for females and weighted 25%; and
 - (ii) Beneficiary: Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional improvement scale MP-2015, set forward two years for males and weighted 25% and set forward one year for females and weighted 75%.

2. This Ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of EAST BAY MUNICIPAL UTILITY DISTRICT held on April 23, 2019, 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 May 14, 2019, at which time the same was finally adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel



AGENDA NO.
MEETING DATE

11.
April 23, 2019

TITLE 2019 WATER SUPPLY AVAILABILITY AND DEFICIENCY REPORT

☒ MOTION _____ ☐ RESOLUTION _____ ☐ ORDINANCE _____

RECOMMENDED ACTION

1. File the Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 - Water Supply Availability and Deficiency.
2. Declare the District's water supply is sufficient for meeting customer demands in 2019.

SUMMARY



The annual Water Supply Availability and Deficiency Report is prepared and submitted to the Board of Directors pursuant to Policy 9.03 – Water Supply Availability and Deficiency. The report evaluates the adequacy of the current year's (2019) water supply. In low water years, this annual report provides the basis for the Board's consideration of possible demand management and/or supplemental supply measures as part of the District's Drought Management Plan. In years of greater water supply, this report provides the basis for the Board's determination of additional availability of water for potential use by others.

For 2019, the end of September total system storage (TSS) is projected to be full, greater than 630 thousand acre-feet (TAF), resulting in the District's water supply being sufficient to meet customer demands in 2019. The 2019 assessment also concludes that projected runoff and water storage require designating "Normal and Above" water year type flows in the lower Mokelumne River under the District's Joint Settlement Agreement (JSA). This determination is based on the State of California Department of Water Resources' (DWR) April 1 Bulletin 120 Forecast. The Mokelumne River April 1 runoff forecast is 152 percent of average.

DISCUSSION

2019 Water Supply and Demand Assessment

Current year water supply availability is determined by forecasting the amount of water that will be stored in District reservoirs on September 30, which marks the end of the "water year." This forecast is a two-step calculation. First, the amount of TSS as of September 30 is determined by adding projected runoff amounts to existing storage levels. The second step is the subtraction of anticipated customer demands and the volume of water that must be released from the District's storage reservoirs to meet operating criteria and downstream obligations. These criteria and obligations include minimum flows for fishery requirements, use by senior water right holders,

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING Water and Natural Resources	DEPARTMENT MANAGER or DIRECTOR  Michael T. Tognolini	APPROVED  General Manager

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water requirements by other downstream interests, and water releases from terminal reservoirs to maintain reservoir levels within normal operating ranges. If the projected TSS on September 30, 2019 exceeds 500 TAF, the District's water supply is deemed sufficient to meet customer needs. If the projected TSS is less than 500 TAF, the District's water supply is deemed deficient.

The East Bay received a normal amount of rain in 2019. In Northern California, late-fall and winter storm systems dropped a generous amount of snow in the Sierra Nevada, which had been very dry through mid-November. The District's Mokelumne Basin snow reference location, Caples Lake, had a snow depth that was 114 inches (218 percent of average) as of April 9. The rainfall year total precipitation through April 9 in the Mokelumne watershed was 57.85 inches (137 percent of average) and the total precipitation in the East Bay was 24.45 inches (103 percent of average). The median unimpaired runoff projection is 1,135 TAF, which corresponds to a projected TSS of 630 TAF at the end of September.

The water year type is classified as "Normal and Above," based on DWR's April 1 Bulletin 120 Forecast for unimpaired runoff of 1,135 TAF into Pardee Reservoir. The "Normal and Above" condition will determine the requirements for the releases from Camanche Reservoir and the flow expected below Woodbridge Dam from April 1, 2019 through September 30, 2019, in accordance with the JSA year-type flow schedule.

The JSA requires additional releases from Camanche Reservoir of up to 200 cubic feet per second dependent upon combined Pardee and Camanche storage levels in "Normal and Above" year types. Storage levels will likely meet those thresholds this year, and these releases will be in addition to all other releases required to meet downstream obligations.

Based on current 2019 runoff projections for the remainder of the year, Woodbridge Irrigation District will receive its full base supply of 60,000 acre-feet (AF); Jackson Valley Irrigation District can receive its maximum entitlement of 3,850 AF, but direct diversion may not be available in all months. North San Joaquin Water Conservation District (NSJWCD), a junior water right holder, may receive up to 20,000 AF. Flood control releases continue as necessary to meet flood control obligations.

The JSA requires the District notify resource agencies of the availability of surplus water. There will be surplus water this year based on current projections.

State Regulations

EBMUD continues to comply with the State Water Resources Control Board (SWRCB) regulatory requirements for monthly reporting on water usage. There are no current drought water-use restrictions in effect.

DREAM Project

The Demonstration Recharge Extraction and Aquifer Management (DREAM) Project is a pilot conjunctive use groundwater replenishment project to enable banking of up to 1,000 AF of water. This project is a joint effort of the San Joaquin County (County), the NSJWCD, and the District.

In 2018, under approval from the SWRCB, EBMUD released 104 AF for instream flow benefits and for NSJWCD to divert and deliver to the DREAM Project. EBMUD is applying for a second temporary change petition from the SWRCB to transfer about 896 AF, the remainder of the 1,000 AF, to NSJWCD this year. Surplus water for the DREAM Project is likely available in 2019. However, runoff projections will continue to be updated and if confirmed to be sufficient, the District will begin deliveries this year.

Bayside Groundwater Project – Phase 1

This project is designed to recharge excess water in the East Bay Plain Groundwater Basin by injecting drinking water during wet years for later extraction during dry years. The District obtained a permit from the Regional Water Quality Control Board in 2007 to inject water into the aquifer. This permit remains current. The District also applied to the SWRCB's Division of Drinking Water (DDW) for the permit to extract and use the groundwater during drought conditions. The DDW has not approved the permit at this time.

In 2018, the District injected water for five days to test the groundwater aquifer's reaction. The test took place from October 9 to November 5, 2018, and a total of 8.34 million gallons were injected. The District may inject water into the Bayside aquifer later this year, depending on availability of water from San Leandro Creek.

Pulse Flow Operations

Pulse flows are intended to mimic the natural variability found in undammed rivers, and help cue fish migration. The District conducted multiple pulse flow releases in the fall of 2018. Each pulse resulted in an increase in salmon returning to the Mokelumne River.

Pulse flow timing for fall of 2019 will be coordinated with other fishery resource agencies and downstream Mokelumne River water users.

ITEM 12

GENERAL MANAGER'S
REPORT

WILL BE PROVIDED
AS AN ORAL REPORT

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: April 18, 2019

MEMO TO: Board of Directors

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

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Planning Committee Minutes – April 9, 2019

Chair Doug Linney called to order the Planning Committee at 8:45 a.m. in the Training Resource Center. Directors Lesa R. McIntosh and Frank Mellon were present at roll call. Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Director of Operations and Maintenance Clifford C. Chan, Manager of Maintenance and Construction/Water Operations David A. Briggs, Director of Wastewater Eileen M. White, Director of Water and Natural Resources Michael T. Tognolini, Manager of Security and Emergency Preparedness Steven G. Frew, Manager of Water Quality Susan M. Teefy, Manager of Regulatory Compliance David M. Woodard, Senior Civil Engineer Casey J. LeBlanc, Associate Civil Engineer Kingsley Kuang, Manager of Watershed and Recreation Kent W. Lambert, Manager of Watershed and Recreation Scott D. Hill, Special Assistant to the General Manager Kelly A. Zito, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Earthquake Preparedness. Manager of Security and Emergency Preparedness Steven G. Frew presented an update on the District's Emergency Preparedness Program and associated plans in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity. He reviewed the program's key performance indicators, the goals of the mutual assistance partnerships and agreements with Los Angeles Department of Power and Water and Las Vegas Valley Water District, and the status of the U.S. Geological Survey's HayWired Report. Volume three of the report, which discusses social and economic impacts of a magnitude 7.0 earthquake on the Hayward fault, is scheduled for release this year. As part of the program, staff will continue working with cities and counties to ensure their local hazard mitigation plans are accurate regarding EBMUD systems, explaining post-earthquake water system outages and recovery expectations, developing water points of distribution plans for after emergencies, and conducting emergency preparedness tours. The District will conduct a mutual assistance exercise April 29-30 and an Emergency Operations Team exercise in October. Additionally, staff will continue working with the California Governor's Office of Emergency Services on mutual assistance plans and providing input on guidelines for Federal Emergency Management Agency reimbursement for agencies that participate in mutual assistance exercises. Mr. Frew responded to Committee questions on the choice of the District's mutual assistance partners, the estimated time portions of the service area could be without water service after a 7.0 earthquake, and ways the Board can help inform city and county elected officials about post-earthquake water system recovery expectations.

Water Quality Program Annual Update – 2018. Manager of Water Quality Susan M. Teefy reported the District met all federal and state drinking water standards and met 97 percent of the District's internal water quality goals for calendar year 2018. The District exceeded its internal goals for total trihalomethanes (TTHMs), five haloacetic acids (HAA5), n-nitrosodimethylamine and filter effluent turbidity. Ms. Teefy reviewed the District's goals for disinfection byproducts and filter

effluent turbidity and explained the complexity in balancing operations to simultaneously meet all water quality regulations. The District's Water Quality Committee is currently reviewing new information and regulatory changes to ensure water quality goals reflect the current understanding of public health concerns and better balance risks. This review is expected to result in several modified goals. She provided an overview of data on the District's four lead monitoring and control programs and reported all of the mandatory public schools (including preschools and charter schools) have been sampled, well ahead of the regulatory deadline of July 1, 2019. The District continues to inventory and replace any lead service laterals identified in the distribution system. Pursuant to state law, the lead component inventory and corresponding abatement plan will be completed by July 1, 2020. There were no major taste and odor incidents and no algal toxins detected in the District's raw water reservoirs during this time period. In conclusion, she discussed the State Water Resources Control Board's two new notification levels for Perfluorooctanoic acid and Perfluorooctanesulfonic acid and the District's conjunctive use groundwater project with the North San Joaquin Water Conservation District.

Regulatory Compliance Semi-Annual Report – September 2018 through March 2019.

Manager of Regulatory Compliance David M. Woodard provided an overview of the major regulatory activities and issues during the reporting period. He highlighted details of the National Pollutant Discharge Elimination System permit and Waste Discharge Requirement issues; two settlements for air permit violations at the Main Wastewater Treatment Plant; the potable water discharge incident at San Ramon Creek; the status of discussions with the Regional Water Quality Control Board regarding the 2017 Orinda Water Treatment Plant chlorinated water discharge; a complaint notice from Cal OSHA; and the District's Lost Time Injury Rate as of February 2019. The District conducted four public meetings on the Integrated Pest Management Program in January and annual training for staff in March. Key upcoming activities include finalizing a settlement agreement for the 2017 Orinda Water Treatment Plant incident; completing the Enhanced Compliance Action as part of the final settlement agreement related to three water main breaks in late 2015 and early 2016; and preparing a report for the San Francisco Regional Water Quality Control Board regarding the District's water main maintenance and rehabilitation initiatives and incident response field protocols.

Advanced Metering Infrastructure (AMI) Water-Energy Nexus Study Update. Senior Civil Engineer Casey J. LeBlanc presented an update on the District's Phase I AMI project which includes two studies with \$1.25 million in grants from the United States Bureau of Reclamation and the Pacific Gas and Electric Company. The studies, which will be conducted for one year, will quantify the water and energy savings for customers that receive more real-time water consumption data from an AMI system. The project includes 13,000 customer accounts distributed throughout the service area. Mr. Le Blanc discussed community outreach regarding the AMI collector construction and said a contractor completed construction of five collectors (i.e., poles and antennas) in January 2019. Staff completed installation of the AMI transmitters in February 2019. Project operations are scheduled to start in July 2019. He displayed a sample of the customer AMI portal and said following testing of the system and one year of operation, the District and a consultant will evaluate the business case for a District-wide AMI project. Mr. Le Blanc responded to Committee questions regarding the community outreach conducted for the AMI collector construction and the status of previous AMI pilots conducted by the District including the pilot in Blackhawk.

South Interceptor 3rd Street Rehabilitation Phase 2 Project. Associate Civil Engineer Kingsley Kuang presented an update on the project which is a phased rehabilitation program to extend the service life of the District's 105-inch diameter concrete pipeline that conveys over 60 percent of wastewater flows along 3rd Street in Oakland to the District's Main Wastewater Treatment Plant. The interceptor is nearing 70 years in continuous service. Construction is progressing and Mr. Kuang explained the plan was to install four jacking pits (used for sliplining); however, the contractor devised a way to eliminate installing one pit in a residential area which helped reduce community impacts and the amount of heavy construction along 3rd Street. He reviewed the mitigations in place to address traffic and noise impacts, community outreach methods implemented by staff including door hangers, notification mailers, phone calls, and in-person meetings, and the community feedback received thus far. Staff will continue engaging in community outreach efforts and collaborating with the contractor and community stakeholders to address neighborhood impacts as they arise. Construction is scheduled to be completed by September 2020.

Annual Recreation Report – 2018. Managers of Watershed and Recreation Kent W. Lambert and Scott D. Hill provided an update on recreation activities in and key performance indicators (KPIs) for the District's Mokelumne and East Bay watersheds. Mr. Lambert reported that total Mokelumne Recreation visitation was 625,898, a 22 percent decrease from 2017, while revenues at recreation areas increased by approximately \$620,000. KPIs for the Mokelumne Recreation area were met for eleven of the twelve benchmarks tracked. He discussed the results of visitor surveys and the completed projects and programs including implementation of various integrated pest management strategies and repairs at the Camanche South Shore Marina. The Maintenance Capital Improvement Fund saw an increase in 2018 due to a combination of new concessionaire contract terms, high reservoir levels and record revenues. The fund is used to help pay for vital recreation-related projects. In 2019 efforts in the Mokelumne Recreation area will focus on completing paving in the Camanche Recreation areas and installing a new entrance gate at Camanche North Shore. Next, Mr. Hill reported in 2018, visitation at the Lafayette and San Pablo Recreation facilities increased by seven percent each from 2017, while the watershed trail system saw a 36 percent increase. He explained cost recovery levels declined at Lafayette Recreation area due to several capital improvement projects and remained the same at San Pablo. He discussed the results of customer satisfaction surveys and completed projects. At Lafayette Reservoir, three miles of walking trail was resurfaced, interactive signage was updated, the play structure was refurbished, a new parking control system was implemented, the rental boat fleet was upgraded and the recreation area has been designated smoke-free. In 2019, efforts in the East Bay will focus on completing the replacement of the aged force sewer main and upgrading the self-contained restroom facilities at Lafayette Reservoir; upgrading picnic areas and group sites at San Pablo Recreation area; and completing the new trail map and installing upgraded signage at staging areas and trail heads. The Committee thanked staff for their work and the report.

- The following document was filed with the Committee: 1) Report entitled "East Bay Municipal Utility District Mokelumne Area Recreation 2018 Annual Report Presented to the Camanche Regional Park Advisory Board at its March 2019 regular meeting."

Adjournment. Chair Linney adjourned the meeting at 10:26 a.m.

ARC/RSC

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: April 18, 2019

MEMO TO: Board of Directors

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

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Legislative/Human Resources Committee Minutes – April 9, 2019

Chair John A. Coleman called to order the Legislative/Human Resources Committee at 10:28 a.m. in the Training Resource Center. Directors Lesa R. McIntosh and William B. Patterson were present at roll call. Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Legislative Affairs Marlaigne K. Dumaine, Director of Engineering and Construction Xavier J. Irias, Special Assistant to the General Manager Kelly A. Zito, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Legislative Update. Manager of Legislative Affairs Marlaigne K. Dumaine summarized the bills in Legislative Report No. 02-19 and responded to Committee questions regarding SB 332 (Hertzberg) Wastewater Treatment: Recycled Water. Ms. Dumaine reported SB 332 is intended to increase the amount of wastewater that is recycled by essentially eliminating wastewater discharges to saline waters, and requiring that the flow of wastewater that would otherwise be discharged to saline water be recycled or reduced through water conservation and efficiency measures. If passed, the bill would require the District to essentially recycle all wastewater treated at the Main Wastewater Treatment Plant and to work with other wastewater facilities that discharge in EBMUD's drinking water service area to recycle their treated wastewater for use in the District's service area. She discussed additional, potential operational and financial impacts to the District and said staff is communicating with the bill author about the District's concerns. It was moved by Director McIntosh, seconded by Director Patterson and unanimously carried (3-0) to forward the staff recommendations for the legislative report to the full Board.

Electrical Engineer Recruitment and Retention Efforts. Director of Engineering and Construction Xavier J. Irias presented an update on staffing and retention trends for Electrical Engineers District-wide. He reported that a number of initiatives have been implemented and additional alternatives are being considered to support ongoing recruitment and retention efforts. He reviewed current initiatives to enhance overall retention of engineers at the District including a strong career ladder, an internal rotation program, cross-division collaboration, and significant technical training; recruitment trends for the Electrical Engineer classification; and plans to address Electrical Engineer retention challenges in the Wastewater Department. He reported the District will continue working on improving recruitment and development and will explore implementing the additional alternatives discussed. Mr. Irias responded to Committee questions regarding professional engineering licensing requirements,

exit interviews for engineers leaving the District, and current overtime rates for Electrical Engineers. It was moved by Director McIntosh, seconded by Director Patterson and unanimously carried (3-0) to accept the staff update.

Adjournment. Chairman Coleman adjourned the meeting at 10:58 a.m.

ARC/RSC

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