



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

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**AGENDA  
REGULAR CLOSED SESSION**

**Tuesday, April 26, 2022**

**11:00 a.m.**

**Boardroom**

**375 11<sup>th</sup> Street**

**Oakland, CA 94607**

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

**ROLL CALL:**

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

**ANNOUNCEMENT OF CLOSED SESSION AGENDA:**

1. Existing litigation pursuant to Government Code section 54956.9(a):
  - a. *Maxwell Hampton v. East Bay Municipal Utility District, et al.*  
Alameda County Superior Court, Case No. RG21102437
2. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2): one matter.
3. Initiation of litigation pursuant to Government Code section 54956.9(d)(4): one matter.

***(The Board will discuss Closed Session agenda items in the Training Resource Center)***

## **REGULAR BUSINESS MEETING**

**1:15 p.m., Boardroom**

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

### **ROLL CALL:**

### **BOARD OF DIRECTORS:**

- Pledge of Allegiance

### **PRESENTATION**

- Secretary of the District Rischa S. Cole's 25 Years of Service Award

### **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.)

1. Approve the Regular Meeting minutes of April 12, 2022.
2. File correspondence with the Board.
3. Award a contract to the lowest responsive/responsible bidder, Airgas USA LLC, for supplying liquid oxygen and maintenance and repair services for the Hypolimnetic Oxygenation System at the District's Upper San Leandro Reservoir for three years, beginning on or after April 26, 2022 with two options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$800,000 under Request for Quotation No. 2106.
4. Award a contract to the lowest responsive/responsible bidder, Imperial Pipe Services, Inc., for supplying fusion bonded epoxy lined and plastic-coated standard weight steel pipe, beginning on or after April 26, 2022 for a total cost, after the addition of taxes, not to exceed \$1,610,422 under Request for Quotation No. 2209.
5. Authorize agreements with Carollo Engineers, Inc., CDM Smith Inc., and Kennedy/Jenks Consultants, Inc. beginning on or after April 26, 2022 for three years with two options to renew for additional one-year terms, for a total aggregate not-to-exceed cost of \$2,000,000 for as-needed services for operations and maintenance documentation development for capital projects.
6. Authorize an additional amount of \$400,000, to a total amount not to exceed \$1,300,000, to the agreement authorized under Board Resolution No. 35171-20 with Axiom Medical Consulting, LLC, for COVID-19 contact tracing services, employee interviews, return to work clearance, and recordkeeping for COVID-19 positive employees.
7. Authorize payment in the amount of \$110,000 to SRM Marina Investors LLC (SRM) for the acquisition of a permanent pipeline easement for the Oakland Inner Harbor Pipeline Crossing and coverage of up to \$200,000 for losses in rental income experienced by SRM, if any, caused by construction impacts.
8. Approve the March 2022 Monthly Investment Transactions Report.

**DETERMINATION AND DISCUSSION:**

9. Take actions related to the issuance of EBMUD Water and Wastewater Systems' Series 2022A and 2022B revenue bonds. (Resolutions)
  - 9.1. Authorize and approve the issuance of Water System Revenue Bonds, Series 2022A and 2022B in an aggregate principal amount not to exceed \$400 million, and approve the form and authorize the execution of certain documents, including a Supplemental Indenture, in connection with the issuance, securing and sale of such bonds.
  - 9.2. Authorize and approve the issuance of Wastewater System Revenue Bonds, Series 2022A and 2022B in an aggregate principal amount not to exceed \$45 million, and approve the form and authorize the execution of certain documents, including a Supplemental Indenture, in connection with the issuance, securing and sale of such bonds.
10. File the 2022 Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 – Water Supply Availability and Deficiency, and declare the District's water supply is deficient for meeting customer demands in 2022.

**PUBLIC HEARING:**

11. Conduct a public hearing on the proposed actions listed under Item 12, including declaration of a water shortage emergency, adoption of Section 28 of the District's Regulations Governing Water Service to Customers, declaration of a Stage 2 Drought and a mandatory District-wide water use reduction goal of 15 percent, affirming immediate implementation of the Excessive Water Use Penalty Ordinance, and directing the preparation of a Water Shortage Emergency Action Plan.

**DETERMINATION AND DISCUSSION: (continued)**

12. Adopt a resolution taking certain actions in response to current drought water supply conditions and making necessary findings. (Resolution)
  - 12.1. Declare a water shortage emergency within the District's service area.
  - 12.2. Declare a Stage 2 Drought and declare a mandatory District-wide water use reduction goal of 15 percent in accordance with the District's Water Shortage Contingency Plan.
  - 12.3. Adopt Section 28, "Water Use During Water Shortage Emergency Condition," of the District's Regulations Governing Water Service to Customers, which defines and imposes temporary water use prohibitions and restrictions and enforcement provisions that will be effective April 26, 2022 and remain in effect until Section 28 is either revised based on changed circumstances or rescinded when the water shortage emergency is declared over.
  - 12.4. Affirm the immediate implementation of the District's Excessive Water Use Penalty Ordinance (Ordinance No. 373-21).
  - 12.5. Direct staff to develop a Water Shortage Emergency Action Plan for consideration at an upcoming Board meeting.

**DETERMINATION AND DISCUSSION: (continued)**

13. Consideration of Stage 2 Drought Surcharge.
14. General Manager's Report:
  - Coronavirus Update

**REPORTS AND DIRECTOR COMMENTS:**

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

**ADJOURNMENT:**

***The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, May 10, 2022.***

**Disability Notice**

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

**Document Availability**

*Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11<sup>th</sup> Street, Oakland, California, during normal business hours, and can be viewed on our website at [www.ebmud.com](http://www.ebmud.com).*

## BOARD CALENDAR

*Meeting dates, times, and locations are subject to change*

Date	Meeting	Time/Location	Topics
Tuesday, April 26	Sustainability/Energy Committee	9:00 a.m. Boardroom	<ul style="list-style-type: none"> <li>Main Wastewater Treatment Plant Workplace Electric Vehicle Charging Pilot Results</li> <li>Green Fleet Roadmap</li> <li>Annual Integrated Pest Management Update</li> </ul>
	Finance/Administration Committee	10:00 a.m. Boardroom	<ul style="list-style-type: none"> <li>Customer Assistance Program Funding</li> <li>Monthly Investment Transactions Report</li> <li>Quarterly Financial Reports</li> <li>EBMUD Series 2022A and 2022B Water System Revenue Bonds</li> <li>EBMUD Series 2022A and 2022B Wastewater System Revenue Bonds</li> <li>Fiscal Year 2022 Semi-Annual Budget Performance Report</li> </ul>
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	<ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>
Tuesday, May 10	Planning Committee	TBD Boardroom	
	Legislative/Human Resources Committee	TBD Boardroom	
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	<ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>
Tuesday, May 24	Finance/Administration Committee	TBD Boardroom	
	Fiscal Year 2023 Mid-Cycle Budget Workshop	TBD Boardroom	
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	<ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>

### 2022 Board Committee Members

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

## Closed Session and Regular Business Meetings

**Tuesday, April 26, 2022**

**11:00 a.m. and 1:15 p.m.**

*EBMUD public Board meetings will be conducted in person in the Boardroom and via Zoom.*

*These meetings are recorded, live-streamed, and posted on the District's website.*

### In Person

- In accordance with county health guidance and Cal/OSHA requirements, a completed COVID-19 symptoms checklist will be required before entering the building.
- In accordance with District safety protocols, masks are required while in the building and Boardroom regardless of vaccination status.

### Online\*

<https://ebmud.zoom.us/j/97065086667?pwd=eUdZSGh5SG82akZiRDF2UDg2b0lyUT09>

Webinar ID: 970 6508 6667

Passcode: 238500

### By Phone\*

Telephone: 1 669 900 6833

Webinar ID: 970 6508 6667

Passcode: 238500

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

\*To familiarize yourself with Zoom, please visit <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

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

- Each speaker is allotted 3 minutes to speak; the Board President has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

### In person

- Fill out and submit a blue speaker card which is available in the foyer of the Boardroom

### Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment  
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
- If you participate by phone, press \*9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

### Submitting written comments or materials

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

## **MINUTES**

**Tuesday, April 12, 2022  
East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

Directors John A. Coleman (remote), Andy Katz, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Lesa R. McIntosh was absent (excused).

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Attorney III Felicity L. Grisham (Item 1a); Meyers Nave Attorneys Camille Hamilton Pating and Janice Brown (Item 1a); Assistant General Counsel Jon Salmon (Item 2, first matter); Director of Wastewater Eileen M. White (Item 2, first matter); Assistant General Counsel Fred Etheridge (Item 2, second matter); Director of Water and Natural Resources Michael T. Tognolini (Item 2, second matter); Environmental Affairs Officer Jose D. Setka (Item 2, second matter); and Engineering Manager Lena L. Tam (Item 2, second matter).

General Counsel Derek T. McDonald was not present for Item 1a.

### **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Joey D. Smith, President, AFSCME Local 2019, congratulated the cohort participants highlighted during the April 12, 2022 Legislative/Human Resources Committee meeting and commented on labor contract negotiations; 2) Ivette Rivera, EBMUD ratepayer, commented on the ABC 7 News story on the Ayriel Bland and Saji Pierce lawsuit; and 3) George Cleveland, Chief Steward, AFSCME Local 2019, commented on personnel matters involving a current and a former Local 2019 member.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

President Linney announced the closed session agenda and the Board convened to the Administration Building Training Resource Center for discussion.

### **Regular Business Meeting**

At 12:40 p.m., General Manager Clifford C. Chan informed Secretary of the District Rischa S. Cole that due to an extended Closed Session Meeting, the Regular Business Meeting would start at 1:30 p.m. President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:36 p.m. in the Administration Building Boardroom.

## **ROLL CALL**

Directors John A. Coleman (remote), Andy Katz, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Lesa R. McIntosh was absent (excused).

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

## **BOARD OF DIRECTORS**

President Linney led the Pledge of Allegiance.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Ivette Rivera, EBMUD ratepayer, commented on the ABC 7 News story on the Ayriel Bland and Saji Pierce lawsuit; 2) Nick Lawrence commented on a dangerous condition on public property on Tappan Terrace in Orinda; 3) George Cleveland, Chief Steward, AFSCME Local 2019, commented on represented employees that retired prior to adoption of the Local 2019 MOU being ineligible to receive the one-time, \$1,000 pandemic compensation provided in the MOU; 4) Hank Leonardo, employee, asked the Board to consider removing the District's masking and COVID-19 testing mandates; and 5) Kasie Evans expressed support for Local 444's request at today's Planning Committee meeting for the Board to consider adding staff for a paving crew.

## **CONSENT CALENDAR**

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Items 1-10 on the Consent Calendar carried (6-0) by the following roll call vote: AYES (Coleman, Katz, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (McIntosh).
1. **Motion No. 064-22** – Approved the Special Meeting and Regular Meeting Minutes for March 22, 2022.
  2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Coronavirus Update," dated April 12, 2022; **2)** Presentation entitled, "Drought Update," dated April 12, 2022; **3)** Presentation entitled, "Emergency Declaration for the Repair of the South Interceptor," dated April 12, 2022; **4)** Presentation entitled, "Water Supply Update," dated April 12, 2022; **5)** Presentation entitled, "Yuba Water Agency Water Transfers (Spring & Summer)," dated April 12, 2022; and **6)** Speakers Bureau and Outreach Record for CY22 dated April 7, 2022.
  3. **Motion No. 065-22** – Awarded a contract to the lowest responsive/responsible bidder, Carahsoft, for supplying software licenses and support for Atlassian Jira issue tracking software, including Fisheye and Security Assertion Markup Language add-on modules beginning on or after April 18, 2022 for one year and 10 months for a total cost, after the addition of taxes, not to exceed \$47,000.

4. **Motion No. 066-22** – Awarded a contract to the lowest responsive/responsible bidder Chemtrade Chemicals US LLC, for supplying liquid polyaluminum chloride to various District water treatment plants for two years, beginning on or after April 12, 2022 with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$1,312,500 under Request for Quotation No. 2206.
5. **Motion No. 067-22** – Awarded a sole source contract to YSI, Inc. for supplying a water quality sampling and profiling system (autoprofiler) for use at the Pardee Reservoir Outlet Tower, beginning on or after April 12, 2022 for a total cost, after the addition of taxes, not to exceed \$120,000.
6. **Motion No. 068-22** – Authorized agreements with Arcadis U.S., Inc., Cadworks Inc., CDM Smith Inc., Geosyntec Consultants, Inc., and GeoWing Mapping, Inc. beginning on or after April 12, 2022 for one year with an option to renew for an additional one-year period, in an aggregate amount, including the optional year, not to exceed \$2,000,000 for as-needed computer aided drafting services.
7. **Motion No. 069-22** – Authorized an agreement beginning on or after April 12, 2022 with Peralta Community College District in an amount not to exceed \$113,072 for tuition, student support services, and materials required for the District's Cohort Learning Program during the period August 2022 to June 2024.
8. **Motion No. 070-22** – Authorized the Office of General Counsel to continue the employment of the law firm of Apex Employment Law, LLP, for specialized legal services related to public sector labor and employment law and litigation matters in an additional amount not to exceed \$125,000.
9. **Resolution No. 35279-22** – Fixing the Boundaries of the Wards for the Purpose of Electing Directors Therefrom.
10. **Resolution No. 35280-22** – Adopting a Proclamation in Recognition of the Sesquicentennial Celebration of the City of San Leandro.
  - Director Mellon commented an EBMUD Board member should present the resolution to the City of San Leandro. President Linney and Director Mellon will work with staff to schedule the presentation.

## **DETERMINATION AND DISCUSSION**

### **11. Appointment of Manager of Security and Emergency Preparedness.**

General Manager Clifford C. Chan announced David M. Cook as the candidate for appointment to the position of Manager of Security and Emergency Preparedness and summarized Mr. Cook's education and previous experience.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Item 11 carried (6-0) by the following roll call vote: AYES (Coleman, Katz, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (McIntosh).

**Resolution No. 35281-22** – Appointing David M. Cook as Manager of Security and Emergency Preparedness (*effective April 25, 2022*).

The Board welcomed Mr. Cook who thanked the Board for the opportunity to serve the District.

**12. Appointment of Assistant Attorney.**

General Counsel Derek T. McDonald announced George Croton as the candidate for appointment to the position of Assistant Attorney, with the title Attorney II, in the Office of the General Counsel and summarized Mr. Croton's education and previous experience.

- Motion by Director Coleman, seconded by Director Katz to approve the recommended actions for Item 12 carried (6-0) by the following roll call vote: AYES (Coleman, Katz, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (McIntosh).

**Resolution No. 35282-22** – Appointing George Croton to the position of Assistant Attorney of the District with the Title of Attorney II (*effective May 9, 2022*).

The Board welcomed Mr. Croton who thanked the Board for the opportunity to serve the District.

**13a-13c. Approve the 2021-2025 Memorandum of Understanding (MOU) and other special agreements between the District and American Federation of State, County, and Municipal Employees Local 2019 (Local 2019); approve revisions to District salary schedules; and amend all existing Civil Service Rules, Policy Statements and Procedures, and other pertinent resolutions to conform to revisions contained in the MOU and in the resolution.**

General Manager Clifford C. Chan announced the recommended actions and noted the draft MOU provided in the agenda materials did not include the day-after-Christmas in the list of observed holidays. The MOU will be updated to include this information and to correct minor spelling errors. The Board is being asked to approve the recommended actions with the revisions as noted.

Direct Mellon requested that the Board vote on Items 13a-13c as separate items.

Staff responded to questions from the Board regarding the one-time, \$1,000 pandemic compensation provided in the Local 2019 MOU; whether the issue regarding retired staff being eligible to receive the compensation was raised during negotiations; whether there is an opportunity to make the compensation retroactive; and the number of employees that have separated from the District from April 26, 2021 to date. Staff will provide information on the number employees who have separated from the District between April 26, 2021 to date.

- Addressing the Board were the following: 1) Gary Walters, II, former member of the Local 2019 negotiating team, commented on a Local 2019 request for information regarding the District's pre-PEPRA and PEPRA pension plans; 12-hour shift language in the proposed Local 2019 MOU; the District's negotiations strategies; and commitment to the success of the District's Diversity, Equity, and Inclusion Strategic Plan; 2) Joey D. Smith, President, AFSCME Local 2019, expressed appreciation for the PEPRA language included in the Local 2019 MOU; thanked the Local 2019 negotiations team and members for their support; thanked the Board and

the General Manager for addressing Local 2019's concerns; and asked the Board to consider establishing an Ad Hoc Committee during future labor contract negotiations; and 3) Brandon Batteate, former member of Local 444's negotiating team, commented that during negotiations, Local 444 proposed that the one-time, \$1,000 pandemic compensation be retroactive.

- Motion by Director Young, seconded by Director Katz to approve the recommended actions for Item 13a carried (5-1) by the following roll call vote: AYES (Coleman, Katz, Patterson, Young, and Linney); NOES (None); ABSTAIN (Mellon); ABSENT (McIntosh).
- Motion by Director Mellon, seconded by Director Young to approve the recommended actions for Item 13b carried (6-0) by the following roll call vote: AYES (Coleman, Katz, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (McIntosh).
  - Director Mellon asked and staff confirmed that revisions to holidays observed in the Local 2019 MOU would be applicable under Item 13c. Director Mellon voiced concern with the District adding Juneteenth as a paid holiday while observing holidays honoring presidents who were either slaveholders or segregationists.
- Motion by Director Katz, seconded by Director Patterson to approve the recommended actions for Item 13c carried (5-1) by the following roll call vote: AYES (Coleman, Katz, Patterson, Young, and Linney); NOES (None); ABSTAIN (Mellon); ABSENT (McIntosh).

**Resolution No. 35283-22** - Approve Implementation of the 2021-2025 Memorandum of Understanding and Other Special Agreements With American Federation of State, County and Municipal Employees, Local 2019.

14. **Water Supply Update.**

Director of Operations and Maintenance David A. Briggs provided the update. The District completed its transfer of 31,916 acre-feet (AF) of its 33,250 AF of 2021 Central Valley Project (CVP) allocation on March 31, 2022 and transferred 2,000 AF of water purchased from Contra Costa Water District. The District's 2022 CVP allocation has been limited to public health and safety which means the District will likely not receive any CVP water this year. Mr. Briggs reviewed gross water production; Mokelumne and East Bay precipitation through April 6; the historical average and Water Year 2022 snow depth for Caples Lake noting the Sierra snowpack has been decreasing since the beginning of the year; results from the April 1 snow survey and data on average levels of snow water content in the Mokelumne Basin from 2000 to 2022; changes in snow water content in the Sierras and the State; and current versus average storage levels in the State's reservoirs compared to the District's reservoirs' total system storage as of April 6 which was 546,660 AF (87 percent of average and 71 percent of capacity). Based on current conditions and pending the Department of Water Resource's April 1 Bulletin 120, the District's Joint Settlement Agreement year type is projected to be "dry" for the period April 2022 through September 2022. He discussed water supply projections including dry year precipitation comparisons from January through June during the period 1985 to 2022; Mokelumne precipitation for Rainfall Year 2022; and the District's total system storage for Water Year 2022. Staff responded to Board questions about projections and plans for water transfers if conditions remain the same in 2023; groundwater levels in the watershed this year compared to last year; and the Hetch Hetchy Reservoir water supply. The Board asked staff to include information on the San

Francisco Public Utilities Commission in future updates that include the graph on Northern California water supply.

15. **2022 Drought Update.**

Director of Operations and Maintenance David A. Briggs recapped diversion information provided in the Water Supply Update and restated the U.S. Bureau of Reclamation (USBR) reduced the District's 2022 CVP allocation to public health and safety levels. Negotiations regarding transfer supplies are ongoing. Manager of Water Supply Linda H. Hu highlighted proposed water transfers from Yuba Water Agency which the Board will be asked to consider authorizing under agenda Items 16.1a-16.2b. At its May 10, 2022 meeting, the Board will be asked to consider authorizing water transfers of 10,000 AF to 20,000 AF from Placer County Water Agency. Senior Civil Engineer Ana R. Ulloa provided an update on state and federal activities. On March 28, 2022, the governor called on local water agencies to implement more aggressive water conservation measures and on March 31, the USBR announced CVP water allocations for CVP contractors, including the District. Ms. Ulloa compared the State's water shortage stages with the District's drought stages noting the District's drought response actions initiated during a Stage 1 Drought corresponds to the State's water shortage level 5. The State Water Resources Control Board has issued curtailment orders which have not impacted users on the Mokelumne River to date. The District continues to track and report water savings to the State. While customer conservation efforts met or exceeded the 10 percent voluntary reduction in water use as requested after the District declared a Stage 1 Drought in April 2021, water use has begun to rebound in dry months. Senior Public Information Representative Andrea A. Pook provided an update on customer and media outreach efforts about the State's and the District's drought activities. The May/June *Customer Pipeline* will focus on drought and customer conservation. Staff will meet with public information officers from other local agencies to discuss opportunities for shared messaging regarding water conservation. Manager of Water and Natural Resources Michael T. Tognolini provided next steps in drought planning efforts including potential water purchases, filing the Water Supply Availability and Deficiency Report, and proposed actions in response to drought conditions.

The Board asked questions about the data and graphic on presentation slide 4; how the District's water shortage stages correlate with its total system storage and the State's water shortage levels; increases in industrial water use since the start of the pandemic; the ability to adjust the *Customer Pipeline* printing and distribution schedule to capture actions taken by the Board on April 26; and potential curtailment orders. Staff was asked to provide information on water transfer options for calendar year 2023; five years of data on water sales (consumption) for single-family, multi-family, and commercial, industrial, or institutional customers; and to quantify the impact of CVP allocations, potential water transfers, and customer water reduction as part of the District's drought determination. The Board also asked staff to explore options for updating customers, as appropriate, on actions taken by the District after the April 26 Board meeting.

- 16.1a- **Authorize the General Manager to take the following actions related to the purchase of water**  
16.2b. **from Yuba Water Agency (YWA) available between April 12, 2022 and June 30, 2022 (Spring Water) in accordance with the January 27, 2022 Temporary Water Transfer Option Agreement between Contra Costa Water District (CCWD), the District, and YWA approved by Board Motion No. 016-22 (Option Agreement): A) Exercise the District's option to purchase up to 10,000 acre-feet (AF) of Spring Water from YWA for an amount not to**

**exceed \$5,000,000; B) Reimburse CCWD's costs to divert, convey, store, and return the purchased Spring Water in Los Vaqueros Reservoir specified in the Option Agreement in an amount not to exceed \$1,890,000; and C) Negotiate and execute any forbearance or exchange agreements with CCWD and the U.S. Bureau of Reclamation (Reclamation) necessary to deliver to the District's service area the Spring Water stored in Los Vaqueros Reservoir, or an equal quantity of water available to CCWD under its Central Valley Project (CVP) contract with Reclamation; and authorize the General Manager to take the following actions related to the purchase of water from YWA available between July 1, 2022 and November 30, 2022 (Summer Water) in accordance with the Option Agreement: a) Exercise the District's option to purchase up to 10,000 AF of Summer Water from YWA for an amount not to exceed \$6,000,000 and divert the water at the Freeport Regional Water Facility; and b) Negotiate and execute a companion Warren Act contract with Reclamation to set forth the terms and conditions of the District's use of the Folsom South Canal to deliver Summer Water to the District in 2022 and reimburse Reclamation's fees and costs arising from the conveyance of Summer Water in an amount not to exceed \$450,000.**

Senior Civil Engineer Hasan M. Abdullah presented the information. On January 11, 2022 the Board approved a one-year water transfer agreement with EBMUD, YWA and CCWD which allows the District to purchase Spring or Summer Water from YWA under the Yuba Accord. Under this agreement, YWA may offer up to 15,000 AF or more in spring 2022 and offer up to 10,000 AF in summer 2022 to CCWD and the District to the extent that water is available under the Yuba Accord for an out-of-basin transfer in 2022. CCWD would have first priority to purchase up to 15,000 AF in the spring and the District would have first priority to purchase 10,000 AF in the summer. The District and CCWD can purchase water offered by YWA and declined by the other. The Spring Water would be diverted at CCWD intakes and stored in Los Vaqueros Reservoir for later return to the District. The District cannot divert the Spring Water at the Freeport Intake because there is not sufficient time to receive a Warren Act contract from Reclamation needed to use the Folsom South Canal for conveying non-CVP water. The District is working with Reclamation to secure a Warren Act contract for the Summer Water transfer to be diverted at Freeport. Mr. Abdullah provided additional detail on the YWA Spring Water transfer including purchase, diversion and storage options, and approvals needed from the USBR for a CVP exchange with CCWD. If the USBR does not approve the CVP exchange, the option agreement between CCWD, EBMUD, and YWA requires that CCWD and EBMUD make all reasonable efforts to return the stored Spring Water to EBMUD or re-market it to another agency by June 30, 2024. This deadline is to accommodate the draining of Los Vaqueros Reservoir for the Los Vaqueros Expansion project. Revenue received from re-marketing the Spring Water to another agency will be sent to EBMUD, less CCWD's remarketing-related costs, and is not to exceed the amount the District originally paid for the water. If water is not delivered to the District or remarketed to another agency prior to the June 30, 2024 date, CCWD will use the remaining stored water and refund EBMUD CCWD's associated avoided cost. Mr. Abdullah also highlighted the proposed plan to transfer up to 20,000 AF of Placer County Water Agency (PCWA) water in the summer. The Board will be asked to consider authorizing the PCWA transfer at its meeting on May 10, 2022.

- Director Mellon left the meeting at 3:00 p.m. and returned and 3:08 p.m.

There was considerable Board discussion about the information presented including additional options for transferring the Spring Water from Los Vaqueros Reservoir to the District. The Board asked staff to evaluate the feasibility of transferring the Spring Water through the CCWD/EBMUD intertie.

- Motion by Director Katz, seconded by Director Patterson to approve the recommended actions for Items 16.1a-16.2b carried (6-0) by the following roll call vote: AYES (Coleman, Katz, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (McIntosh).

**Motion No. 071-22** – Authorized the General Manager to take the following actions related to the purchase of water from Yuba Water Agency (YWA) available between April 12, 2022 and June 30, 2022 (Spring Water) in accordance with the January 27, 2022 Temporary Water Transfer Option Agreement between Contra Costa Water District (CCWD), the District, and YWA approved by Board Motion No. 016-22 (Option Agreement): a. Exercise the District's option to purchase up to 10,000 acre-feet of Spring Water from YWA for an amount not to exceed \$5,000,000; b. Reimburse CCWD's costs to divert, convey, store, and return the purchased Spring Water in Los Vaqueros Reservoir specified in the Option Agreement in an amount not to exceed \$1,890,000; and c. Negotiate and execute any forbearance or exchange agreements with CCWD and the U.S. Bureau of Reclamation (Reclamation) necessary to deliver to the District's service area the Spring Water stored in Los Vaqueros Reservoir, or an equal quantity of water available to CCWD under its Central Valley Project contract with Reclamation.

**Motion No. 072-22** – Authorized the General Manager to take the following actions related to the purchase of water from YWA available between July 1, 2022 and November 30, 2022 (Summer Water) in accordance with the Option Agreement: a. Exercise the District's option to purchase up to 10,000 acre-feet of Summer Water from YWA for an amount not to exceed \$6,000,000 and divert the water at the Freeport Regional Water Facility; and b. Negotiate and execute a companion Warren Act contract with Reclamation to set forth the terms and conditions of the District's use of the Folsom South Canal to deliver Summer Water to the District in 2022 and reimburse Reclamation's fees and costs arising from the conveyance of Summer Water in an amount not to exceed \$450,000.

- 17.1- **Ratify the General Manager's March 30, 2022 declaration of a District emergency in**  
17.2. **accordance with Policy 7.03 – Emergency Preparedness/Business Continuity because of a catastrophic failure of a portion of the District's South Interceptor; and authorize expenditure of sums as needed in response to such emergency.**

Director of Wastewater Eileen M. White provided the presentation. On March 28, 2022 a contractor informed the District a portion of the 66-inch South Interceptor near the intersection of Kennedy Street and Dennison Street in Oakland had collapsed and formed a sinkhole. No regulatory violations resulted from the incident. Ms. White reviewed the incident location and photos of the damage. Rehabilitation work on the interceptor was already planned under the Special Structures Rehabilitation Project for summer 2022; however, the planned project cannot be accelerated because of the time it will take to obtain permits, materials, and equipment. On March 30, 2022, the General Manager, in consultation with the Board President, declared a "District Emergency" in accordance with District Policy 7.03. Emergency repairs are in progress and expected to be completed in April 2022. The Special Structures Rehabilitation Project to perform long-term repairs to the interceptor is scheduled to begin in July 2022. Ms. White responded to Board questions about potential impacts to traffic and

confirmed a portion of Interstate 880 will not have to be closed during the emergency repairs or during the work scheduled to begin in July.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Items 17.1-17.2 carried (6-0) by the following roll call vote: AYES (Coleman, Katz, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (McIntosh)

**Resolution No. 35284-22** – Ratifying General Manager’s Declaration of the Existence of a District Emergency and Authorizing Expenditure of Sums as Needed in Response to Such Emergency

**18. General Manager’s Report.**

Coronavirus Update

Director of Operations and Maintenance David A. Briggs presented the update. He reviewed COVID-19 positive cases in Alameda and Contra Costa counties and the number of employee (462) and contractor (33) positive COVID-19 cases to date. As of April 6, the California Department of Public Health is no longer recommending people quarantine if they are asymptomatic, regardless of vaccination status although testing is still recommended 3-5 days from exposure. While minor adjustments have been made to accommodate work-related travel and gatherings, all other safety protocols and the District’s vaccination requirement remain in place. The District is still requiring face coverings indoors at District facilities but may lift the requirement if pandemic conditions continue to improve. There are still three testing sites available for employees and those with an approved religious or medical exemption will continue to test weekly. Staff will continue monitoring and updating safety protocols as needed.

Monthly Report – March 2022

General Manager Clifford C. Chan said he is available to answer questions regarding the report. Staff was asked to consider messaging on how salmon originating from the Mokelumne River supports California ocean fisheries and on the District’s habitat restoration efforts.

**REPORTS AND DIRECTOR COMMENTS**

**19. Committee Reports.**

- Filed with the Board were the Minutes for the March 22, 2022 Finance/Administration Committee meeting.
- Dublin San Ramon Services District (DSRSD)/EBMUD Recycled Water Authority (DERWA) representative John A. Coleman reported the JPA met on March 28 to conduct regular business and receive updates on budget preparation, authority management transition, meeting frequency, and operations and projects. DERWA representative Frank Mellon also reported the DERWA Board approved an interim agreement between EBMUD and DSRSD related to the supply and sale of recycled water.

- Planning Committee Chair Marguerite Young reported the Committee met earlier and received updates on the Water Quality Program, the 2021 Mokelumne Fishery, and Paving and Other Related Services. Due to time constraints, the 2021 Annual Recreation Report was held over to a future Committee meeting.
- Legislative/Human Resources Committee Chair William B. Patterson reported the Committee met earlier and received information on the Peralta Community College District Cohort Learning Program and heard success stories about program participants, two of which attended the meeting.

20. **Other Items for Future Consideration.**

None.

21. **Director Comments.**

- Director Coleman reported attending the following events (*remotely*): DERWA Board meeting on March 28 and the Los Vaqueros Reservoir JPA Finance Committee meeting on March 31. He reported on plans to attend the following events: Los Vaqueros Reservoir JPA Board meeting on April 13 (*remotely*); FRWA Board meeting on April 14 (*remotely*); and the UMRWA Board meeting on April 22.
- Director Young reported attending a tour of the Orinda Water Treatment Plant on March 24 with other elected officials and the contractor that will construct the ultraviolet disinfection system at the plant. She thanked staff for coordinating the tour and noted other District collaborators and partners should participate in similar events.
- Director Patterson reported attending an Oakland Branch NAACP meeting on April 9 at the West Oakland Library where attendees discussed history and memories past EBMUD employees.
- President Linney and Directors Katz, and Mellon had no reports. Direct McIntosh was absent (excused).

**ADJOURNMENT**

President Linney adjourned the meeting at 3:44 p.m.

SUBMITTED BY:

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Rischa S. Cole, Secretary of the District

APPROVED: April 26, 2022

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Doug A. Linney, President of the Board



AGENDA NO. 3.  
MEETING DATE April 26, 2022

**TITLE LIQUID OXYGEN SUPPLY AND SYSTEM MAINTENANCE AT UPPER SAN LEANDRO RESERVOIR**

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

**RECOMMENDED ACTION**

Award a contract to the lowest responsive/responsible bidder, Airgas USA LLC, for supplying liquid oxygen (LOX) and maintenance and repair services for the Hypolimnetic Oxygenation System (HOS) at the District's Upper San Leandro Reservoir (USL) for three years, beginning on or after April 26, 2022 with two options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$800,000 under Request for Quotation (RFQ) No. 2106.

**SUMMARY**

The HOS was installed at USL Reservoir in 2002. The system is operated seasonally from approximately April to October, ensuring the reservoir is completely oxygenated. This operation improves water quality in the reservoir by limiting the release of nutrients from sediments. These nutrients can significantly increase algae blooms which in turn lead to production of compounds which cause taste and odor variations and create disinfection-byproducts. Use of the HOS makes it easier and less costly to treat water from the reservoir, resulting in higher water quality for customers. This item supports the District's Water Quality and Environmental Protection Strategic Plan goal.


**VENDOR SELECTION**

An RFQ was posted on the District's website, sent to 90 potential bidders, and advertised in the East Bay Times. One bid was received from Airgas USA LLC. District staff evaluated the bid from Airgas and found pricing to be representative of the marketplace.

**SUSTAINABILITY**

**Economic**

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

Funds Available: FY22/23	Budget Coding: 778/8483600/1004851/53610	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department  Finance	Department Director or Manager  Sophia D. Skoda	Approved   General Manager
Attachment(s): P-035; P-061		

## **ALTERNATIVES**

**Purchase LOX on the open market.** This alternative is not recommended because the District participated in a fair and competitive bidding process. Although only one bid was received, another prospective vendor submitted a “no bid” stating that their supply network could not meet District demand quantities.

**Do not operate the USL HOS.** This alternative is not recommended because discontinuing operations will result in a less desirable source water quality, potential adverse impacts to taste and odor, and will subsequently increase overall water treatment costs.



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>Materials and Supplies - RFQ No.: 2106</b>  Liquid Oxygen Supply and System Maintenance at Upper San Leandro Reservoir						<b>DATE:</b>  April 14, 2022								
<b>CONTRACTOR:</b>  Airgas USA LLC (West Division) Sacramento, CA 95828					<b>Local Business / Sole Bidder</b>					<b>PERCENTAGE OF CONTRACT DOLLARS</b>				
					<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>					
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			<b>White Men</b>		<b>25%</b>		<b>100.0%</b>					
		<b>Ethnicity</b>		<b>Gender</b>		<b>White Women</b>		<b>2%</b>		<b>0.0%</b>				
\$800,000 *		White		Men		<b>Ethnic Minorities</b>		<b>25%</b>		<b>0.0%</b>				
<b>CONTRACT EQUITY PARTICIPATION</b>														
<b>COMPANY NAME</b>		<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>								
				<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>		
<b>PRIME:</b> Airgas USA LLC (West Division)		\$800,000	White	X		100.0%								
<b>SUBS:</b> None														
<b>TOTAL</b>		\$800,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%		
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>														
		<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>						
<b>No. of Employees:</b>														
<b>Percent of Total Employees:</b>														
<b>MSA Labor Market %:</b>														
<b>MSA Labor Market Location:</b>														
INFORMATION NOT PROVIDED														
<b>COMMENTS</b>														
<b>Contract Equity Participation:</b> 100% White Men participation <b>Contract Duration:</b> Three years with 2 One-year Renewal Options  *Total not to exceed: \$800,000														
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>					<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>					
NA					NA									





AGENDA NO. 4.  
MEETING DATE April 26, 2022

**TITLE FUSION BONDED EPOXY LINED AND PLASTIC-COATED STANDARD WEIGHT STEEL PIPE**

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

**RECOMMENDED ACTION**

Award a contract to the lowest responsive/responsible bidder, Imperial Pipe Services, Inc., for supplying fusion bonded epoxy lined and plastic-coated standard weight steel pipe (FBE-PCS), beginning on or after April 26, 2022 for a total cost, after the addition of taxes, not to exceed \$1,610,422 under Request for Quotation (RFQ) No. 2209.

**SUMMARY**

This contract is for the purchase and delivery of 1,500 feet of 6-inch, 3,400 feet of 8-inch, and 3,500 feet of 12-inch diameter FBE-PCS.


**DISCUSSION**

The District has many applicant water main extension projects located in infill areas with a combination of contaminated soils, geohazards, and dead ends where water quality is a concern. FBE-PCS is the only approved pipe that can be installed in these types of areas where applicant projects are located. The District has successfully used this pipe since November 2020 for several applicant projects. The FBE-PCS pipe under this contract will be used for eight applicant water main extensions that are part of the 2021 Water Service Estimates.

This purchase supports the District's Water Quality and Environmental Protection and Long-Term Infrastructure Investment Strategic Plan goals.

**VENDOR SELECTION**

An RFQ was posted on the District's website, sent to three resource organizations and to 16 potential proposers, and advertised in the Oakland Tribune. Two bids were received. Imperial Pipe Services, Inc. was the lowest responsive/responsible bidder.

Funds Available: FY22, CIP #000104; Page #23	Budget Coding: 531/2005121/0275690	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachment(s): P-035; P-061		

## **SUSTAINABILITY**

### **Economic**

Funding for this purchase is available in the FY22 adopted capital budget for the Pipeline System Extensions.

## **ALTERNATIVES**

**Do not purchase this pipe.** This alternative is not recommended because the District has many applicant projects located in areas with a combination of contaminated soils, geohazards, and dead ends where water quality is a concern. FBE-PCS pipe meets the needs of the applicant and the District.

**Rebid the RFQ.** This alternative is not recommended as the District engaged in a fair and competitive bid process. In addition, there is a long lead time to manufacture and receive delivery of the pipe and a delay would affect the applicant's construction schedule.



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>Materials and Supplies - RFQ No.: 2209</b> Fusion Bonded Epoxy Lined and Plastic Coated Standard Weight Steel Pipe						<b>DATE:</b> April 11, 2022						
<b>CONTRACTOR:</b> Imperial Pipe Services, Inc. Riverside, CA 92509					<b>PERCENTAGE OF CONTRACT DOLLARS</b>							
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>			
\$1,610,422 *		White		Men	White Men		25%		100.0%			
		Ethnicity		Gender	White Women		2%		0.0%			
		White		Men	Ethnic Minorities		25%		0.0%			
<b>CONTRACT EQUITY PARTICIPATION</b>												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
<b>PRIME:</b> Imperial Pipe Services, Inc.		\$1,610,422	White	X		100.0%						
<b>SUBS:</b> None												
<b>TOTAL</b>		\$1,610,422				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		INFORMATION NOT PROVIDED										
Percent of Total Employees:												
MSA Labor Market %:												
MSA Labor Market Location:												
<b>COMMENTS</b>												
<b>Contract Equity Participation:</b> 100% White Men participation. <b>Contract Duration:</b> NA  *Total not to exceed: \$1,610,422												
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>					<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>			
NA					NA							





AGENDA NO. 5.  
MEETING DATE April 26, 2022

**TITLE OPERATIONS AND MAINTENANCE DOCUMENTATION DEVELOPMENT FOR CAPITAL PROJECTS**

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

**RECOMMENDED ACTION**

Authorize agreements with Carollo Engineers, Inc., CDM Smith Inc., and Kennedy/Jenks Consultants, Inc. beginning on or after April 26, 2022 for three years with two options to renew for additional one-year terms, for a total aggregate not-to-exceed cost of \$2,000,000 for as-needed services for operations and maintenance (O&M) documentation development for capital projects.

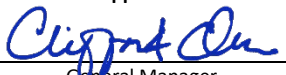
**SUMMARY**

These agreements will provide O&M documentation development on an as-needed basis for specific projects constructed as part of the Capital Improvement Program (CIP). This item was discussed at the October 12, 2021 Planning Committee meeting.

**DISCUSSION**

The District plans and designs new and upgraded water infrastructure facilities to maintain water quality standards, ensure reliability, and meet current and future water system demands. The five-year CIP includes a significant number of complex infrastructure improvements projects, such as large water treatment upgrades, with significant quantities of new and upgraded equipment that require development of specialty O&M documentation. Staff will issue task order requests to the selected consultants for the preparation of standard operating procedures (SOPs) and/or job procedures (JPs) and maintenance plans (MPs) for those projects. The consultants will be required to perform field reconnaissance and work closely with staff to develop the requested documents.

Development of these specialty O&M documents requires a combined skill set of electrical and mechanical O&M experience in addition to technical writing capabilities, which are above and beyond staff's normal asset management job description. Staff does not have the resources to develop O&M documentation for all of the planned new assets. The agreements will provide valuable input on O&M documentation for the District's more complex and specialized water treatment upgrade projects. Staff will operate and maintain the assets once the plans (SOPs, JPs and MPs) have been established.

Funds Available: FY22/23; CIP#000437; Page 47	Budget Coding: 11/557/5231/2011351 2011371:22	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department  Engineering and Construction	Department Director or Manager  Olujimi O. Yoloje	Approved  General Manager
Attachment(s): P-035; P-061		

These agreements support the District's Long-Term Infrastructure Investment Strategic Plan goal.

## **CONSULTANT SELECTION**

A request for proposals was posted on the District's website and sent to 57 firms, including 55 from the District's Professional Services Roster. Three proposals were received. Carollo Engineers, Inc., CDM Smith Inc., and Kennedy/Jenks Consultants, Inc. were selected based on their qualifications and expertise.

## **SUSTAINABILITY**

### **Economic**

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

### **Social**

Locals 2019 and 21 were notified of these agreements on October 4, 2021. Local 2019 issues were addressed at a meeting on November 2, 2021 and resolved. Local 21 did not raise any specific issues related to these agreements.

### **Environmental**

California Environmental Quality Act compliance will be performed as required for each of the capital projects that require development of specialty O&M documentation under these agreements.

## **ALTERNATIVES**


**Perform the work with District forces.** This alternative is not recommended because staff does not have expertise in all of the required areas and resources needed to support O&M documentation development for all of the new equipment and complex/specialized assets included in the CIP.

**Do not perform the work.** This alternative is not recommended because O&M documentation is required to provide a smooth transfer of new and upgraded water infrastructure facilities from construction to operations and maintenance.



## 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 Operations and Maintenance Documentation Development for Capital Projects						April 1, 2022					
CONTRACTOR:  Various Firms (See below)				PERCENTAGE OF CONTRACT DOLLARS							
				Availability Group		Contracting Objectives		Participation			
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		83.3%			
		Ethnicity	Gender	White Women		6%		16.7%			
\$2,000,000		See below		-		Ethnic Minorities		25%		0.0%	
CONTRACT EQUITY PARTICIPATION											
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIMES:											
Carollo Engineers, Inc.	\$466,666	White	X		23.3%						
SUBS:											
Dan Mount	\$100,000	White	X		5.0%						
J Calton Engineering	\$100,000	White	X		5.0%						
PRIME:											
CDM Smith Inc.	\$666,668	White	X		33.3%						
PRIME:											
Kennedy/Jenks Consultants, Inc.	\$466,666	White	X		16.7%						
SUB:											
SRT Consultants	\$200,000	White		X		16.7%					
TOTAL		\$2,000,000			83.3%	16.7%	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:		See Attached P-061 Form									
Percent of Total Employees:											
MSA Labor Market %:											
MSA Labor Market Location:											
COMMENTS											
Contract Equity Participation: 83.3% White Men and 16.7% White Women participation. Contract Duration: Three years with 2 One-year renewal options.											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
(P-035 - 7/11) NA				Page: 1 of 1 NA				 4671_P			

## AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

<b>Title:</b> <b>Operations and Maintenance Documentation Development for Capital Projects</b>			<b>Ethnic Minority Percentages From U.S. Census Data</b>						
					<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>
			<b>National</b>		10.5	10.7	3.7	0.7	27.3
<b>Professional Services Agreement</b>		<b>DATE:</b> <b>4/1/2022</b>	<b>9 Bay Area Counties</b>		5.5	16.2	14.2	0.4	39.9
			<b>Alameda/CC Counties</b>		10.7	15.6	15.4	0.5	46.2
<b>R=Recmmd</b> <b>P=Prime S=Sub</b>	<b>Composition of Ownership</b>	<b>Number of Ethnic Minority Employees</b>							
<b>Company Name, Owner/Contact Person, Address, and Phone Number</b>			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>	<b>MSA %</b>
<b>RP</b>	<b>WM: LBE</b>	<b>Company Wide</b>	34	126	133	2	295	26.2%	27.3%
Carollo Engineers, Inc. Erin Frankline 2795 Mitchell Drive Walnut Creek, CA 94598  602-474-4017		Manager/Prof	27	95	112	0	234	25.1%	
		Technical/Sales	4	19	13	2	38	34.9%	
		Clerical/Skilled	3	12	8	0	23	27.7%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	2	10	19	0	31	27.0%	
		AA Plan on File:	<b>NA</b>		Date of last contract with District:		<b>7/9/2021</b>		
		Co. Wide MSA:	<b>Total USA</b>		# Employees-Co. Wide:		<b>1,124</b>	Bay Area:	<b>115</b>
<b>S</b>	<b>WM: LBE</b>	<b>Company Wide</b>	<b>INFORMATION NOT PROVIDED</b>						
Dan Mount  2880 Gateway Oaks Drive, Suite 300 Sacramento, CA 95833  916-825-5986		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		<b>Bay Area</b>							
		Co. Wide MSA:							
<b>S</b>	<b>WM</b>	<b>Company Wide</b>	<b>INFORMATION NOT PROVIDED</b>						
J Calton Engineering John Calton 5723 Oak Creek Place Granite Bay, CA 95746  916-375-9797		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		<b>Bay Area</b>							
		Co. Wide MSA:							
<b>RP</b>	<b>WM: LBE</b>	<b>Company Wide</b>	127	233	287	7	654	19.8%	27.3%
CDM Smith Inc. Patrice Robbins 2300 Clayton Road, Suite 950 Concord, CA 94520  407-660-6464		Manager/Prof	85	175	269	5	534	19.3%	
		Technical/Sales	28	25	13	0	66	17.7%	
		Clerical/Skilled	13	19	4	1	37	31.4%	
		Semi/Unskilled	1	14	1	1	17	50.0%	
		<b>Bay Area</b>	0	1	12	0	13	33.3%	
		Co. Wide MSA:	<b>Total USA</b>		<b>3,296</b>		Bay Area:	<b>39</b>	

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

## AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

[illegible]

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

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AGENDA NO. 6.  
MEETING DATE April 26, 2022

**TITLE** AMEND COVID-19 CONTACT TRACING SERVICES

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

**RECOMMENDED ACTION**

Authorize an additional amount of \$400,000, to a total amount not to exceed \$1,300,000, to the agreement authorized under Board Resolution No. 35171-20 with Axiom Medical Consulting, LLC (Axiom) for COVID-19 contact tracing services, employee interviews, return to work clearance, and recordkeeping for COVID-19 positive employees.

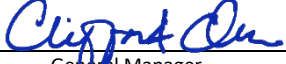
**SUMMARY**

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

**DISCUSSION**

On March 17, 2020, the District declared an emergency in response to the COVID-19 pandemic. The emergency declaration was later ratified under Board Resolution No. 35171-20. Under delegated authority, and consistent with Policy 7.03 – Emergency Preparedness/Business Continuity, the General Manager executed an emergency agreement not to exceed \$500,000 with Axiom to provide COVID-19 employee contact tracing and case management support without bids or notice. On January 25, 2022, an additional \$400,000 was authorized under Board Motion No. 027-22.

Axiom was first used by the District in January 2021 to provide contact tracing, employee interviews, and recordkeeping for COVID-19 positive employees during a high infection period of the pandemic. Contact tracing is needed to slow the spread of COVID-19 and to comply with Cal/OSHA, Centers for Disease Control and Infection, the California Department of Public Health, and county regulations and guidance. Contact tracing and the required quarantine period reduces the likelihood of employee-to-employee transmission of the coronavirus. The cost of the program through March 2022 was \$977,755. This agreement supports the District's Workforce Planning and Development Strategic Plan goal.

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

## **CONSULTANT SELECTION**

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

## **SUSTAINABILITY**

### **Economic**

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

### **Social**

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

## **ALTERNATIVES**

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

**Provide contact tracing services utilizing District resources.** This alternative is not recommended because the District does not have the resources to perform this type of work.



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>General Services Agreement - Amendment</b> Amend Covid-19 Contact Tracing Services						<b>DATE:</b> April 11, 2022						
<b>CONTRACTOR:</b> Axiom Medical Consulting , LLC Woodlands, TX 77381					<b>Direct Award</b>					<b>PERCENTAGE OF CONTRACT DOLLARS</b>		
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>			
\$400,000 *		White		Men	White Men		25%		100.0%			
		Ethnicity	Gender	White Women		6%		0.0%				
		White	Men	Ethnic Minorities		25%		0.0%				
<b>CONTRACT EQUITY PARTICIPATION</b>												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
<b>PRIMES:</b> Axiom Medical Consulting , LLC		\$400,000	White	X		100.0%						
<b>SUBS:</b> None												
<b>TOTAL</b>		\$400,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
			<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>			
<b>No. of Employees:</b>			INFORMATION NOT PROVIDED									
<b>Percent of Total Employees:</b>												
<b>MSA Labor Market %:</b>												
<b>MSA Labor Market Location:</b>												
<b>COMMENTS</b>												
<b>Contract Equity Participation:</b> 100% White Men participation.												
*Total not to exceed: \$1,300,000 = \$900,000 (Multiple previous amendments) + \$400,000 (Amendment)												
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>					<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>			
NA					NA							

## AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: <b>Amend Covid-19 Contact Tracing Services</b>		Ethnic Minority Percentages From U.S. Census Data							
			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>		
		<b>National</b>	10.5	10.7	3.7	0.7	27.3		
<b>General Services Agreement - Amendment</b>		DATE:	<b>9 Bay Area Counties</b>	5.5	16.2	14.2	0.4	39.9	
		4/11/2022	<b>Alameda/CC Counties</b>	10.7	15.6	15.4	0.5	46.2	
R=Recmmnd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>	<b>MSA %</b>
<b>RP</b>	<b>WM</b>	<b>Company Wide</b>	INFORMATION NOT PROVIDED						
Axiom Medical Consulting , LLC		Manager/Prof							
		Technical/Sales							
8401 New Trails Drive, Suite 100		Clerical/Skilled							
The Woodlands, TX 77381		Semi/Unskilled							
		<b>Bay Area</b>							
281-465-7100		AA Plan on File:							
		Co. Wide MSA:							

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



AGENDA NO. 7.  
MEETING DATE April 26, 2022

**TITLE     OAKLAND INNER HARBOR PIPELINE CROSSING - SRM MARINA INVESTORS  
             LLC EASEMENT ACQUISITION**

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

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

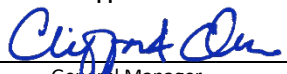
Authorize payment in the amount of \$110,000 to SRM Marina Investors LLC (SRM) for the acquisition of a permanent pipeline easement for the Oakland Inner Harbor Pipeline Crossing (Project) and coverage of up to \$200,000 for losses in rental income experienced by SRM, if any, caused by construction impacts.

**SUMMARY**

As part of its 2014 Master Plan for Alameda-North Bay Farm Island, the District is replacing the existing pipeline crossing underneath the Oakland Inner Harbor, from Oakland to Alameda. The Project includes installation of 3,000 feet of 32-inch pipeline underneath the Oakland Inner Harbor beginning on Fallon Street in Oakland to Marina Village Parkway in Alameda to ensure reliable water service to Alameda customers. The District must acquire a permanent easement for the new pipeline from SRM (Attachment). The District and SRM negotiated payment of \$110,000 for the easement. This action constitutes one of the five easements needed to construct the Project in the proposed alignment. The District has secured two of the easements needed and acquisition of the remaining easements is being negotiated.

**DISCUSSION**

The District studied several alignments to identify the most viable alternative to replace the existing crossing. The alternative deemed most viable requires five easements to construct the Project in the proposed alignment. Because the new pipeline runs underneath SRM's property, the District must acquire an easement from SRM. The District negotiated the acquisition of the required 6,146 square foot easement from SRM for \$110,000. This amount includes costs, including attorneys' fees, incurred by SRM in evaluating and responding to the District's offer and negotiating the final amount.

Funds Available: FY22, CIP#: 1006298, Page #14	Budget Coding: 534-2011526/2011560:27-5501	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department  Customer and Community Services	Department Director or Manager  Andrew L. Lee	Approved  General Manager
Attachment(s): Legal and Plat of Property		

During the course of negotiations for the acquisition of the easement, SRM expressed concern that construction activities in support of the Project adjacent to SRM's property may cause SRM's marina tenants to vacate their slips. To resolve this matter without the need for litigation over the easement, the District proposes to cover any losses of rental income within the "Gate 10 Extension" portion of SRM's marina if tenants leave due to construction impacts, subject to reasonable verification. The District's liability for any such losses will be capped at \$200,000.

The easement supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

## **SUSTAINABILITY**

### **Economic**

The \$110,000 to be paid to SRM for the easement is available in the adopted capital budget for the Large Diameter Pipeline Program.

### **Social**

The existing pipeline crossing was constructed in soft soils and is susceptible to failure during a significant seismic event, which would impact water services to Alameda customers. The acquisition of the easement is essential to ensure long-term water service reliability and redundancy for approximately 80,000 residents in Alameda.

### **Environmental**

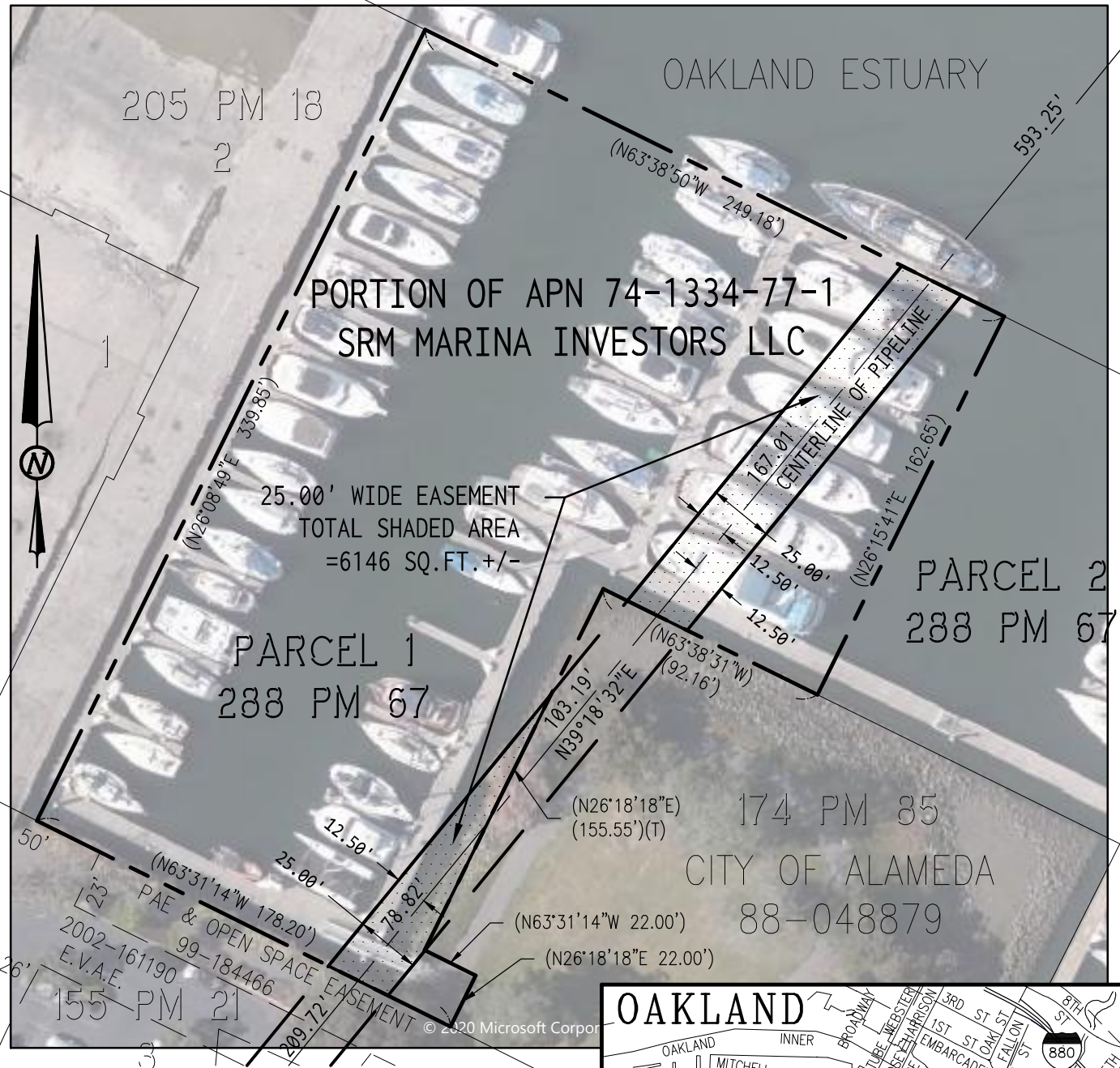
A California Environmental Quality Act Environmental Impact Report for the Project was certified by the Board on December 13, 2016.

## **ALTERNATIVES**

**Do not acquire the easement.** This alternative is not recommended because the existing pipeline has reached the end of its useful life and is susceptible to catastrophic failure during a major seismic event.

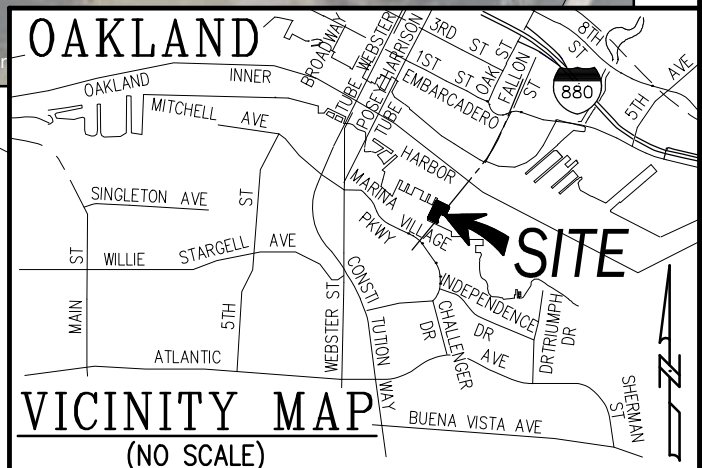
**Identify an alternate alignment for the crossing.** This alternative is not recommended because the proposed alignment for a crossing to replace the existing pipeline is the most viable option.

H:\00\_job-2009\2011560\Alameda Crossing #1 Pipeline Replacement\RES\DWG\PLAT-ALA-77.Dwg



1. THIS DRAWING IS BASED ON AN EBMUD SURVEY  
2. RECORDED DATA IN ( ) PER 288 PM 67

1. PARCEL MAP 8931, 288 PM 67, 4/5/2006



SCALE : 1" = 60'

DATE : 18 AUGUST 2020

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AGENDA NO. 8.  
MEETING DATE April 26, 2022

**TITLE** MONTHLY INVESTMENT TRANSACTIONS REPORT

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

**RECOMMENDED ACTION**

Approve the March 2022 Monthly Investment Transactions Report.

**SUMMARY**


In accordance with Policy 4.07 – Investment Policy, staff prepares a monthly transactions report for the Finance/Administration Committee to review and for the Board to consider each month. The March 2022 report is being brought to the Board for consideration. This report was reviewed at the April 26, 2022 Finance/Administration Committee meeting.

**DISCUSSION**

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

In March 2022, the portfolio increased from \$776.2 million to \$779.2 million. Net transactions increased the total by \$2.8 million. Interest received added approximately \$209,000 to the portfolio. Deposits into short-term liquidity funds totaled \$23.4 million, and \$21.7 million was withdrawn. The District purchased \$20.0 million in securities, and \$20.0 million in securities matured. No securities were called or sold. Net transactions at the District's commercial bank resulted in an increase of \$1.2 million.

I:\Sec\2022 Board Related Items\042622 Board Agenda Items\FIN - Monthly Investment Transactions Report March 2022.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachment(s): March 2022 Monthly Investment Transactions Report		

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## **Monthly Investment Transactions Report**

### **March 2022**

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  
Robert Hannay, Acting For Sophia Skoda

4/8/2022  
Date

SDS:AMM:lm



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Investment Transactions Summary**  
**March 2022**

Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	603,508,306.97	3,200,000.00	13,493.99	606,721,800.96
007 - Wastewater Consolidated	119,495,496.80	800,000.00	3,409.17	120,298,905.97
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,262,600.00	-	-	2,262,600.00
015 - DERWA	1,000,000.00	-	-	1,000,000.00
002 - FRWA	1,000,000.00	-	-	1,000,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	7,509,080.43	(2,305,000.00)	-	5,204,080.43
099 - Wells Fargo**	39,197,187.77	1,154,093.63	191,606.25	40,542,887.65
<b>Total</b>	<b>776,187,171.97</b>	<b>2,849,093.63</b>	<b>208,509.41</b>	<b>779,244,775.01</b>

\* Portfolio balance presented at face value.

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

Leanne Maloney  
 Prepared by: Leanne Maloney, Accountant III

Kevin Ma  
 Reviewed by: Kevin Ma, Accounting Supervisor

Andrea Miller  
 Approved by: Andrea M. Miller, Controller

04/06/2022  
 Date

04/06/2022  
 Date

04/06/2022  
 Date



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Investment Activity**  
**March 2022**

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	16,000,000.00	11,200,000.00	(16,000,000.00)	-	-	(8,000,000.00)	-	3,200,000.00
007 - Wastewater Consolidated	4,000,000.00	2,800,000.00	(4,000,000.00)	-	-	(2,000,000.00)	-	800,000.00
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	9,444,000.00	-	-	-	(11,749,000.00)	-	(2,305,000.00)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
<b>Investment Activity Total</b>	<b>20,000,000.00</b>	<b>23,444,000.00</b>	<b>(20,000,000.00)</b>	<b>-</b>	<b>-</b>	<b>(21,749,000.00)</b>	<b>-</b>	<b>1,695,000.00</b>
099 - Wells Fargo	(20,000,000.00)	(23,444,000.00)	20,000,000.00	-	-	21,749,000.00	2,849,093.63	1,154,093.63
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,849,093.63</b>	<b>2,849,093.63</b>

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

*Steven Goodman-Leibof*  
 Reviewed by: Steven Goodman-Leibof, Principal Mgmt Analyst

4/7/2022

Date

*Robert L. Hannay*  
 Approved by: Robert L. Hannay, Treasury Manager

4/8/2022

Date



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
March 2022

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buys</b>										
001 - Water System Consolidated	US Treasuries	T-Bill 0 3/23/2023	912796U31	3/23/2022	3/24/2022	3/23/2023	16,000,000.00	15,765,422.22	0.00	15,765,422.22
					<b>Total</b>		<b>16,000,000.00</b>			
007 - Wastewater Consolidated	US Treasuries	T-Bill 0 3/23/2023	912796U31	3/23/2022	3/24/2022	3/23/2023	4,000,000.00	3,941,355.56	0.00	3,941,355.56
					<b>Total</b>		<b>4,000,000.00</b>			

20,000,000.00	19,706,777.78	0.00	19,706,777.78
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**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Investment Activity**  
**March 2022**

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Deposits</b>										
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	3/4/2022	3/4/2022	N/A	4,967,000.00	4,967,000.00	0.00	4,967,000.00
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	3/18/2022	3/18/2022	N/A	4,477,000.00	4,477,000.00	0.00	4,477,000.00
					<b>Total</b>		<b>9,444,000.00</b>			
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	3/15/2022	3/15/2022	N/A	4,800,000.00	4,800,000.00	0.00	4,800,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley MM	MVRXX	3/28/2022	3/28/2022	N/A	6,400,000.00	6,400,000.00	0.00	6,400,000.00
					<b>Total</b>		<b>11,200,000.00</b>			
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	3/15/2022	3/15/2022	N/A	1,200,000.00	1,200,000.00	0.00	1,200,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley MM	MVRXX	3/28/2022	3/28/2022	N/A	1,600,000.00	1,600,000.00	0.00	1,600,000.00
					<b>Total</b>		<b>2,800,000.00</b>			
							<b>23,444,000.00</b>	<b>23,444,000.00</b>	<b>0.00</b>	<b>23,444,000.00</b>



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
March 2022

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Matured</b>										
001 - Water System Consolidated	US Treasuries	T-Bill 0 3/24/2022	912796F38	3/24/2022	3/24/2022	3/24/2022	16,000,000.00	16,000,000.00	0.00	16,000,000.00
					<b>Total</b>		<b>16,000,000.00</b>			
007 - Wastewater Consolidated	US Treasuries	T-Bill 0 3/24/2022	912796F38	3/24/2022	3/24/2022	3/24/2022	4,000,000.00	4,000,000.00	0.00	4,000,000.00
					<b>Total</b>		<b>4,000,000.00</b>			
							<b>20,000,000.00</b>	<b>20,000,000.00</b>	<b>0.00</b>	<b>20,000,000.00</b>



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
March 2022

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

\*No Transactions this Period\*

0.00	0.00	0.00	0.00
------	------	------	------



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
March 2022

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

\*No Transactions this Period\*

0.00	0.00	0.00	0.00
------	------	------	------



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Investment Activity**  
**March 2022**

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Withdrawals</b>										
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	3/23/2022	3/23/2022	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
					<b>Total</b>		<b>8,000,000.00</b>			
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	3/30/2022	3/30/2022	N/A	11,749,000.00	11,749,000.00	0.00	11,749,000.00
					<b>Total</b>		<b>11,749,000.00</b>			
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	3/23/2022	3/23/2022	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
					<b>Total</b>		<b>2,000,000.00</b>			
							<b>21,749,000.00</b>	<b>21,749,000.00</b>	<b>0.00</b>	<b>21,749,000.00</b>



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Interest Activity**  
**March 2022**

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	167,600.24	(154,106.25)	13,493.99
007 - Wastewater Consolidated	40,909.17	(37,500.00)	3,409.17
049 - Ferc Partnership	-	-	-
009 - BACWA	-	-	-
015 - DERWA	-	-	-
002 - FRWA	-	-	-
014 - IICP	-	-	-
010 - UMRWA	-	-	-
003 - Employees Retirement	-	-	-
065 - Water S2008A DSRF	-	-	-
068 - Water 2010A DSRF	-	-	-
<b>Interest Transactions Total</b>	<b>208,509.41</b>	<b>(191,606.25)</b>	<b>16,903.16</b>
<b>099 - Wells Fargo</b>	<b>-</b>	<b>191,606.25</b>	<b>191,606.25</b>
<b>Total</b>	<b>208,509.41</b>	<b>-</b>	<b>208,509.41</b>

\*Coupon and other interest received; reinvestment unavailable.

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

Leanne Maloney  
 Prepared by: Leanne Maloney, Accountant III

Kevin Ma  
 Reviewed by: Kevin Ma, Accounting Supervisor

Andrea Miller  
 Approved by: Andrea M. Miller, Controller

04/06/2022  
 Date

04/06/2022  
 Date

04/06/2011  
 Date



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Interest Activity**  
**March 2022**

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Interest Received (Transferred to Wells Fargo)</b>										
001 - Water System Consolidated	Municipal Bonds	Yorba Linda Redevelopment Agency Success	986176AR6	3/1/2022	3/1/2022	9/1/2022	0.00	0.00	4,106.25	4,106.25
001 - Water System Consolidated	US Treasuries	T-Note 1.875 9/30/2022	9128282W9	3/31/2022	3/31/2022	9/30/2022	0.00	0.00	150,000.00	150,000.00
								<b>Total</b>		<b>154,106.25</b>
007 - Wastewater Consolidated	US Treasuries	T-Note 1.875 9/30/2022	9128282W9	3/31/2022	3/31/2022	9/30/2022	0.00	0.00	37,500.00	37,500.00
								<b>Total</b>		<b>37,500.00</b>
							<b>0.00</b>	<b>0.00</b>	<b>191,606.25</b>	<b>191,606.25</b>



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Interest Activity**  
**March 2022**

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Interest Received (Reinvested)</b>										
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	3/1/2022	3/1/2022	N/A	0.00	0.00	430.22	430.22
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley   MVRXX		3/1/2022	3/1/2022	N/A	0.00	0.00	410.28	410.28
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	3/31/2022	3/31/2022	N/A	0.00	0.00	12,653.49	12,653.49
<b>Total</b>										<b>13,493.99</b>
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	3/1/2022	3/1/2022	N/A	0.00	0.00	110.93	110.93
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley   MVRXX		3/1/2022	3/1/2022	N/A	0.00	0.00	135.13	135.13
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	3/31/2022	3/31/2022	N/A	0.00	0.00	3,163.11	3,163.11
<b>Total</b>										<b>3,409.17</b>
							<b>0.00</b>	<b>0.00</b>	<b>16,903.16</b>	<b>16,903.16</b>



AGENDA NO. 9.1  
MEETING DATE April 26, 2022

**TITLE** EBMUD SERIES 2022A AND 2022B WATER SYSTEM REVENUE BONDS

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

**RECOMMENDED ACTION**


Authorize and approve the issuance of Water System Revenue Bonds, Series 2022A and 2022B in an aggregate principal amount not to exceed \$400 million, and approve the form and authorize the execution of certain documents, including a Supplemental Indenture, in connection with the issuance, securing and sale of such bonds.

**SUMMARY**

The Series 2022A Water System Revenue Bonds are being issued to provide funding for the District's Capital Improvement Program. Bond proceeds will also be used to pay the costs of issuance of the bonds. The District is planning to issue these bonds as "Green Bonds" based on the Guidance for Issuing Green Bonds, approved under Board Motion No. 063-22 on March 22, 2022. The Series 2022B Water System Revenue Bonds are expected to be issued in two series, Series 2022B-1 and Series 2022B-2, and are planned to be issued for the primary purpose of (i) refunding all or a portion of the District's outstanding fixed-rate Series 2012A Bonds and (ii) refunding all or a portion of the District's outstanding variable rate Series 2008A Bonds. In connection with the refunding of variable rate Series 2008A Bonds, proceeds of the bonds may also be applied to fund the costs of terminating certain interest rate swap agreements entered into by the District relating to such bonds to be refunded. This item was presented at the April 26, 2022 Finance/Administration Committee meeting.

**DISCUSSION**

The Series 2022A Bonds are proposed to provide funding for the District's Water System Capital Improvement Program, with a particular focus on projects that improve water quality. This bond issue is consistent with the financing plan in the District's Biennial Budget for Fiscal Years 2022 and 2023. The Series 2022B-1 and 2022B-2 Bonds are proposed to refund all or a portion of the District's outstanding fixed-rate Series 2012A Bonds and the District's outstanding variable rate Series 2008A Bonds. The Series 2012A Bonds have a final maturity of June 1, 2037 and the full \$81.75 million in principal outstanding is callable on or after June 1, 2022. The Series 2008A Bonds have a final maturity of June 1, 2038 and the potential refunded amount of principal is \$105.25 million. In connection with the refunding of variable rate Series 2008A Bonds, proceeds of the bonds may also be applied to fund the costs of terminating certain interest rate swap agreements entered into by the District relating to such bonds to be

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachment(s): Resolution; Preliminary Official Statement (including Appendices); Thirtieth Supplemental Indenture; Continuing Disclosure Agreement; Purchase Contract		

refunded. The District will only refund fixed-rate bonds that provide net present value savings of at least 3 percent of the refunded par. Based on current market conditions, the full amount of the Series 2012A bonds meets that savings threshold. The projected savings for the 2012A refunding, expected to be part of Series 2022B-1, equals 21.7 percent savings as a percentage of the par amount refunded. When refunding variable-rate bonds, the District will only refund bonds that are expected to provide net savings or are cost neutral, with cost neutral defined as a net present value cost of no more than the greater of 0.75 percent of the par amount of the bonds or \$250,000. The projected cost for the 2008A variable rate refunding, expected to be part of Series 2022B-2, equals 0.1 percent cost, as a percentage of the par amount refunded.

The bond resolution authorizes the issuance of the bonds in one or more series (and with such further or other series designation as applicable). It approves the Preliminary Official Statement and Official Statement that will be used to market the bonds to investors. The resolution further authorizes other documents supporting the bond issuance, including a Supplemental Indenture, a bond purchase contract, a continuing disclosure agreement, and swap termination documents, and authorizes their execution. It also delegates authority to the General Manager, the Director of Finance or the Treasury Manager or the designee of any of such officers to engage U.S. Bank Trust Company, National Association, the District's bond trustee, as trustee for the bonds. The bond resolution further authorizes the General Manager, the Director of Finance, the Treasury Manager, and the other proper officers of the District to take the necessary actions and execute other agreements, documents and certificates in order to provide for the sale and delivery of the bonds. The bonds are currently scheduled to be sold via a negotiated sale in May 2022 using underwriters from the District's underwriter pool. The timing of the bond sale may be adjusted for market conditions and other factors. This item supports the District's Long-Term Financial Stability Strategic Plan goal.

Summaries of the key bond documents are provided below:

- Authorizing Resolution relating to the Series 2022A and 2022B Water System Revenue Bonds authorizes the issuance of the bonds in one or more series or subseries (with such further or other series designation as applicable) in an aggregate amount not to exceed \$400 million, with a final maturity not later than June 1, 2052 and at a true interest cost to the District of not in excess of 4.75 percent per annum.
- Preliminary Official Statement (including Appendices) is the disclosure document prepared by the District that provides information about the District and the Water System (primarily in Appendix A) and the terms of the bond sale to potential investors. A final Official Statement will be prepared after the sale of the bonds for distribution to actual purchasers of the Series 2022A, 2022B-1 and 2022B-2 Water System Revenue Bonds. Under federal securities laws, these disclosure documents are required to contain all information that would be material to investors in making their decision whether to purchase the District's bonds, and must not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such information therein not misleading, in light of the circumstances under which it was presented.
- Thirtieth Supplemental Indenture relating to the Series 2022A and 2022B Water System Revenue Bonds supplements the Water System Bond Indenture between the District and its bond trustee and provides the terms of each of the Series 2022A, 2022B-1 and 2022B-2 Water System Revenue Bonds, including the principal and interest payment dates and the interest rates on the new Series

2022A, 2022B-1 and 2022B-2 Water System Revenue Bonds. Under the Water System Bond Indenture, the District is obligated to set rates to provide net revenues sufficient to cover 1.1 times the annual debt service on all of the outstanding Water System Revenue Bonds, which will include the Series 2022A, 2022B-1 and 2022B-2 Water System Revenue Bonds.

- Continuing Disclosure Agreement obligates the District to provide certain annual reports regarding the District and the Water System and notices of certain events in connection with the Series 2022A, 2022B-1 and 2022B-2 Water System Revenue Bonds. Under the securities laws, the underwriters are required to obtain this commitment from the District to provide ongoing disclosure in connection with the District's bonds. Under the Continuing Disclosure Agreement, Digital Assurance Certification, LLC, as the District's dissemination agent, is entitled to receive compensation for its services and receives certain indemnification from the District in connection with its services.
- Purchase Contract is the agreement between the District and the underwriters of the Series 2022A, 2022B-1 and 2022B-2 Water System Revenue Bonds in connection with a negotiated sale of the bonds. The Purchase Contract provides the terms and conditions under which the underwriters agree to purchase the Series 2022A-1, 2022B-1 and 2022B-2 Water System Revenue Bonds from the District for reoffering to the public and specifies the circumstances under which the underwriters' obligation may be terminated prior to delivery of the Bonds. The Authorizing Resolution provides that the discount to be paid to the underwriters in connection with their purchase of the bonds shall not exceed 0.3 percent of the aggregate principal amount of the Bonds to be purchased.
- Swap Termination Documents are authorized to be entered into by the District to provide for the termination (in whole or in part) of the interest rate swap agreements related to the variable rate Series 2008A Bonds proposed to be refunded. Similar to the swap termination agreements entered into by the District in connection with prior refundings of hedged variable rate bonds, each Swap Termination Document may provide for reinstatement of the interest rate swap agreement in the unlikely event that, following the execution of the Purchase Contract for the Series 2022B-2 Bonds and the related Swap Termination Documents, the Series 2022B-2 Bonds are not delivered on their scheduled date of issuance. The reinstatement of an interest rate swap agreement may require an adjustment in the fixed rate that was previously payable by the District under such interest rate swap agreement or the payment of a fixed amount equivalent thereto to reflect intervening market movements between the termination trade date and the reinstatement date.

## **SUSTAINABILITY**

### **Economic**

At current market rates, the District's debt service costs are expected to be below estimates in the proposed budget.

### **Environmental**

By issuing the 2022A series of bonds as Green Bonds, the District helps further develop the market for Green Bonds for issuers and investors. The District continues to demonstrate leadership in this area by providing substantial information in connection with its self-labeling of the bonds as Green Bonds and providing detail on the projects funded by the bonds.

### **ALTERNATIVE**

**Do not issue the proposed bonds.** This alternative is not recommended because without the bond issue the District would need to fund capital improvement projects from cash on hand, thereby decreasing the District's liquidity. This could weaken the District's credit profile and increase interest and fee costs for current variable-rate debt and for future fixed-rate bond issues. Additionally, declining to refund the bonds proposed for refunding would not exercise existing options to refund debt for savings and would not allow the District to complete its final de-risking transaction and eliminate the remaining variable rate demand bonds and terminate the associated swaps.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

PRELIMINARY OFFICIAL STATEMENT DATED MAY \_\_, 2022

NEW ISSUE – BOOK ENTRY ONLY

Ratings: S&P: “\_\_\_”  
Moody’s: “\_\_\_”  
See “RATINGS” herein.

*In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described in this Official Statement, interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals. In the further opinion of Co-Bond Counsel, interest (and original issue discount) on the Series 2022 Bonds is exempt from State of California personal income tax. See “TAX MATTERS.”*

[DISTRICT LOGO]

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)

\$ \_\_\_\_\_\*  
Water System Revenue Bonds,  
Series 2022A (Green Bonds)

\$ \_\_\_\_\_\*  
Water System Revenue  
Refunding Bonds, Series 2022B-1

\$ \_\_\_\_\_\*  
Water System Revenue  
Refunding Bonds, Series 2022B-2

Dated: Date of Delivery

Due: June 1, as shown on inside cover pages

*This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.*

The East Bay Municipal Utility District (the “District”) is issuing its Water System Revenue Bonds, Series 2022A (Green Bonds) and its Water System Revenue Refunding Bonds, Series 2022B-1 and Series 2022B-2 (collectively, the “Series 2022 Bonds”) pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and the Trustee, providing for the issuance of the Series 2022 Bonds (collectively, the “Indenture”). The Series 2022 Bonds will be issued in fully-registered form, without coupons, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series 2022 Bonds. Beneficial ownership interests in the Series 2022 Bonds of each Series may be purchased in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Interest on the Series 2022 Bonds is payable semiannually on June 1 and December 1 of each year, commencing December 1, 2022. Principal is payable on June 1 of the years set forth on the inside front cover. The principal or redemption price of, and interest on, the Series 2022 Bonds are payable by the Trustee to DTC, which is obligated in turn to remit such principal or redemption price and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Series 2022 Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

*The Series 2022 Bonds are subject to redemption prior to maturity as more fully described herein. See “THE SERIES 2022 BONDS – Redemption.”*

The Series 2022 Bonds are being issued for the purpose of providing moneys to (i) finance and/or reimburse the District for certain costs of improvements to the Water System of the District, (ii) together with certain other available funds, refund all or a portion of certain series of the District’s outstanding Water System revenue bonds, (iii) fund the costs of terminating certain interest rate swap agreements relating to the variable rate Water System revenue bonds of the District to be refunded (subject to market conditions), and (iv) pay costs of issuance of the Series 2022 Bonds, as described herein. See “PLAN OF FINANCE.”

The Series 2022 Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Water Revenues as more fully described herein. Subordinated Water Revenues generally consist of the District’s Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of all Water Operation and Maintenance Costs. The Series 2022 Bonds are being issued on parity with the District’s Water System Revenue Bonds and Parity Debt heretofore or hereafter incurred, as more fully described herein. There are no Senior Water Bonds remaining outstanding and the District has covenanted that it will not issue any Senior Water Bonds in the future. The District also operates a Wastewater System. The Series 2022 Bonds are not payable from or secured by the revenues of the Wastewater System of the District. **Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series 2022 Bonds or the interest thereon.**

*The Series 2022 Bonds are offered when, as and if issued, subject to the approval of validity by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., as Co-Disclosure Counsel, and for the Underwriters by Orrick, Herrington & Sutcliffe LLP. Montague DeRose and Associates, LLC is serving as municipal advisor to the District in connection with the Series 2022 Bonds. It is anticipated that the Series 2022 Bonds will be available for delivery through the facilities of DTC in New York, New York by Fast Automated Securities Transfer (FAST) on or about June \_\_, 2022.*

Morgan Stanley

BofA Securities

Blaylock Van, LLC

Dated: \_\_\_\_\_, 2022

\* Preliminary, subject to change.

4873-4178-9712v5/200893-0003

**EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)**

**MATURITY SCHEDULES\***

\$ \_\_\_\_\_<sup>\*</sup>  
**Water System Revenue Bonds,  
Series 2022A (Green Bonds)**

\$ \_\_\_\_\_ **Serial Series 2022A Bonds**

<i><b>Maturity Date (June 1)</b></i>	<i><b>Principal Amount</b></i>	<i><b>Interest Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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\$ \_\_\_\_\_ % **Term Series 2022A Bonds due June 1, 20**\_\_\_\_, **Yield** \_\_\_\_\_%; **CUSIP<sup>†</sup>: 271014**\_\_\_\_

<sup>\*</sup> Preliminary, subject to change.

<sup>†</sup> CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of the American Bankers Association. CUSIP numbers have been assigned by an independent company not affiliated with the District or the Underwriters and are included solely for the convenience of the holders of the Series 2022A Bonds. Neither the District nor the Underwriters is responsible for the selection or use of these CUSIP numbers and no representation is made as to their correctness on the Series 2022A Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2022A Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2022A Bonds.

\$ \_\_\_\_\_ \*

**Water System Revenue Refunding Bonds,  
Series 2022B-1**

\$ \_\_\_\_\_ Serial Series 2022B-1 Bonds

<i><b>Maturity Date (June 1)</b></i>	<i><b>Principal Amount</b></i>	<i><b>Interest Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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\$ \_\_\_\_\_ % Term Series 2022B-1 Bonds due June 1, 20 \_\_, Yield \_\_\_\_%; CUSIP<sup>†</sup>: 271014 \_\_\_\_

\$ \_\_\_\_\_ \*

**Water System Revenue Refunding Bonds,  
Series 2022B-2**

\$ \_\_\_\_\_ Serial Series 2022B-2 Bonds

<i><b>Maturity Date (June 1)</b></i>	<i><b>Principal Amount</b></i>	<i><b>Interest Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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\$ \_\_\_\_\_ % Term Series 2022B-2 Bonds due June 1, 20 \_\_, Yield \_\_\_\_%; CUSIP<sup>†</sup>: 271014 \_\_\_\_

\* Preliminary, subject to change.

† CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of the American Bankers Association. CUSIP numbers have been assigned by an independent company not affiliated with the District or the Underwriters and are included solely for the convenience of the holders of the Series 2022B Bonds. Neither the District nor the Underwriters is responsible for the selection or use of these CUSIP numbers and no representation is made as to their correctness on the Series 2022B Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2022B Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2022B Bonds.

No dealer, broker, salesperson or other person has been authorized by the District to give any information or to make any representation other than as set forth herein and, if given or made, such other information or representation must not be relied upon as having been authorized by the District. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Series 2022 Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale. This Official Statement is not to be construed as a contract with the purchasers of the Series 2022 Bonds.

The information set forth in this Official Statement has been furnished by the District and obtained from official sources and other sources which are believed to be reliable. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District since the date hereof.

The Underwriters have provided the following sentence for inclusion in this Official Statement:

The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access (EMMA) website. The District also maintains a website and certain social media accounts. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Series 2022 Bonds.

#### **FORWARD-LOOKING STATEMENTS**

**CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND “FORWARD-LOOKING STATEMENTS.” NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS “ESTIMATE,” “PROJECT,” “ANTICIPATE,” “EXPECT,” “INTEND,” “BELIEVE” AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.**

References to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Securities and Exchange Commission Rule 15c2-12.

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
Alameda and Contra Costa Counties, California  
375 Eleventh Street  
Oakland, California 94607  
(866) 403-2683

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John A. Coleman, *Vice President*  
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Andrea M. Miller, *Controller*  
Robert L. Hannay, *Treasury Manager*  
Samuel A. Feldman, *Debt Administrator*

**Co-Bond and Co-Disclosure Counsel**

Stradling Yocca Carlson & Rauth,  
a Professional Corporation  
Newport Beach, California

Curl's Bartling P.C.  
Oakland, California

**Municipal Advisor**

Montague DeRose and Associates, LLC  
Walnut Creek, California

**Trustee**

U.S. Bank Trust Company, National Association  
San Francisco, California

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## OFFICIAL STATEMENT

### EAST BAY MUNICIPAL UTILITY DISTRICT (Alameda and Contra Costa Counties, California)

\$ \_\_\_\_\_\*  
Water System Revenue Bonds,  
Series 2022A (Green Bonds)

\$ \_\_\_\_\_\*  
Water System Revenue  
Refunding Bonds, Series 2022B-1

\$ \_\_\_\_\_\*  
Water System Revenue  
Refunding Bonds, Series 2022B-2

## INTRODUCTION

*This Introduction is not a summary of this Official Statement, and is qualified by more complete and detailed information contained elsewhere in the Official Statement. A full review should be made of the entire Official Statement, including the cover page and attached appendices. The offering of Series 2022 Bonds to potential investors is made only by means of the entire Official Statement. Certain definitions of capitalized terms used and not defined herein are set forth in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”*

### Purpose

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning the East Bay Municipal Utility District (the “District”), the water supply, treatment and distribution system owned by the District (the “Water System” or the “System”), and System finances, in connection with the sale of the District’s \$ \_\_\_\_\_\* Water System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”) and its \$ \_\_\_\_\_\* Water System Revenue Refunding Bonds, Series 2022B-1 (the “Series 2022B-1 Bonds”) and \$ \_\_\_\_\_\* Water System Revenue Refunding Bonds, Series 2022B-2 (the “Series 2022B-2 Bonds” and, together with the Series 2022B-1 Bonds, the “Series 2022B Bonds”). The Series 2022A Bonds and the Series 2022B Bonds are collectively referred to herein as the “Series 2022 Bonds.” The Series 2022 Bonds are being issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the Thirtieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and the Trustee, relating to the Series 2022 Bonds (as so amended and supplemented, the “Indenture”).

The Series 2022 Bonds are being issued for the purpose of providing moneys to (i) finance and/or reimburse the District for certain costs of improvements to the Water System of the District, (ii) together with certain other available funds, refund all or a portion of certain Series of the District’s outstanding Water System revenue bonds (as defined herein, such bonds being refunded, the “Refunded Bonds”), (iii) fund the costs of terminating certain interest rate swap agreements relating to the variable rate Refunded Bonds (subject to market conditions), and (iv) pay costs of issuance in connection with the Series 2022 Bonds. See “ESTIMATED SOURCES AND USES OF FUNDS” and “PLAN OF FINANCE.” See also APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Capital Improvement Program.”

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\* Preliminary, subject to change.

## The District

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California (the “State”). The District is formed under the authority of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State, commencing with Section 11501 (the “Municipal Utility District Act”). Pursuant to the Municipal Utility District Act, the District is empowered to own and operate the Water System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM).” The District also operates a wastewater system (the “Wastewater System”). The District’s Wastewater System treats and disposes of sewage from a portion of the area within the District, which is designated as Special District No. 1.

The Series 2022 Bonds are not payable from or secured by the revenues of the Wastewater System of the District.

## Security for the Series 2022 Bonds

The Series 2022 Bonds are special obligations of the District, payable solely from and secured by a pledge of the Subordinated Water Revenues of the District, as defined in the Indenture. Subordinated Water Revenues generally consist of the District’s Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of (a) all Water Operation and Maintenance Costs and (b) all amounts required to be paid under the District’s Senior Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Water Bonds. **There are no Senior Water Bonds currently outstanding and the District has covenanted pursuant to the Eighteenth Supplemental Indenture, dated as of September 15, 2010 (the “Eighteenth Supplemental Indenture”) that it will not issue any Senior Water Bonds in the future.** Prior to the date of execution and delivery of the Eighteenth Supplemental Indenture, all Water System revenue bonds of the District issued under the Indenture were designated “Water System Subordinated Revenue Bonds.” Pursuant to the Eighteenth Supplemental Indenture, any Water System revenue bonds of the District issued (or remarketed or otherwise reoffered) under the Indenture following the execution and delivery of the Eighteenth Supplemental Indenture are designated “Water System Revenue Bonds” in order to reflect that the lien of the Senior Water Bonds has been closed. All Outstanding Water System revenue bonds issued under the Indenture (howsoever designated), together with any additional Water System revenue bonds hereafter issued under the Indenture are secured on parity by Subordinated Water Revenues and are collectively referred to herein as the “Water System Revenue Bonds.” See “SECURITY FOR THE SERIES 2022 BONDS – Pledge of Subordinated Water Revenues.”

The Series 2022 Bonds are secured on a parity with the District’s other Water System Revenue Bonds to be Outstanding upon the delivery thereof, together with any additional Water System Revenue Bonds hereafter issued, with certain outstanding State Loans as described in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt,” and with any other Parity Debt heretofore or hereafter issued or incurred in accordance with the Indenture. See “SECURITY FOR THE SERIES 2022 BONDS – Outstanding Water System Revenue Obligations,” and “– Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations.” As of April 30, 2022, the District had Outstanding \$2,328,805,000 aggregate principal amount of Water System Revenue Bonds and \$31,432,846 aggregate principal amount of State Loans constituting Parity Debt. In addition, as of April 30, 2022, the District had outstanding certain interest rate swap agreements as described under “SECURITY FOR THE SERIES 2022 BONDS – Outstanding Water System Revenue Obligations – *Interest Rate Swap Agreements*,” the regularly-scheduled payment obligations under which are payable from Subordinated Water Revenues on parity with the District’s Water System Revenue Bonds and other

Parity Debt. All of the currently outstanding interest rate swaps are expected to be refunded in connection with the issuance of the Series 2022 Bonds and the refunding of the Refunded Bonds.\* See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt” and “– Variable Rate and Swap Obligations.” See also “PLAN OF FINANCE.”

The Sixteenth Supplemental Indenture dated as of February 1, 2010 (the “Sixteenth Supplemental Indenture”) includes a number of amendments to the Indenture in the manner and effective as of the date described under “AMENDMENTS TO THE INDENTURE.” Such amendments are expected to become effective following the issuance of the Series 2022B Bonds, upon the redemption of the variable rate Refunded Bonds to be refunded (subject to market conditions) and the termination of the related interest rate swap agreements and standby bond purchase agreements in connection therewith.

**NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE DISTRICT IS PLEDGED TO THE PAYMENT OF THE SERIES 2022 BONDS OR THE INTEREST THEREON.**

### **Rate Covenant**

The District covenants under the Indenture that it will at all times, while any of the Water System Revenue Bonds (including the Series 2022 Bonds) remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the Subordinated Water Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Water System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Covenants.” See also “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES.”

### **Continuing Disclosure**

Pursuant to a Continuing Disclosure Agreement, dated the date of delivery of the Series 2022 Bonds, by and between the District and Digital Assurance Certification, LLC, as dissemination agent (the “Dissemination Agent”), the District will covenant and agree for the benefit of the holders and beneficial owners of the Series 2022 Bonds to provide certain financial information and operating data relating to the District and the Water System by not later than December 31 of each year in which the Bonds are outstanding (or if the District’s fiscal year changes, by no later than six months after the end of such Fiscal Year) (the “Annual Report”), commencing with the Annual Report for Fiscal Year 2021-22, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Dissemination Agent on behalf of the District with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access system (“EMMA”). See “CONTINUING DISCLOSURE.” These covenants have been made in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). See also APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years. Filings through EMMA are linked to a particular issue of obligations by CUSIP number (which is subject to change after the issuance of obligations as a result of various subsequent actions). The District uses its best efforts to confirm that each report filed through EMMA is linked to all the correct 9-digit CUSIP numbers. However, as a technical matter, it has come to the District’s attention that certain filings during the past five years, when made, were not appropriately

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\* Preliminary, subject to change.

linked to all applicable CUSIP numbers. The District has since caused the applicable filings to be linked to the additional CUSIPs.

### **Professionals Involved in the Issue**

U.S. Bank Trust Company, National Association serves as Trustee under the Indenture. Certain legal matters incident to the authorization, issuance and sale of the Series 2022 Bonds are subject to the approval of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., as Co Disclosure Counsel, and for the Underwriters by Orrick, Herrington & Sutcliffe LLP, San Francisco, California, Underwriters' Counsel. Montague DeRose and Associates, LLC, Walnut Creek, California, is serving as municipal advisor to the District in connection with the issuance of the Series 2022 Bonds.

### **Summaries Not Definitive**

The summaries and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary or reference is qualified in its entirety by reference to each such document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in the Indenture and, as used herein, has the meaning given to it in the Indenture. Unless otherwise indicated, all financial and statistical information herein has been provided by the District.

All references to and summaries of the Indenture and all documents, statutes, reports and other instruments referred to herein are qualified in their entirety by reference to the full Indenture and each such document, statute, report or instrument, respectively, copies of which are available for inspection at the offices of the District in Oakland, California, and will be available from the Trustee upon request and payment of duplication costs. Forward-looking statements in this Official Statement are subject to risks and uncertainties. Actual results may vary from forecasts or projections contained herein if events and circumstances do not occur as projected, and such variances may be material.

### **Additional Information**

The District regularly prepares a variety of publicly available reports, including audits, budgets and related documents. Any Series 2022 Bondholder may obtain a copy of any such report, as available, from the Trustee or the District. Additional information regarding this Official Statement may be obtained by contacting the Trustee or Sophia D. Skoda, Director of Finance, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607-4240, (510) 287-0231.

## **THE DISTRICT**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California. The District is formed under the authority of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and, within an area known as Special District No. 1, sewerage and

wastewater interception, treatment and disposal, and power generation through its Wastewater System. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

For information on the District, the Water System and its finances and operations, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)” and APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.”

## **PLAN OF FINANCE**

### **Purposes of the Series 2022 Bonds**

The proceeds of the Series 2022 Bonds will be applied to (i) finance and/or reimburse the District for certain costs of improvements to the Water System of the District, (ii) refund all or a portion of the District’s outstanding Water System Revenue Refunding Bonds, Series 2012A (the “Series 2012A Bonds”) and Water System Revenue Refunding Bonds, Series 2008A (the “Series 2008A Bonds”), (iii) fund the costs of terminating certain interest rate swap agreements relating to the Series 2008A Bonds to be refunded (subject to market conditions), and (iv) pay costs incidental to the issuance of the Series 2022 Bonds. See “ESTIMATED SOURCES AND USES OF FUNDS.”

### **Series 2022A Bonds Designation as Green Bonds**

The Series 2022A Bonds are being issued for the primary purpose of providing additional moneys to finance (by reimbursement to the District of) a portion of the costs of various improvements to the District’s Water System. The District has designated the Series 2022A Bonds as “Green Bonds” to allow investors to invest directly in bonds that finance environmentally beneficial projects. Such designation has been made by the District in accordance with the District’s Board-approved Guidance for Issuing Green Bonds (the “District’s Green Bond Guidance”), which was most recently approved by the District Board on March 22, 2022. The District’s Green Bond Guidance identifies the criteria (described below) that the District expects to take into consideration in identifying the types of “green” projects the costs of which may be funded (or reimbursed to the District) from the proceeds of Green Bonds. The District’s Green Bonds Guidance further provides that in identifying potential projects for Green Bond financing, the District’s aim should be towards including projects that best meet one or more of the identified criteria and excluding those projects that appear marginal or that have unresolved sustainability issues.

The District has promoted principles of sustainability for a number of years. The District initially adopted a Sustainability Policy, District Policy 7.05, in 1994. The District’s current Sustainability Policy provides that it is the policy of the District to provide reliable, high-quality drinking water and wastewater service through sustainable and resilient planning, design, and construction, operations, maintenance, rehabilitation, and disposal activities that manage long-term economic, environmental, and human resource benefits. The District’s current Sustainability Policy further provides for District staff to annually report to the Board summarizing the status of the District’s sustainability efforts.

In identifying projects eligible for Green Bond financing, the District considers projects that are designed to meet one or more of the following criteria to be “green” projects: (i) maintain water quality; (ii) improve water use efficiency, including conservation through reduced water loss; (iii) improve biodiversity and ecosystem quality; (iv) protect against flooding; (v) reduce pollution; (vi) improve resilience (adaptation) to climate change; (vii) reduce the combustion of fossil fuels; (viii) reduce greenhouse gas emissions; (ix) implement “reduce, reuse, recycle” practices in preference to raw materials; or (x) adhere to sustainable purchasing guidelines. Where relevant, the District’s Green Bond

Guidance maps these criteria for alignment with the categories, principles, or goals under the standards or frameworks established by the International Capital Market Association's Green Bond Principles, the United Nations' Sustainable Development Goals and the Climate Bonds Initiative's Climate Bonds Taxonomy. It should be noted that such mapping is provided for comparison purposes only and no representation is made by the District that the projects satisfying the District's criteria will necessarily fit the mapped criteria from the other frameworks.

The District's Green Bond Guidance as approved by the Board on March 22, 2022 is set forth in APPENDIX G – "THE DISTRICT'S GREEN BOND GUIDANCE AND EXPECTED SERIES 2022A BONDS GREEN BOND PROJECTS." Also set forth in Appendix G is a list of the particular projects that are considered by the District to be "green" projects, the costs of which the District expects to be funded (through reimbursement to the District) from proceeds of the Series 2022A Bonds. Proceeds of the Series 2022A Bonds will primarily be used to reimburse the District for some or all of the costs of the projects identified in Exhibit G. The proceeds of the Series 2022A Bonds will be deposited into a separately labeled account by the District and allocated to prior expenditures for capital improvement projects identified by the District as satisfying its criteria for green projects. Because proceeds of the Series 2022A Bonds will be applied to reimburse the District for prior expenditures made in connection with the projects identified in Exhibit G, the District does not intend to undertake any further tracking of and reporting on the use of the proceeds of the Series 2022A Bonds.

There can be no assurance that the green projects funded with the proceeds of the Series 2022A Bonds will meet an investor's expectations regarding sustainability performance. It is possible that adverse environmental or social impacts may occur during the design, construction and operation of the green projects. For additional information regarding the District's capital improvement program, and a description of the major programs and projects included therein, see APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Capital Improvement Program."

The terms "Green Bonds" and "green project" are neither defined in nor related to provisions in the Indenture or otherwise defined under State or federal laws. No independent certification is being obtained with respect to the treatment of the Series 2022A Bonds as Green Bonds. The use of such terms herein is for identification purposes only and is not intended to provide or imply that an owner of the Series 2022A Bonds is entitled to any additional security other than as provided in the Indenture. The repayment obligations of the District with respect to the Series 2022A Bonds are not conditioned on the completion of any particular project or the satisfaction of any certification relating to the status of the Series 2022A Bonds as Green Bonds. The District assumes no obligation to ensure that these projects comply with any legal or other principles of green projects as such principles may evolve over time. The District's Green Bond Guidance as applied in connection with the Series 2022A Bonds may be updated or changed in the future at the Board's discretion.

The Series 2022A Bonds will not constitute "exempt facility bonds" issued to finance "qualified green building and sustainable design projects" within the meaning of Section 142(1) of the Code.

### **Refunding of the Refunded Bonds**

The Series 2022B Bonds are being issued for the primary purpose of refunding all or a portion of the District's Outstanding fixed rate Series 2012A Bonds and the District's Outstanding variable rate Series 2008A Bonds. Proceeds of the Series 2022B Bonds will also be applied to fund the costs of terminating certain interest rate swap agreements entered into by the District relating to the variable rate Series 2008A Bonds to be refunded.

The refunding of the fixed rate Series 2012A Bonds (such bonds to be refunded being hereinafter sometimes referred to herein as the “Refunded Series 2012A Bonds”) is being undertaken in order to achieve net present value and debt service savings. The refunding of the variable rate Series 2008A Bonds (such bonds to be refunded being sometimes referred to herein as the “Refunded Series 2008A Bonds”) is being undertaken as part of the District’s plan to periodically refund its variable rate bonds with fixed rate debt and reduce the notional amount of associated interest rate swap agreements when market conditions so warrant. The variable rate Series 2008A Bonds identified in the table below represent the District’s only currently Outstanding variable rate Water System Revenue Bonds. In connection with such bonds being refunded through the issuance of the Series 2022B Bonds, the interest rate swaps related thereto (currently outstanding in an aggregate notional amount of \$105,250,000) are expected to be terminated in full (subject to market conditions). Following the termination of such interest rate swaps, there will be no Water System interest rate swap agreements of the District remaining outstanding. See also “SECURITY FOR THE SERIES 2022 BONDS – Outstanding Water System Revenue Obligations” and APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt” and “– Variable Rate and Swap Obligations.” Affiliates of BofA Securities, Inc., one of the Underwriters of the Series 2022 Bonds is also a party to certain of the interest rate swap agreements to be terminated. See “CERTAIN RELATIONSHIPS.”

The following table details the Series, maturity dates and principal amounts of the Water System Revenue Bonds that are to be refunded (the “Refunded Bonds”). The specific bonds to be refunded will be determined by the District at the time that the District and the Underwriters execute the bond purchase contract for the Series 2022 Bonds. **All refunded Water System Revenue Bonds, dates and amounts are subject to change by the District in its sole discretion.**

Refunded Bonds*						
Water System Revenue Bonds Series Designation	Issue Date	Maturity Date	CUSIP (Base No. 271014)	Interest Rate	Outstanding Principal Amount	Principal Amount to be Redeemed
<u>Fixed Rate Bonds</u>						
Water System Revenue Refunding Bonds, Series 2012A						
	10/10/2012	06/01/2030	UU4	5.00%	\$10,000,000	\$ 10,000,000
	10/10/2012	06/01/2035	UV2	5.00	61,750,000	61,750,000
	10/10/2012	06/01/2037	F80	5.00	10,000,000	10,000,000
						\$ 81,750,000
<u>Variable Rate Bonds</u>						
Water System Revenue Refunding Bonds, Series 2008A						
Series 2008A-1	03/20/2008	06/01/2038	UC4	Variable	\$32,395,000	\$ 32,395,000
Series 2008A-2	03/20/2008	06/01/2038	TW2	Variable	24,285,000	24,285,000
Series 2008A-3	03/20/2008	06/01/2038	TX0	Variable	24,285,000	24,285,000
Series 2008A-4	03/20/2008	06/01/2038	UA8	Variable	24,285,000	24,285,000
						\$105,250,000
TOTAL						\$187,000,000

\* Preliminary, subject to change.

The refunding of the Refunded Bonds will be effected by depositing a portion of the proceeds of the Series 2022B Bonds, together with other available moneys, into separate accounts established in the Redemption Fund held by the Trustee under the Indenture. The amounts so deposited will be applied on \_\_\_\_\_, 2022, the date of delivery of the Series 2022 Bonds, to redeem the Refunded Bonds at a redemption price of 100% of the principal amount thereof, without premium, together with accrued interest thereon to the redemption date. Pursuant to the Indenture, upon such deposit and notice of the redemption of the Refunded Bonds having been given, all liability of the District with respect to the Refunded Bonds will cease, terminate and be completely discharged and satisfied and the owners of the Refunded Bonds will be entitled to payment thereof solely from the amounts deposited in the related account in the Redemption Fund established for such purpose.

### **ESTIMATED SOURCES AND USES OF FUNDS**

The estimated sources and uses of funds with respect to the Series 2022 Bonds, rounded to the nearest dollar, are as follows:

	<i><b>Series 2022A Bonds</b></i>	<i><b>Series 2022B Bonds</b></i>	<i><b>Total</b></i>
<b><i>Sources</i></b>			
Principal Amount	\$	\$	\$
Original Issue Premium/Discount			
Transfer from Refunded Bonds			
Reserve Fund Release			
[District Contribution]			
Total	<u>\$</u>	<u>\$</u>	<u>\$</u>
<b><i>Uses</i></b>			
Series 2022A (Green Bonds)			
Water System Fund <sup>(1)</sup>	\$	\$	\$
Deposit to Redemption Fund			
Swap Termination Payments <sup>(2)</sup>			
Underwriters' Discount			
Costs of Issuance <sup>(3)</sup>			
Total	<u>\$</u>	<u>\$</u>	<u>\$</u>

<sup>(1)</sup> Includes previous expenditures to be reimbursed to the District.

<sup>(2)</sup> [Includes accrued amounts payable to the swap termination date.]

<sup>(3)</sup> Includes legal, financing and consulting fees, rating agency fees, printing costs and other miscellaneous expenses.

## THE SERIES 2022 BONDS

### General Description

The Series 2022 Bonds of each Series will be issued in the respective aggregate principal amounts, will bear interest at the respective rates and will mature in the respective years and amounts all as set forth on the inside cover pages of this Official Statement. The Series 2022 Bonds of each Series will be issued in denominations of \$5,000 principal amount or any integral multiple thereof. The Series 2022 Bonds of each Series will be dated, and shall bear interest from, their date of delivery. Interest on the Series 2022 Bonds of each Series is payable on each June 1 and December 1, commencing on December 1, 2022, and will be computed on the basis of a 360-day year of twelve 30-day months. The Series 2022 Bonds will be issued as fully registered bonds in book-entry form only and when delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Series 2022 Bonds. So long as DTC, or its nominee, Cede & Co., is the registered owner of the Series 2022 Bonds, all payments of principal or redemption price of, and interest on, the Series 2022 Bonds will be made directly to DTC, which is obligated in turn to remit such principal or redemption price and interest to its DTC participants for subsequent disbursement to the beneficial owners of the Series 2022 Bonds. See APPENDIX E – "DTC AND THE BOOK-ENTRY ONLY SYSTEM."

### Redemption\*

#### Series 2022A Bonds

**Optional Redemption.** The Series 2022A Bonds maturing on or before June 1, 2032 are not subject to optional redemption prior to maturity. The Series 2022A Bonds maturing on and after June 1, 2033 are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 2032, at a redemption price equal to the principal amount of Series 2022A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

**Mandatory Redemption.** The Series 2022A Bonds maturing on June 1, 20\_\_ are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below, commencing on June 1, 20\_\_, at the principal amount of each Series 2022A Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

#### Term Series 2022A Bonds due June 1, 20\_\_

<i>Mandatory Sinking Account Payment Dates (June 1)</i>	<i>Mandatory Sinking Account Payments</i>
	\$

†

† Final Maturity.

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\* Preliminary, subject to change.

Upon an optional redemption of a portion of any term Series 2022A Bond, the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such term Series 2022A Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

### **Series 2022B-1 Bonds**

**Optional Redemption.** The Series 2022B-1 Bonds maturing on or before June 1, 2032 are not subject to optional redemption prior to maturity. The Series 2022B-1 Bonds maturing on and after June 1, 2033 are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 2032, at a redemption price equal to the principal amount of Series 2022B-1 Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

**Mandatory Redemption.** The Series 2022B-1 Bonds maturing on June 1, 20\_\_ are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below, commencing on June 1, 20\_\_, at the principal amount of each Series 2022B-1 Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

#### **Term Series 2022B-1 Bonds due June 1, 20\_\_**

<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>
	\$

†

† Final Maturity.

Upon an optional redemption of a portion of any term Series 2022B-1 Bond, the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such term Series 2022B-1 Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

### **Series 2022B-2 Bonds**

**No Optional Redemption.** The Series 2022B-2 Bonds are not subject to optional redemption prior to maturity.

**Mandatory Redemption.** The Series 2022B-2 Bonds maturing on June 1, 20\_\_ are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below, commencing on June 1, 20\_\_, at the principal amount of each Series 2022B-2 Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

**Term Series 2022B-2 Bonds due June 1, 20\_\_\_\_**

<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>
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† Final Maturity.

Upon an optional redemption of a portion of any term Series 2022B-2 Bond, the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such term Series 2022B-2 Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

**Notice of Redemption**

Notice of redemption of the Series 2022 Bonds shall be given by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to DTC by electronic means of communication or by first-class mail or, if the book-entry system as described in Appendix E has been discontinued, to the respective Owners of any Series 2022 Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, and to EMMA by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Such notice of redemption will state, among other things, the date of issue of the Series 2022 Bonds to which such notice relates, the redemption date, the redemption price and in the case of Series 2022 Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed, and shall be given in the form and otherwise in accordance with the terms of the Indenture. Failure by any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

In the event of an optional redemption of Series 2022 Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series 2022 Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

**Selection of Bonds for Redemption**

Whenever provision is made in the Indenture for the redemption of less than all of a Series of the Series 2022 Bonds, the maturities of the Series 2022 Bonds of such Series to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series 2022 Bonds of any maturity, the Trustee will select the Series 2022 Bonds of such maturity to be redeemed from all Series 2022 Bonds of the respective Series and maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion deems appropriate and fair.

**Effect of Redemption**

If notice of redemption is given as provided in the Indenture, and moneys for payment of the redemption price of, together with interest accrued to the redemption date on, the Series 2022 Bonds (or

portions thereof) so called for redemption is held by the Trustee, then on the redemption date designated in such notice, the Series 2022 Bonds (or portions thereof) so called for redemption will become due and payable at the redemption price specified in the notice of redemption, together with interest accrued thereon to the date fixed for redemption, interest on such Series 2022 Bonds so called for redemption will cease to accrue, the Series 2022 Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture and the owners of the Series 2022 Bonds (or portions thereof) will have no rights in respect thereof except to receive payment of the redemption price plus accrued interest.

## SECURITY FOR THE SERIES 2022 BONDS

### General

***Authority for Issuance.*** The Series 2022 Bonds are authorized for issuance pursuant to the Municipal Utility District Act and laws of the State amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and with respect to any portion of the Series 2022 Bonds issued to refund outstanding bonds of the District, Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), resolutions adopted by the District, and the Indenture.

***Amendments to the Indenture.*** The Sixteenth Supplemental Indenture includes a number of amendments to the Indenture in the manner and effective as of the date described under “AMENDMENTS TO THE INDENTURE.” See also APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.” Such amendments are expected to become effective following the issuance of the Series 2022B Bonds, upon the refunding and redemption (subject to market conditions) of the Refunded Series 2008A Bonds and the termination of the related interest rate swap agreements and standby bond purchase agreements in connection therewith.

### Pledge of Subordinated Water Revenues

Pursuant to the Indenture, the District has irrevocably pledged to the payment of the principal or redemption price of and interest on the Water System Revenue Bonds, including the Series 2022 Bonds and any Parity Debt, all Subordinated Water Revenues (as hereinafter defined) and amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

“Subordinated Water Revenues” is generally defined in the Indenture to mean, for any fiscal period, the sum of (a) all charges received for, and all other income and receipts derived by the District from, the operation of the Water System or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Senior Water Bond Resolution relating to the District’s Senior Water Bonds or under the Indenture (collectively, the “Water Revenues”) for such fiscal period, plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund established under the Senior Water Bond Resolution for treatment as Water Revenues for such fiscal period, less the sum of (c) all Water Operation and Maintenance Costs (as hereinafter defined) for such fiscal period, (d) the amounts, if any, withdrawn by the District from Water Revenues for such fiscal period for deposit in the Rate Stabilization Fund, and (e) all amounts required to be paid under the Senior Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Water Bonds as the same become due and payable. **There are no Senior Water Bonds currently outstanding and the District has covenanted pursuant to the Eighteenth Supplemental Indenture that it will not issue any Senior Water Bonds in the future.** See “– Outstanding Water System Revenue Obligations – *No Senior Water Bonds*” below.

The District may deposit into, or withdraw amounts from time to time held in, the Rate Stabilization Fund within 120 days after the end of the applicable Fiscal Year. Amounts deposited into the Rate Stabilization Fund shall be deducted from Water Revenues for such Fiscal Year. Amounts withdrawn from the Rate Stabilization Fund shall be included in Water Revenues for such Fiscal Year and may be applied for any purposes for which Water Revenues generally are available. All interest and earnings upon deposits in the Rate Stabilization Fund will not be held therein, but will be treated and accounted for as Water Revenues. The amount on deposit in the Rate Stabilization Fund as of April 30, 2022 was \$150,000,000.

“Water Operation and Maintenance Costs” is generally defined in the Indenture to mean the reasonable and necessary costs of maintaining and operating the Water System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Water Revenues and therefore payable on a parity with the Water System Revenue Bonds (whether or not any Water System Revenue Bonds are Outstanding).

The Series 2022 Bonds are not payable from or secured by the revenues of the Wastewater System of the District.

**The Series 2022 Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Water Revenues. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series 2022 Bonds or the interest thereon.**

#### **Allocation of Subordinated Water Revenues Under the Indenture**

In accordance with the Indenture, all Subordinated Water Revenues, when and as received by the District, shall be deposited into a fund to be established and maintained by the District designated as the “Revenue Fund.” So long as any Water System Revenue Bonds are Outstanding, the District will transfer the moneys in the Revenue Fund into the following respective funds (established, maintained and held by the Trustee in trust for the benefit of the Owners of the Water System Revenue Bonds) in the following order of priority; provided, that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which deposits shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Water System Revenue Bonds and such Parity Debt):

***Interest Fund.*** The District will transfer to the Trustee to be set aside in the Interest Fund on or before the Business Day prior to each interest payment date an amount equal to the interest becoming due and payable on the Outstanding Water System Revenue Bonds (excluding any interest for which there are moneys on deposit in the Interest Fund from the proceeds of any Series of Water System Revenue Bonds or other source to pay such interest).

***Principal Fund; Sinking Accounts.*** The District shall transfer to the Trustee to be set aside in the Principal Fund on or before the Business Day prior to each principal or sinking account payment date an

amount equal to the amount of Bond Obligation (as defined in the Indenture) plus the Mandatory Sinking Account Payments becoming due and payable on such date. All Mandatory Sinking Account Payments shall be made without priority of any payment into any one such sinking account over any other such payment.

***Bond Reserve Funds.*** Upon the occurrence of any deficiency in any bond reserve fund established pursuant to the Indenture for any Series of Water System Revenue Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such bond reserve fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from such bond reserve fund until there is on deposit in such bond reserve fund an amount equal to the respective reserve requirement for such bond reserve fund. There is no bond reserve fund being established in connection with the Series 2022 Bonds. See “– No Bond Reserve Fund for Series 2022 Bonds” below.

The requirements of each such fund (including the making up of any deficiencies in any such fund resulting from a lack of Subordinated Water Revenues sufficient to make any earlier required deposit) at the time of deposit is to be satisfied before any deposit is made to any other fund subsequent in priority. The Indenture provides that any Subordinated Water Revenues remaining in the Revenue Fund after the foregoing transfers, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of the Indenture by the District. The District may use and apply such Subordinated Water Revenues for any lawful purpose of the District, including the redemption of Water System Revenue Bonds upon the terms and conditions set forth in a Supplemental Indenture relating to such Water System Revenue Bonds and the purchase of Water System Revenue Bonds as and when and at such prices as it may determine.

Under the Indenture the District may enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Water System Revenue Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such an interest rate swap agreement may be applied to the deposits required under the Indenture. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Water Revenues and other assets pledged under the Indenture to the Water System Revenue Bonds on a parity basis therewith.

For further information regarding the allocation of Subordinated Water Revenues with respect to the Water System Revenue Bonds, see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Allocation of Subordinated Water Revenues.”

#### **No Bond Reserve Fund for Series 2022 Bonds**

There is no bond reserve fund being established in connection with the Series 2022 Bonds and amounts on deposit in any bond reserve fund for any other Series of Water System Revenue Bonds are not available for the payment of, and do not in any manner secure, the Series 2022 Bonds.

#### **Rate Covenant**

The District has covenanted under the Indenture that it will, at all times while any of the Water System Revenue Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the Subordinated Water Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Water System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions” for the definition of Debt Service under the Indenture. See also “AMENDMENTS TO THE INDENTURE.”

## Outstanding Water System Revenue Obligations

***No Senior Water Bonds.*** Pursuant to Resolution No. 30050 adopted by the Board of Directors of the District on January 26, 1982 (as amended and supplemented, the “Senior Water Bond Resolution”), the District authorized the issuance, from time to time, of bonds of the District designated as “East Bay Municipal Utility District Water System Revenue Bonds” (the “Senior Water Bonds”) and secured by a pledge of, and first lien on, the Net Revenues (as defined in the Senior Water Bond Resolution) of the District’s Water System, generally being all of the Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) after payment of Water Operation and Maintenance Costs thereof, all on the terms and conditions set forth in the Senior Water Bond Resolution. At the time of the initial execution and delivery of the Indenture in 1990, the Indenture did not preclude the District from issuing additional Senior Water Bonds pursuant to the Senior Water Bond Resolution. The District last issued Senior Water Bonds in 1986 and all outstanding Senior Water Bonds were retired in 1997. **There are currently no Senior Water Bonds outstanding. Pursuant to the Eighteenth Supplemental Indenture, the District has covenanted and agreed that it will not issue any Senior Water Bonds in the future pursuant to the Senior Water Bond Resolution.**

***Outstanding Water System Revenue Bonds and Parity Debt.*** As of April 30, 2022, the District had Outstanding \$2,328,805,000 aggregate principal amount of Water System Revenue Bonds (collectively, the “Outstanding Water System Revenue Bonds”) issued under and pursuant to the Indenture. The District’s Outstanding Water System Revenue Bonds include fixed rate bonds (a portion of which are “Build America Bonds”) and variable rate demand obligations which are currently in a weekly mode during which the per annum interest rate thereon is re-set weekly (the “Weekly Rate Bonds”). See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt.”

All of the District’s \$105,250,000 aggregate principal amount of variable rate Outstanding Water System Revenue Bonds, consisting of the Series 2008A Bonds, are Weekly Rate Bonds. The Weekly Rate Bonds are subject to tender prior to maturity, including optional tender by the owners thereof upon seven days’ notice. The District has entered into liquidity agreements with various banks to provide liquidity facilities for such variable rate Outstanding Water System Revenue Bonds. The obligation of the District to repay any draws on such liquidity facilities is payable on a parity with the Outstanding Water System Revenue Bonds to the extent such repayment is not thereafter provided from remarketing proceeds of the related Outstanding Water System Revenue Bonds. Unreimbursed draws under liquidity facilities supporting such variable rate Outstanding Water System Revenue Bonds bear interest at a maximum rate that may be substantially in excess of the current interest rate on the related variable rate Outstanding Water System Revenue Bonds. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity facilities may result in the acceleration of the scheduled payment of principal on such variable rate Outstanding Water System Revenue Bonds. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Variable Rate and Swap Obligations” for additional information regarding the liquidity providers, the principal amount of Outstanding Water System Revenue Bonds covered under each such liquidity facility, the expiration date of each of such liquidity facilities and certain of the terms thereof. Upon the issuance of the Series 2022 Bonds and the redemption of the District’s variable rate Series 2008A Bonds being effected thereby in full, all of the existing liquidity facilities relating to such variable rate Outstanding Water System Revenue Bonds are expected to terminate in accordance with their terms.

The District’s \$400,000,000 fixed rate Outstanding Water System Revenue Bonds, Series 2010B were issued as “Build America Bonds” that are “qualified bonds” under the provisions of the American Recovery and Reinvestment Act of 2009. The interest subsidy payments the District receives as reimbursement for interest on such Build America Bonds pursuant to Section 54AA of the Code (referred to herein as “BABs Interest Subsidy Payments”) are currently treated as Water Revenues for purposes of

the Indenture. From and after the effective date of the amendments to the Indenture pursuant to the Sixteenth Supplemental Indenture (see “AMENDMENTS TO THE INDENTURE”), for the purpose of calculating Debt Service, Annual Debt Service and Maximum Annual Debt Service under the Indenture (as amended by the Sixteenth Supplemental Indenture), to the extent interest on such Build America Bonds is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then in making such calculations, interest payments with respect to the Build America Bonds will be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

Pursuant to Federal sequestration legislation passed by Congress in 2011 and 2013, Federal subsidy payments for direct-pay bonds, including Build America Bonds, have been reduced (by formula) from the original funding subsidy level of 35% of interest costs on direct-pay bonds, including Build America Bonds. The sequestration reduction rate of the Federal subsidy payment for Build America Bonds is 5.7% for the Federal government’s fiscal year 2022 (which began on October 1, 2021 and ends on September 30, 2022), and this means that BABs Interest Subsidy Payments sought by the District for its Build America Bonds will be reduced by this percentage. This reduction will increase the District’s net interest cost. The sequestration reduction rate will be applied unless and until a law is enacted that cancels or otherwise affects the sequester, at which time the sequestration reduction rate is subject to change. year. At present, pursuant to Federal legislation, sequestration will continue through fiscal year 2030. The District can give no assurance regarding the level of subsidy payments or changes in the sequestration rate, if any, in the future, or whether Congress will adopt legislation in the future that will further reduce subsidy payments for direct-pay bonds, including Build America Bonds. Under the Indenture, the District is obligated to make all interest payments on the Water System Revenue Bonds without regard to the receipt of any federal BABs Interest Subsidy Payments by the District.

In addition to the Outstanding Water System Revenue Bonds, the District has outstanding loans with the State of California’s State Water Resources Control Board and certain interest rate swap agreements the scheduled payments under which are payable from Subordinated Water Revenues on a parity with the Water System Revenue Bonds, as described below. See “*Interest Rate Swap Agreements*” and “*Parity State Loans*” below. The Outstanding Water System Revenue Bonds, together with any additional Water System Revenue Bonds issued under the Indenture (including the Series 2022 Bonds), and any Parity Debt heretofore or hereafter issued or incurred in accordance with the Indenture, are on a parity as to the pledge of and lien on Subordinated Water Revenues.

***Interest Rate Swap Agreements.*** As of April 30, 2022, the District had outstanding interest rate swap agreements relating to its Outstanding variable rate Water System Revenue Bonds (hereinafter collectively, the “Water Interest Rate Swap Agreements”) with various counterparties (collectively, the “Swap Providers”) in the aggregate notional amount of \$105,250,000. The Water Interest Rate Swap Agreements were entered into to hedge the interest rate exposure on the related variable rate Water System Revenue Bonds by synthetically converting the variable interest rate payments that the District is obligated to make with respect to the related Water System Revenue Bonds into substantially fixed payments. In general, the terms of the Water Interest Rate Swap Agreements provide that, on a same-day net-payment basis determined by reference to a notional amount, the District will pay a fixed interest rate on the respective notional amount. In return, the applicable Swap Provider will pay a variable rate of interest (determined as a specified percentage of an interest rate index) on a like notional amount.

There is no guarantee that the floating rate payable to the District pursuant to each of the Water Interest Rate Swap Agreements will match the variable interest rate on the associated Water System Revenue Bonds to which the respective Water Interest Rate Swap Agreement relates at all times or at any time. Since the respective effective dates of the Water Interest Rate Swap Agreements, the floating rates payable to the District pursuant to the Water Interest Rate Swap Agreements have generally not matched the variable interest rates on the associated Water System Revenue Bonds. To the extent that the Swap

Providers are obligated to make a payment to the District under their respective Water Interest Rate Swap Agreement that is less than the interest due on the associated Water System Revenue Bonds to which such Water Interest Rate Swap Agreement relates, the District is obligated to pay such insufficiency from Subordinated Water Revenues.

The obligation of the District to make regularly scheduled payments to the Swap Providers under the respective Water Interest Rate Swap Agreements is on a parity with the District's obligation to make payments on the Water System Revenue Bonds, including the Series 2022 Bonds. Under certain circumstances, the Water Interest Rate Swap Agreements may be terminated and the District may be required to make a termination payment to the respective Swap Providers. Pursuant to the Water Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Series 2022 Bonds but prior to the District's Commercial Paper Notes (Water Series) and Extendable Municipal Commercial Paper Notes (Water Series), if any.

Pursuant to the terms of certain of the Water Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District's total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement.

See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Variable Rate and Swap Obligations" for additional information regarding the Water Interest Rate Swap Agreements, including the District's collateral posting obligations in connection therewith.

All of the District's currently outstanding interest rate swaps under the Water Interest Rate Swap Agreements are expected to be terminated (subject to market conditions) as a result of the issuance of the Series 2022 Bonds and the refunding of the Refunded Series 2008A Bonds, which are the District's only variable rate Outstanding Water System Revenue Bonds. Following the termination of such interest rate swaps, there will no transactions under the Water Interest Rate Swap Agreements outstanding. The District may determine not to refund all of the outstanding Refunded Series 2008A Bonds or not to terminate all of the current outstanding interest rate swaps under the Water Interest Rate Swap Agreements. In such case, a portion of the interest rate swaps under the Water Interest Rate Swap Agreement are expected to remain outstanding.

The District may, from time-to-time, enter into additional interest rate swap agreements in the future with security and payment provisions as determined by the District and subject to any conditions contained in the Indenture.

**Parity State Loans.** The District participates in the Safe Drinking Water State Revolving Fund and Clean Water State Revolving Fund loan programs administered by the State Water Resources Control Board (the "SWRCB"), which were established to provide below-market rate financing for qualified water resource projects in the State. Loan contracts under these programs ("State Loans") are provided on a project-by-project basis. State Loans under the current SWRCB State Loan programs generally provide for up to 30-year amortizing loan terms which commence one year following project completion and an interest rate on each State Loan that is equal to one-half of the interest rate on the most recent issue of State general obligation bonds at the time the State Loan is entered into. Under the terms of the programs, State Loans are generally required to be either senior to or on parity with all future debt of the borrower. The District, from time to time, applies to the SWRCB for State Loans to finance certain capital projects of the District. State Loan program moneys under executed loan contracts with the SWRCB for approved projects are disbursed to the District on a cost-incurred basis pursuant to disbursement requests submitted by the District. Under these programs, as of April 30, 2022, the District had outstanding borrowings under existing State Loans aggregating approximately \$31,432,846. Borrowings under each of the District's

outstanding State Loans are treated by the District as Parity Debt under the Indenture for purposes of calculating debt service coverage ratios. Any future State Loans received by the District would likely constitute Parity Debt under the Indenture. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Parity State Loans” for additional information regarding the terms of the District’s outstanding State Loans.

***Subordinate Commercial Paper.*** The District maintains two commercial paper note programs. Under the District’s traditional commercial paper program, commercial paper notes may be issued at prevailing interest rates for periods of not more than 270 days from the date of issuance. In connection with its traditional commercial paper program, the District has covenanted to procure and maintain in effect for any series or subseries of commercial paper notes issued thereunder one or more liquidity facilities enabling it to borrow an aggregate amount at least equal to the principal amount of such series or subseries of commercial paper notes. As of April 30, 2022, the District had outstanding \$312,800,000 aggregate principal amount of tax-exempt Commercial Paper Notes (Water Series) issued for the benefit of the Water System under the District’s traditional commercial paper program. Under the extendable municipal commercial paper program, commercial paper may be issued at prevailing interest rates for periods of not more than 120 days from the date of issuance with the option by the District to extend the maturity for another 150 days. The extendable municipal commercial paper program is not supported by any liquidity or revolving credit agreement. As of April 30, 2022, the District had outstanding no Extendable Municipal Commercial Paper Notes (Water Series) issued for the benefit of the Water System under the District’s extendable municipal commercial paper program. Commercial paper notes issued for the benefit of the Water System under either such program (and the District’s repayment obligation for amounts borrowed, if any, under any applicable liquidity facility therefor), are payable from and secured by a pledge of Water Revenues on a basis subordinate to the Water System Revenue Bonds and Parity Debt. See also APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt” and “– Subordinate Commercial Paper Programs” for additional information regarding the District’s authorized commercial paper note programs.

### **Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations**

The Indenture provides conditions under which additional Series of Water System Revenue Bonds or other Parity Debt payable from Subordinated Water Revenues may be issued on a parity with the Outstanding Water System Revenue Bonds. Among other conditions, the Indenture requires that the District shall have placed on file with the Trustee a certificate of the District certifying that the sum of: (1) the Subordinated Water Revenues for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Water System Revenue Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Water Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Water Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Water System Revenue Bonds due to improvements to the Water System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Water System Revenue Bonds, shall have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt then Outstanding and the additional Water System Revenue Bonds or Parity Debt then proposed to be issued. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions” for the definition of Maximum Annual Debt Service and Debt Service under the Indenture. See also “AMENDMENTS TO THE INDENTURE.”

Refunding Water System Revenue Bonds may be authorized and issued by the District without compliance with the provisions described above, subject to the terms and conditions of the Indenture, including the condition that Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt outstanding following the issuance of such refunding Water System Revenue Bonds is less than or equal to Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt outstanding prior to the issuance of such refunding Water System Revenue Bonds. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Refunding Bonds.”

Pursuant to the Indenture, the District may incur obligations which are junior and subordinate to the payment of the principal, redemption price, interest and reserve fund requirements for the Water System Revenue Bonds and all Parity Debt and which subordinated obligations are payable as to principal, redemption price, interest and reserve fund requirements, if any, only out of Subordinated Water Revenues after the prior payment of all amounts then required to be paid under the Indenture from Subordinated Water Revenues for principal, redemption price, interest and reserve fund requirements for the Water System Revenue Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in the Indenture or the instrument authorizing such Parity Debt, as applicable.

### **Investment of Moneys in Funds and Accounts Under the Indenture**

All moneys held in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District, solely in Investment Securities (see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions” for the definition of Investment Securities under the Indenture). If and to the extent the Trustee does not receive investment instructions from the District with respect to the moneys in such funds and accounts, such moneys shall be invested in a cash sweep or similar account arrangement of or available to the Trustee described in clause (xi) of the definition of Investment Securities.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of moneys in any fund or account other than the Rebate Fund shall be transferred to the Revenue Fund when received; provided, however, that an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

### **Limitations on Remedies**

The ability of the District to comply with its covenants under the Indenture and to generate Water Revenues sufficient to pay the principal of and interest on the Series 2022 Bonds may be adversely affected by actions and events outside of the control of the District. Furthermore, any remedies available to the owners of the Series 2022 Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition, enforceability of the rights and remedies of the owners of the Series 2022 Bonds, and the obligations incurred by the District under the Series 2022 Bonds and the Indenture, may become subject to the following: the federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor’s rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the

owners of the Series 2022 Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default; Remedies” for additional information regarding events of default under the Indenture and the remedies available to owners of the Bonds pursuant to the terms thereof.

## **AMENDMENTS TO THE INDENTURE**

The Sixteenth Supplemental Indenture includes a number of amendments to the Indenture (as described below) which will become effective upon the earlier to occur of: (i) the first date upon which all of the now Outstanding Series 2008A Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Sixteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements. In the event that the Series 2008A Bonds are refunded (subject to market conditions) and the related interest rate swap agreements and standby bond purchase agreements terminated in connection with the issuance of the Series 2022B Bonds, the amendments are expected to become effective upon such refunding and terminations.

As modified, the term “Annual Debt Service” shall mean, for any Fiscal Year, the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

As modified, the term “Assumed Debt Service” shall mean for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

As modified, the term “Debt Service” shall mean the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, that for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate

on such Water Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Water Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Water Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest rate on such Water Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Water Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a fixed

rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest on such Water Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Water Revenues on parity with the lien of the Water Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Water Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Water Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Water Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Water Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

As modified, the term “Maximum Annual Debt Service” shall mean the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

The term “SIFMA Municipal Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

As modified, the term “Water Revenues” shall mean all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Senior Water Bond Resolution or the Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code or any future similar program.

## CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES

### Tax Limitations – Proposition 13

Article XIII A of the State Constitution, known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum *ad valorem* tax on real property to 1% of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State statutes. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to *ad valorem* taxes levied to pay interest or redemption charges on (1) indebtedness approved by the voters prior to July 1, 1978, and (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the 1975-76 Fiscal Year tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the taxing jurisdiction, or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any *ad valorem* property tax except to pay debt service on indebtedness approved by the voters as described above. Such legislation further provides that each county will levy the maximum tax permitted by Article XIII A, which is \$1.00 per \$100 of assessed market value. The legislation further establishes the method for allocating the taxes collected by each county among the taxing agencies in the county. Special districts, such as the District, receive an allocation that is based primarily upon their tax levies in certain years prior to the amendment’s effective date relative to the tax levies of other congruent agencies. The District receives approximately 1.25% of the non-debt service property taxes collected within its jurisdiction from Alameda and Contra Costa counties. See also APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Property Tax Revenues.”

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These exceptions include certain transfers of real property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of the District.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the 2% annual adjustment are allocated among the various jurisdictions in the “taxing area” based upon their respective “situation.” Any such allocation made to a local agency continues as part of its allocation in future years.

The effect of Article XIII A on the District’s finances has been to restrict *ad valorem* tax revenues for general purposes to the statutory allocation of the 1% levy while leaving intact the power to levy *ad valorem* taxes in whatever rate or amount may be required to pay debt service on its outstanding general obligation bonds and unissued bonds authorized prior to July 1, 1978. Since Fiscal Year 1978-79 tax revenues for the Water System have consisted exclusively of the District’s allocated share of the 1% county levy.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

For a description of the property tax collection procedure and certain statistical information concerning tax collections and delinquencies, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Property Tax Revenues.”

### **Spending Limitations**

At the statewide special election of November 6, 1979, the voters approved an initiative entitled “Limitation of Government Appropriations” which added Article XIII B to the California Constitution. Under Article XIII B, State and local governmental entities have an annual “appropriations limit” which limits the ability to spend certain moneys which are called “appropriations subject to limitation” (consisting of tax revenues, state subventions and certain other funds) in an amount higher than the “appropriations.” Article XIII B does not affect the appropriation of moneys which are excluded from the definition of “appropriations subject to limitation.” Among the exclusions is an “appropriation of any special district which existed on January 1, 1978, and which did not as of the 1977-78 Fiscal Year levy an *ad valorem* tax on property in excess of 12.5 cents per \$100 of assessed value.” In the opinion of the District’s General Counsel, the appropriations of the District are excluded from the limitations of Article XIII B under this clause.

### **Proposition 62**

A statutory initiative (“Proposition 62”) was adopted by the voters voting in the State at the November 4, 1986 General Election which (1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity, (2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction, (3) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (4) prohibits the imposition of *ad valorem* taxes on real property by local governmental entities except as permitted by Article XIII A, (5) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities and (6) requires that any tax imposed by a local governmental entity on or after March 1, 1985 be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

### **Proposition 218**

On November 5, 1996, the voters of the State approved Proposition 218, the so-called “Right to Vote on Taxes Act.” Proposition 218 added Articles XIII C and XIII D to the State Constitution, which contain a number of provisions affecting the ability of local governments to levy and collect both existing and future taxes, assessments, fees and charges.

**Article XIII D.** Article XIII D established procedural requirements for the imposition of “assessments” subject to its provisions, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the assessment, with each ballot weighted according to the

proportional financial obligation of the affected parcel. The District does not currently impose standby charges or assessments for its Water System.

Article XIID conditions the imposition or increase of any “fee” or “charge” subject to its provisions upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIID defines “fee” or “charge” to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIID is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and notice must be mailed to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

The California Supreme Court decisions in *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409 (2004) (“Richmond”), and *Bighorn Desert View Water Agency v. Verjil*, 39 Cal. 4th 206 (2006) (“Bighorn”) have clarified uncertainty surrounding the applicability of Section 6 of Article XIID to service fees and charges. In Richmond, the California Supreme Court upheld a Court of Appeal decision that water connection fees (which included a capacity charge for capital improvements to the water system and a fire suppression charge) imposed by the Shasta Community Services District were not property related fees or charges subject to Article XIID because a water connection fee results from the property owner’s voluntary decision to apply for the connection. In both Richmond and Bighorn, however, the Court stated that a fee for ongoing water service through an existing connection is imposed “as an incident of property ownership” within the meaning of Article XIID, rejecting, in Bighorn, the water agency’s argument that consumption based water charges are not imposed “as an incident of property ownership” but as a result of the voluntary decisions of customers as to how much water to use.

The District has followed the notice, hearing and protest procedures in Article XIID in connection with water rate increases since its Fiscal Year 2008 rate increases, and plans to follow such notice, hearing and protest procedures in connection with future rate increases.

In addition to the procedural requirements of Article XIID, under Article XIID all property-related fees and charges, including those which were in existence prior to the passage of Proposition 218 in November 1996, must meet the following substantive standards:

- (1) Revenues derived from the fee or charge cannot exceed the funds required to provide the property-related service.
- (2) Revenues derived from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, must be classified as assessments and cannot be imposed without compliance with Section 4 of Article XIID (relating to assessments).

- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

On April 20, 2015, the California Fourth District Court of Appeal issued a decision in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano*, 235 Cal.App.4<sup>th</sup> 1493 (2015), holding that the City of San Juan Capistrano's tiered water rates (or inclining block rates) that were in effect from February 1, 2010 through June 30, 2014 violated the requirement of Proposition 218 that a fee or charge for property-related services, such as water delivery, must be proportional to the cost of providing service. In interpreting Proposition 218, the Court of Appeal emphasized that tiered water rates, or inclining block rates, that go up progressively in relation to usage are compatible with Proposition 218. However, the court concluded that Article XIIIID requires that each tier must reflect the actual costs of service for property owners falling in each of the tiers. The court further concluded that the city had the burden of proof to demonstrate compliance with Proposition 218 and that the city failed to meet its burden of proof in demonstrating that its tiered water rates corresponded to the actual costs of providing service to each tier. The Court of Appeal rejected the city's argument that the rates for its highest tiers constituted a penalty or a fine, which are excluded from Proposition 218. The court determined that deeming such rates to be penalties or fines would improperly circumvent Proposition 218 in that all an agency would need to do is establish a low base rate for service and then impose penalty rates for usage in excess of the base rate that have no relation to the cost of providing service at the penalty levels. On May 19, 2015, the City of San Juan Capistrano announced that the city and the San Juan Capistrano Taxpayers Association, Inc. had reached a settlement, under the terms of which the city agreed that it would not seek review by the California Supreme Court of the Appellate Court decision. In 2014, the city adopted a new water rate structure, including tiered rates with flatter tiers relative to its prior tiered water structure. The tiered water rates adopted by the city in 2014 were not the subject of the lawsuit. Similar water rate challenges under Proposition 218 have been reported to have been filed against other public agencies in California.

On January 13, 2022, the District was served with a class action lawsuit on behalf of a Water System customer and a class of others similarly situated challenging the District's tiered water rates. The lawsuit generally alleges that the District's tiered water rates for single-family residential customers violate the substantive requirement of Proposition 218 that such rates must be proportional to the cost of providing service, and therefore operate as an illegal tax, fee or charge under Article XIIIID. The plaintiff is asking the court to find that the District is in violation of Article XIIIID and enjoin the District from continuing to impose and collect its water rates based on its current rate structure. The complaint is seeking a refund, on behalf of the plaintiff and a class of all others similarly situated, of the water charges billed and paid by the plaintiffs and the class on or after October 4, 2020 to the extent such water charges exceeded the maximum water charges that the District could impose in compliance with Article XIIIID. The portion of the District's water rates for which a refund is sought is not specified in the complaint.

It is District policy to conduct periodic cost of service studies for its rates and charges. The District believes that its established rates for water service comply with the substantive standards of Article XIIIID and do not exceed the proportional cost of providing water service at each given level of usage. However, due to the uncertainties of evolving case law and potential future judicial interpretations of Proposition 218, the District is unable to predict the outcome of such ongoing litigation or whether Proposition 218 could be interpreted, for example, to further limit fees and charges for water services and/or to require stricter standards for the allocation of costs among customers and customer classes. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Rates and Charges."

Article XIIIID further provides that nothing in Proposition 218 shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development. The District believes that Proposition 218 does not apply to the District's System Capacity Charge, although there can

be no assurance that a court would not determine otherwise. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – System Capacity Charge.”

**Article XIII C.** Article XIII C provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIII C does not define the terms “local tax,” “assessment,” “fee” or “charge.” On July 24, 2006, the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil* that the provisions of Article XIII C applied to rates and fees charged for domestic water use. In the decision, the Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District and its General Counsel do not believe that Article XIII C grants to the voters within the District the power to repeal or reduce rates and charges in a manner that would be inconsistent with the contractual obligations of the District.

The interpretation and application of Proposition 218 will likely be subject to further judicial determinations, and the District is unable to predict the outcome of such determinations, or what, if any, further implementing legislation will be enacted. No assurance can be given that the courts will not further interpret Article XIII C and Article XIII D to limit the ability of the District to impose, levy, charge and collect increased fees and charges for water services, or the voters of the District will not, in the future, approve initiatives which seek to repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the District’s water service fees and charges, which are the source of Subordinated Water Revenues pledged to the payment of debt service on the Series 2022 Bonds.

## **Proposition 26**

Proposition 26, which amended Articles XIII A and XIII C of the California Constitution, was approved by the electorate at the November 2, 2010 election. Proposition 26 imposes a majority voter approval requirement on local governments such as the District with respect to certain fees and charges for general purposes, and a two-thirds voter approval requirement with respect to certain fees and charges for special purposes, unless the fees and charges are expressly excluded. Proposition 26, according to its supporters, was intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIII A, XIII C and XIII D pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures. Proposition 26 expressly excludes from its scope “a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product” and “assessments and property-related fees imposed in accordance with the provisions of Article XIII D.” As described above, the California Supreme Court has stated that fees and charges for ongoing water service through an existing connection are property related fees and charges under Article XIII D. See “– Proposition 218” above. The District believes that its fees and charges meet the criteria for exclusion under Proposition 26 and that the initiative is not intended to, and would not, apply to fees for water deliveries and services charged by the District. The District is unable to predict, however, how Proposition 26 will be interpreted by the courts or what its ultimate impact will be.

## **Other Initiatives**

Articles XIII A, XIII B, XIII C and XIII D and Propositions 62 and 26 were adopted as measures that qualified for the ballot pursuant to California’s initiative process. From time to time other initiatives have been and could be proposed and adopted affecting the District’s revenues or ability to increase revenues. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by the District.

## **CERTAIN RISK FACTORS**

*This section provides a general overview of certain risk factors which should be considered, in addition to the other matters set forth in this Official Statement, in evaluating an investment in the Series 2022 Bonds. The ability of the District to pay principal of and interest on the Series 2022 Bonds depends primarily upon the District's receipt of Subordinated Water Revenues. Any one or more of the risk factors discussed below, among others, could adversely affect the ability of the District to realize Subordinated Water Revenues in amounts sufficient to satisfy the requirements of the Indenture and make timely payments of principal of or interest on the Series 2022 Bonds and/or lead to a decrease in the market price and/or in the marketability of the Series 2022 Bonds. The order in which this information is presented does not necessarily reflect the relative importance of various risks or the probability of their occurrence. Further, there can be no assurance that other risk factors not discussed herein will not become material and the District has not undertaken to update investors about the emergence of the risk factors in the future. This section is provided for convenience and is not meant to be a comprehensive or definitive discussion of all of the risks associated with an investment in the Series 2022 Bonds. Many of the risk factors identified below are more fully discussed elsewhere in this Official Statement. Potential investors are advised to read the entire Official Statement, including the appendices hereto, to obtain information essential to making an informed investment decision.*

### **Limited Obligations; General**

The Series 2022 Bonds are special limited obligations of the District payable solely from and secured solely by a pledge of Subordinated Water Revenues of the District. Neither the full faith and credit nor the taxing power of the District is pledged for the payment of the Series 2022 Bonds or the interest thereon. The Series 2022 Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the District's property or its income, receipts or revenues, except the Subordinated Water Revenues. See "SECURITY FOR THE SERIES 2022 BONDS."

The ability of the District to generate Subordinated Water Revenues in amounts sufficient to pay principal of and interest on the Series 2022 Bonds and all other Outstanding Water System Revenue Bonds and Parity Debt may be adversely affected by actions and events outside the control of the District. Among other matters, water supply and demand, general and local economic conditions and changes in law and government regulations (including initiatives and moratoriums on growth) could adversely affect the amount of Water Revenues that the District receives or significantly increase Water Operation and Maintenance Costs. Further, the realization of future Subordinated Water Revenues by the District is subject to, among other things, the capabilities of management of the District, the ability of the District to provide water to its customers, and the ability of the District to establish, maintain and collect rates and charges sufficient to pay for Water Operation and Maintenance Costs, debt service on Water System Revenue Bonds, and other obligations payable from such Water Revenues. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES."

### **No Bond Reserve Fund**

No bond reserve fund has been established for the Series 2022 Bonds. Amounts on deposit in any bond reserve fund established with respect to any other Series of the District's Water System Revenue Bonds do not secure and are not available for the payment of the Series 2022 Bonds. See "SECURITY FOR THE SERIES 2022 BONDS."

## **Water Supply and Demand; Drought; Climate Change**

The District's water supply and the availability thereof is impacted by, among other things, weather conditions. The State is situated in a semi-arid region and is subject to periodic drought. The water year that ended September 30, 2021 was the second driest on record in California and drought conditions are ongoing, with all 58 counties in the State currently under a drought emergency proclamation by the Governor. Periodic drought conditions can also be expected to occur in the future. The District plans for normal occurrences of drought and has developed long-term and dry-year supplies to maximize its ability to reliably deliver water to its customers and the community. Sustained drought conditions or continued low water levels, however, could adversely affect the District's water supply and impact Water Operation and Maintenance Costs and/or demand for water services from the Water System. If the District delivers less water to its customers, the District would need to increase water rates or charges or Water Revenues from water sales would decline. Similarly, to the extent the District acquires Supplemental Supply (as defined in Appendix A) from outside its normal watershed to deliver water to its customers, the District will be obligated to pay the additional costs associated with such Supplemental Supply, resulting in increased Water Operation and Maintenance Costs. The District has developed a comprehensive approach to drought response planning which includes managing the fiscal challenges posed by multi-year drought conditions. The District's adopted water rates and charges include a system of drought surcharges that may be implemented in the event of ongoing drought conditions. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Drought Management" and "–WATER SYSTEM FINANCES – Drought Surcharges."

One of the factors that may pose a risk to the availability of the District's Water Supply is climate change. Rising temperatures may result in decreased precipitation levels that could amplify the effects of drought conditions on water supply. Rising temperatures may also cause a reduction in Sierra Nevada snowmelt, a major source of water in California and the location of the Mokelumne River watershed, the District's primary water supply source. The District has incorporated climate change into its planning activities. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Climate Change."

## **Limitations on Rate-Setting**

The generation of Subordinated Water Revenues sufficient to satisfy the requirements of the Indenture and to pay the principal of and interest on the Series 2022 Bonds and all other Water System Revenue Bonds and Parity Debt will require the District to periodically raise the water rates and charges payable by its customers. The increase or imposition of retail water rates is subject to various substantive and procedural requirements and limitations, including Proposition 218, which added Article XIIC and XIID to the State Constitution. Proposition 218 further authorizes the exercise of the initiative power by voters to repeal or reduce water rate and charges. The District's adopted retail water rates for Fiscal Years 2022 and 2023 have been imposed in accordance with the notice, hearing and protest procedures provided for under Proposition 218. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES" and APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Rates and Charges."

## **Statutory and Regulatory Compliance**

Laws and regulations governing treatment and delivery of drinking water are enacted and promulgated by federal, state and local government agencies. In the event the District were to fail to comply with applicable laws and regulations, significant fines and penalties could be imposed by such agencies. In addition to claims by private parties, changes in the scope and standards for public agency

water systems such as the Water System may also lead to administrative orders issued by federal or State regulators. Compliance with new statutory and regulatory requirements or orders concerning matters such as water quality, dam safety, instream fishery flows and endangered species could require significant capital investments and/or increases in Water Operation and Maintenance Costs. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Water Quality and Treatment; Other Regulatory Matters” and “– Water Rights and Related Proceedings.”

### **Costs of Capital Improvement Program; Construction Risks**

As described herein, during the Fiscal Years 2022 through 2026, the District’s capital improvement program for the Water System is projected to require cash expenditures of approximately \$2.0 billion. The actual cost of acquiring and constructing the various components of the planned capital improvements to the Water System will depend on a variety of factors, including but not limited to potential rising costs or shortages of labor or materials, the discovery of unforeseen subsurface conditions, natural hazards or seismic events encountered during construction, severe weather conditions, access to financial markets or other events outside the control of the District. There can be no assurances that costs for acquisition and construction of capital improvements to the Water System will not significantly exceed the amounts projected by the District. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Capital Improvement Program.”

### **Casualty Risks**

California is subject to geotechnical and extreme weather conditions which represent potential safety hazards, including expansive soils, wildfires, floods, high winds and areas of potential liquefaction and landslide. Natural disasters, including earthquakes, wildfires, floods, high winds, or man-made disasters or accidents, could cause failure of Water System infrastructure or otherwise interrupt operation of the Water System and thereby impair the ability of the District to generate Water Revenues. The severity and/or frequency of natural disaster occurrences may be exacerbated by the impacts of climate change. The occurrence of such events could also result in liability claims against the District. Under the doctrine of inverse condemnation (a legal concept that entitles property owners to just compensation if their property is damaged by a public use), California courts have imposed liability on utilities in legal actions brought by property holders for damages caused by the utility’s infrastructure. Thus, if certain facilities of the District, such as its water storage or conveyance facilities, are determined to be the substantial cause of damage to property from flooding or otherwise, and the doctrine of inverse condemnation applies, the District could be liable for property damages in certain cases without having been found negligent.

The Indenture requires the District to maintain public liability insurance and insurance on the Water System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities but only if it is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District. The District uses a combination of self-funding/self-insuring and insurance coverage in the District’s risk management program; however, the program does not provide coverage for every conceivable risk of loss. The District’s insurance program does not currently include earthquake coverage. Further, in the event of material damage to Water System facilities, there can be no assurance that any insurance proceeds will be sufficient to rebuild or replace such facilities.

See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Seismic and Wildfire Matters” and “– Insurance.”

## **Cybersecurity; Other Safety and Security Risks**

Cybersecurity breaches could damage the District's information and security systems and cause material disruption to its operations. The occurrence of military conflicts and terrorist activities, including cyber terrorism, could also adversely impact the operations of the Water System or the finances of the District. Foreign state-sponsored and other cyber-activities may increase during periods of geo-political conflict such as the ongoing conflict in Ukraine. United States government agencies have in the past issued warnings indicating that critical infrastructure sectors such as water systems may be specific targets of cybersecurity threats. Attacks directed at critical water sector operations could damage distribution and storage assets, cause operational malfunctions and outages, and result in costly recovery and remediation efforts. The District maintains active security (including information security) and emergency preparedness programs and has a number of security measures and safeguards in place. However, there can be no assurance that any existing or additional safety and security measures will prove adequate in the event that military conflicts or terrorist activities, including cyber terrorism, or acts of malfeasance are directed against the assets of the Water System or the information technology systems of the District. The costs of security measures or of remedying damage from security breaches could be greater than presently anticipated. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM – Security and Emergency Preparedness; Cybersecurity."

## **COVID-19 Considerations; Infectious Disease Outbreak**

The outbreak of COVID-19, a respiratory disease caused by a new highly transmissible strain of coronavirus, has been declared as a pandemic by the World Health Organization. The pandemic has affected many parts of the world, including the United States and the State of California. Commerce, travel, asset values and financial markets experienced disruptions worldwide. Although governmental-imposed stay-at-home orders and restrictions on operations of schools and businesses implemented to respond to and control the outbreak have largely been eased or eliminated in California, new variants of the disease continue to emerge and restrictions may be re-imposed in various jurisdictions from time to time as local conditions warrant. Further, it is not known with certainty when a full resumption of normal economic conditions will occur. It is widely expected that the negative effects of the COVID-19 pandemic and its aftermath on global, national and local economies will continue at least for some period of time. Due to the essential nature of the services provided by the District's Water System, the District has not experienced a significant, materially adverse impact on its annual revenues or operations as a result of COVID-19. However, given the remaining uncertainties surrounding the COVID-19 pandemic and its impacts, no assurances can be given that the District and the economy of its service area will not be adversely affected in the future. Another national or localized outbreak of highly contagious or epidemic disease in the future could also negatively impact the District's operations and finances and/or the economy of its service area. For additional information regarding the impacts of COVID-19 on the District, see APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE DISTRICT – COVID-19."

## **Uncertainties of Projections, Forecasts and Assumptions**

Certain information contained in this Official Statement is based upon assumptions and projections. Projections and assumptions are inherently subject to significant uncertainties. Inevitably, some assumptions will not be realized and unanticipated events and circumstances may occur and actual results are likely to differ, perhaps materially, from those projected. Accordingly, such projections are not necessarily indicative of future performance. See "FORWARD-LOOKING STATEMENTS" on page (c) of the inside cover pages of this Official Statement. See also APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Projected Operating Results."

## **Limitations on Remedies**

Upon the occurrence and continuance of an Event of Default under the Indenture, the registered owners of not less than a majority in aggregate principal amount of the Water System Revenue Bonds at the time outstanding are entitled to declare the principal of all of such Water System Revenue Bonds and the interest accrued thereon to be immediately due and payable. However, in the event of a default and such acceleration, there can be no assurance that the District will have sufficient Subordinated Water Revenues available for payment of all of the Water System Revenue Bonds. In addition, enforceability of the rights and remedies of the owners of the Series 2022 Bonds, and the obligations incurred by the District under the Series 2022 Bonds and the Indenture, may become subject to the following: the federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose.

If the District fails to comply with its covenants under the Indenture or to pay the principal of and interest on the Series 2022 Bonds, there can be no assurance that the available legal remedies will be adequate to protect the interests of the owners of the Series 2022 Bonds. See "SECURITY FOR THE SERIES 2022 BONDS – Limitations on Remedies" and APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default; Remedies."

## **Certain Other Obligations May Be Subject to Acceleration**

The District has entered into standby bond purchase facilities to provide liquidity support for its variable rate Water System Revenue Bonds which provide, upon the occurrence of certain events of default, that the providers thereof may declare any outstanding payment obligations thereunder to be immediately due and payable. In addition, the repayment obligations of the District under the outstanding parity State Loans may be accelerated by the State following an uncured breach by the District of a material provision of the State Loan. Interest rate swaps to which the District is a party are, under some circumstances, subject to early termination, upon which a substantial termination payment may become immediately due to the applicable counterparty. Further, the bank credit facilities supporting the District's subordinate Commercial Paper Notes (Water Series) are subject to termination upon the occurrence of certain events and upon the occurrence of any such termination or certain events of default, any outstanding repayment obligations of the District to the bank thereunder may be subject to acceleration. If any parity or subordinate obligations are accelerated or substantial swap termination payments become due, it may significantly reduce the amount of Subordinated Water Revenues available to pay debt service on the Series 2022 Bonds and other Water System Revenue Bonds. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Variable Rate and Swap Obligations," "–Parity State Loans" and "–Subordinate Commercial Paper Programs." Certain of the agreements referenced above are expected to be terminated in connection with the issuance of the Series 2022B Bonds and the refunding of the Refunded Bonds. See "PLAN OF FINANCE –Refunding of the Refunded Bonds" herein.

## **Green Bonds**

The designation of the Series 2022A Bonds as Green Bonds is not based upon the receipt by the District of any third-party certification relating to the status of the Series 2022 Bonds as Green Bonds. The terms "Green Bonds" and "green project" are neither defined in nor related to provisions in the Indenture or otherwise defined under State or federal laws. The use of such terms herein is for identification purposes only and is not intended to provide or imply that an owner of the Series 2022A

Bonds is entitled to any additional security other than as provided in the Indenture. The Series 2022A Bonds are being designated by the District as “Green Bonds” consistent with the District’s Green Bond Guidance approved by the District Board. However, there can be no assurance that the green projects funded with the proceeds of the Series 2022A Bonds will meet an investor’s expectations regarding sustainability performance. The purpose of labeling the Series 2022A Bonds as “Green Bonds” is, as noted, to allow owners of the Series 2022A Bonds to invest directly in bonds that are expected to finance environmentally beneficial projects. The District assumes no obligation to ensure that these projects comply with any legal or other principles of green projects as such principles may evolve over time. See “PLAN OF FINANCE – Series 2022A Bonds Designation as Green Bonds.”

### **Tax Law Proposals; Risk of Audit**

Existing law may change so as to reduce or eliminate the benefit to beneficial owners of the Series 2022 Bonds of the exclusion of interest thereon from gross income for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Series 2022 Bonds.

The IRS has initiated an expanded program for the auditing of tax-exempt securities issues, including both random and target audits. It is possible that the Series 2022 Bonds will be selected for audit by the IRS. It is also possible that the market value of the Series 2022 Bonds might be affected as a result of such an audit of the Series 2022 Bonds (or by an audit of similar securities). See “TAX MATTERS.”

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement, dated the date of delivery of the Series 2022 Bonds, by and between the District and the Dissemination Agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series 2022 Bonds to provide in an Annual Report certain financial information and operating data relating to the District and the Water System by not later than December 31 of each year in which the Series 2022 Bonds are outstanding (or if the District’s fiscal year changes, by no later than six months after the end of such Fiscal Year), commencing with the Annual Report for Fiscal Year 2021-22, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Trustee on behalf of the District with the Municipal Securities Rulemaking Board through EMMA. The Municipal Securities Rulemaking Board has made such information available to the public without charge through such internet portal. The specific nature of the information to be contained in the Annual Report and the notices of specified events is set forth in APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years. Filings through EMMA are linked to a particular issue of obligations by CUSIP number (which is subject to change after the issuance of obligations as a result of various subsequent actions). The District uses its best efforts to confirm that each report filed through EMMA is linked to all the correct 9-digit CUSIP numbers. However, as a technical matter, it has come to the District’s attention that certain filings during the past five years, when made, were not appropriately linked to all applicable CUSIP numbers. The District has since linked the applicable filings to the additional CUSIPs.

### **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the District in the issuance and delivery of, or in any way contesting or affecting the validity of, the Series 2022 Bonds or the Indenture, or the pledge of Subordinated Water Revenues under the Indenture, or

contesting or affecting the power or authority of the District to impose rates and charges for services of the Water System. There is no litigation known to be pending, or to the knowledge of the District, threatened, questioning the existence of the District or the title of the officers of the District to their respective offices.

At any given time, including the present, there are certain other claims and lawsuits against the District that arise in the course of operations of the Water System. Certain of such matters could, if determined adversely to the District, affect expenditures by the District, and in some cases, Water Revenues. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES – Proposition 218 – *Article XIII D*” for information regarding certain litigation challenging the District’s tiered water rates. The District is also a party to various other legal proceedings affecting the Water System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – THE WATER SYSTEM” for a discussion of certain of such matters. In the view of the District’s management and General Counsel, there is no litigation pending against the District, or other ongoing legal proceedings to which the District is a party, which if determined adversely to the District, would individually or in the aggregate materially impair the District’s ability to pay debt service on its indebtedness, including the Series 2022 Bonds.

## **RATINGS**

S&P Global Ratings (“S&P”) and Moody’s Investors Service, Inc. (“Moody’s”) have assigned the Series 2022 Bonds the ratings of “\_\_\_\_” and “\_\_\_\_,” respectively. No application has been made to any other rating agency for the purpose of obtaining any additional rating on the Series 2022 Bonds. Any desired explanation of such ratings should be obtained from the rating agency furnishing the same. Generally, rating agencies base their ratings on information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. There is no assurance that any rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in the judgment of such rating agency, circumstances so warrant. Any such change in or withdrawal of such ratings may have an adverse effect on the market price of the Series 2022 Bonds.

## **TAX MATTERS**

In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described herein, interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals. In the further opinion of Co-Bond Counsel, interest (and original issue discount) on the Series 2022 Bonds is exempt from State of California personal income tax.

Co-Bond Counsel’s opinion as to the exclusion from gross income for federal income tax purposes of interest (and original issue discount) on the Series 2022 Bonds is based upon certain representations of fact and certifications made by the District and others and is subject to the condition that the District comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2022 Bonds to assure that interest (and original issue discount) on the Series 2022 Bonds will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause interest (and original issue discount) on the Series 2022 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2022 Bonds. The District has covenanted to comply with all such requirements.

The amount by which a Series 2022 Bond Owner's original basis for determining loss on sale or exchange in the applicable Series 2022 Bond (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier call date) constitutes amortizable bond premium, which must be amortized under Section 171 of the Code; such amortizable bond premium reduces the Series 2022 Bond Owner's basis in the applicable Series 2022 Bond (and the amount of tax-exempt interest received with respect to the Series 2022 Bonds), and is not deductible for federal income tax purposes. The basis reduction as a result of the amortization of bond premium may result in a Series 2022 Bond Owner realizing a taxable gain when a Series 2022 Bond is sold by the Owner for an amount equal to or less (under certain circumstances) than the original cost of the Series 2022 Bond to the Owner. Purchasers of the Series 2022 Bonds should consult their own tax advisors as to the treatment, computation and collateral consequences of amortizable bond premium.

The difference between the issue price of a Series 2022 Bond (the first price at which a substantial amount of the Series 2022 Bonds of a maturity is to be sold to the public) and the stated redemption price at maturity of such Series 2022 Bond constitutes original issue discount. Original issue discount accrues under a constant yield method, and original issue discount will accrue to a Series 2022 Bond Owner before receipt of cash attributable to such excludable income. The amount of original issue discount deemed received by a Series 2022 Bond Owner will increase the Series 2022 Bond Owner's basis in the applicable Series 2022 Bond. The amount of original issue discount that accrues to the Owner of a Series 2022 Bond is excluded from the gross income of such Series 2022 Bond Owner for federal income tax purposes, is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals, and is exempt from State of California personal income tax.

The IRS has initiated an expanded program for the auditing of tax exempt bond issues, including both random and targeted audits. It is possible that the Series 2022 Bonds will be selected for audit by the IRS. It is also possible that the market value of the Series 2022 Bonds might be affected as a result of such an audit of the Series 2022 Bonds (or by an audit of similar municipal obligations). No assurance can be given that in the course of an audit, as a result of an audit, or otherwise, Congress or the IRS might not change the Code (or interpretation thereof) subsequent to the issuance of the Series 2022 Bonds to the extent that it materially adversely affects the exclusion from gross income of interest (and original issue discount) on the Series 2022 Bonds or their market value.

It is possible that subsequent to the issuance of the Series 2022 Bonds there might be federal, state, or local statutory changes (or judicial or regulatory interpretations of federal, state, or local law) that affect the federal, state, or local tax treatment of the Series 2022 Bonds or the market value of the Series 2022 Bonds. The introduction or enactment of any of such changes could adversely affect the market value or liquidity of the Series 2022 Bonds. No assurance can be given that subsequent to the issuance of the Series 2022 Bonds such changes (or other changes) will not be introduced or enacted or interpretations will not occur. Before purchasing any of the Series 2022 Bonds, all potential purchasers should consult their tax advisors regarding possible statutory changes or judicial or regulatory changes or interpretations, and their collateral tax consequences relating to the Series 2022 Bonds.

Co-Bond Counsel's opinions with respect to the Series 2022 Bonds may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. Co-Bond Counsel has not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate relating to the Series 2022 Bonds permit certain actions to be taken or to be omitted if a favorable opinion of Co-Bond Counsel is provided with respect thereto. Co-Bond Counsel expresses no opinion as to the effect on the exclusion from gross income of interest (and original issue discount) for federal income tax purposes with respect to any Series 2022 Bond if any such action is taken or omitted based upon the advice of counsel other than Co-Bond Counsel.

Although Co-Bond Counsel has rendered their opinions that interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes provided that the District continues to comply with certain requirements of the Code, the ownership of the Series 2022 Bonds and the accrual or receipt of interest (and original issue discount) on the Series 2022 Bonds may otherwise affect the tax liability of certain persons. Co-Bond Counsel expresses no opinion regarding any such tax consequences. Accordingly, before purchasing any of the Series 2022 Bonds, all potential purchasers should consult their tax advisors with respect to collateral tax consequences relating to the Series 2022 Bonds.

A copy of the form of the opinions of Co-Bond Counsel relating to the Series 2022 Bonds is included in APPENDIX D hereto.

## **UNDERWRITING**

The Series 2022 Bonds are being purchased by BofA Securities, Inc., on behalf of itself and as representative of Morgan Stanley & Co. LLC and Blaylock Van, LLP, underwriters for the Series 2022 Bonds (collectively, the “Underwriters”), pursuant to and subject to the conditions set forth in the bond purchase contract between the District and the Underwriters, at a purchase price of \$\_\_\_\_\_ (equal to the \$\_\_\_\_\_ aggregate principal amount of the Series 2022 Bonds, plus original issue premium of \$\_\_\_\_\_, less an Underwriters’ discount of \$\_\_\_\_\_). The bond purchase contract provides that the Underwriters will purchase all of the Series 2022 Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the bond purchase contract.

The Underwriters may offer and sell the Series 2022 Bonds to certain dealers (including dealers depositing Series 2022 Bonds into investment trusts) and others at prices lower than the respective public offering prices stated or derived from information stated on the inside cover pages hereof. The initial public offering prices may be changed from time to time by the Underwriters.

BofA Securities, Inc., an Underwriter of the Series 2022 Bonds, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”). As part of this arrangement, BofA Securities, Inc. may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S. As part of this arrangement, BofA Securities, Inc. may compensate MLPF&S as a dealer for their selling efforts with respect to the Series 2022 Bonds.

Morgan Stanley & Co. LLC, an Underwriter of the Series 2022 Bonds, has entered into a retail distribution arrangement with its affiliate Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may distribute municipal securities to retail investors through the financial advisor network of Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Series 2022 Bonds.

## **CERTAIN RELATIONSHIPS**

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the District, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of sales, trading, brokerage and financing activities, certain of the Underwriters may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities and financial instruments or bank loans, as applicable, of the District and other governmental entities and utilities. In connection with these activities and the provision of other services, certain of the Underwriters may be or become creditors of such entities. In addition, the Underwriters, or their affiliates, currently serve as remarketing agents or providers of credit enhancement or liquidity facilities for variable rate obligations issued by, or as interest rate swap providers to, governmental entities and utilities, including the District.

Affiliates of BofA Securities, Inc., one of the Underwriters of the Series 2022 Bonds, are counterparties to the District with respect to certain of the interest rate swap agreements that are being terminated in connection with the issuance of the Series 2022B Bonds. The termination of the interest rate swap agreements will result in the District making a termination payment to such affiliates of BofA Securities, Inc.

### **APPROVAL OF LEGAL PROCEEDINGS**

All legal matters incident to the offering of the Series 2022 Bonds are subject to the approval of legality by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Oakland, California, as Co-Disclosure Counsel, and for the Underwriters by their counsel, Orrick, Herrington & Sutcliffe LLP. The form of the approving opinions of Co-Bond Counsel, in connection with the issuance of the Series 2022 Bonds is included as APPENDIX D– “PROPOSED FORM OF CO-BOND COUNSEL OPINIONS” to this Official Statement.

### **MUNICIPAL ADVISOR**

The District has retained Montague DeRose and Associates, LLC, Walnut Creek, California, as municipal advisor (the “Municipal Advisor”) in connection with the issuance and delivery of the Series 2022 Bonds. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement.

### **INDEPENDENT ACCOUNTANTS**

Included as APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020” to this Official Statement are the audited financial statements of the District for the Fiscal Years ended June 30, 2021 and 2020. The District’s financial statements for the Fiscal Years ended June 30, 2021 and 2020 have been audited by Lance, Soll & Lunghard, LLP, certified public accountants. Lance, Soll & Lunghard, LLP has not been requested to consent to the inclusion of its report in APPENDIX B and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Lance, Soll & Lunghard, LLP with respect to any event subsequent to the date of its report.

It is District policy to competitively select and retain independent accountants on a periodic basis. Following a competitive selection process and District Board approval, Lance, Soll & Lunghard, LLP began serving as the District’s independent accountants in Fiscal Year 2019. The District exercised its option to extend the contract with Lance, Soll & Lunghard, LLP on March 22, 2022 to serve as independent accountants pursuant to the contract terms for an additional two-year period for the fiscal years ending June 30, 2022 and 2023.

## **MISCELLANEOUS**

References made herein to certain documents and reports are brief summaries thereof and do not purport to be complete or definitive and reference is hereby made to such documents and reports for a full and complete statement of the contents thereof.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or registered owners of any of the Series 2022 Bonds. The delivery and distribution of this Official Statement have been duly authorized by the District.

### **EAST BAY MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
General Manager

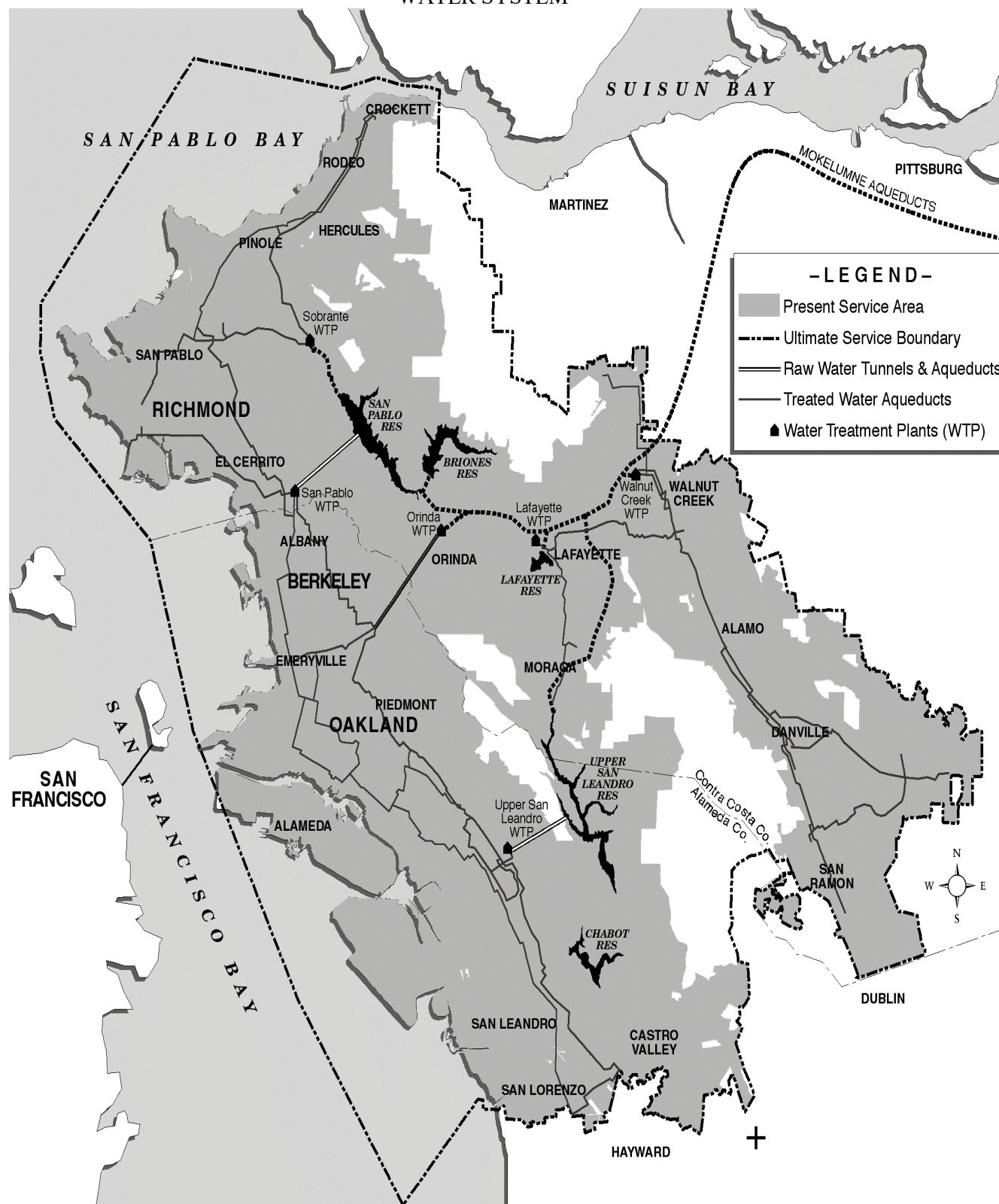
**APPENDIX A**

**THE EAST BAY MUNICIPAL UTILITY DISTRICT  
(THE WATER SYSTEM)**



The East Bay Municipal Utility District occupies 332 square miles of the San Francisco – Oakland metropolitan region. The Water System serves approximately 1.4 million people, or approximately 50% of the population of Alameda and Contra Costa Counties.

# EAST BAY MUNICIPAL UTILITY DISTRICT WATER SYSTEM



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## THE DISTRICT

### Organization

In May 1923, voters in cities along the eastern shore of the San Francisco Bay located in portions of Alameda and Contra Costa Counties (known throughout the San Francisco Bay Area as the “East Bay”) elected to create the East Bay Municipal Utility District (the “District”) under the provisions of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the territory of the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

### District Board

The District, a public agency, is governed by an elected seven-member Board of Directors (the “Board” or “District Board”) which determines such matters as rates and charges for services, approval of contracts and District policy. Voters elect directors by ward to four-year terms. There are seven wards which together cover the entire service area of the District. Each year, the Board elects from among its members persons to serve as Board officers (*i.e.*, President and Vice President). The current members of the District Board have an average service tenure of approximately 22 years. Each of the Board members has served one or more years as an officer of the Board and has chaired one or more of the Board’s standing committees that review financial, long-range planning, and legislative matters. The following persons currently serve on the Board:

**Doug A. Linney** has served on the Board since 2000 and represents Ward 5, which includes the Alameda County cities of Alameda and San Lorenzo, the West Oakland and Oakland Airport Area, and a portion of San Leandro. Mr. Linney is currently President of the Board. He is active in a number of community and environmental organizations, including the California League of Conservation Voters, Friends of the River and ZEV2030, a zero emission vehicle advocacy organization. Mr. Linney is employed as President of The Next Generation, a public relations firm providing services that emphasize achieving environmental protection. Mr. Linney has a Bachelor of Science degree in Environmental Science and Public Policy from the University of California, Davis. His current term expires on December 31, 2024.

**John A. Coleman** has served on the Board since 1990 and represents Ward 2, which includes the Contra Costa County cities of Alamo, Lafayette and Walnut Creek, the Town of Danville, the communities of Blackhawk and Diablo, and portions of Pleasant Hill and San Ramon. Mr. Coleman is currently Vice President of the Board. Mr. Coleman represents the District on the governing boards of the Freeport Regional Water Authority and the Upper Mokelumne River Watershed Authority, as well as the DSRSD/EBMUD Recycled Water Authority (“DERWA”) and the Los Vaqueros Reservoir Joint Powers Authority. Mr. Coleman also serves as a board member of East Bay Leadership Council and as a member of the San Francisco Bay Restoration Authority Advisory Committee. He is also a past president of the Association of California Water Agencies (“ACWA”) board of directors and the California Association of Sanitation Agencies, a past Chair of ACWA’s

Federal Affairs Committee, and a past Chair of ACWA's California Finance Water Task Force. Mr. Coleman is employed as the Chief Executive Officer of the Bay Planning Coalition, which represents maritime and shoreline interests and issues in northern California. He has a Bachelor of Science degree in Natural Resources from the University of California, Berkeley and a certificate in management from the University of Pacific School of Business and Public Administration. His current term expires on December 31, 2022.

**Andy Katz** has served on the Board since 2006 and represents Ward 4, which includes Albany, Berkeley, Emeryville and North Oakland in Alameda County, and El Cerrito and Kensington in Contra Costa County. Mr. Katz is employed as an environmental and workers' rights attorney. He is Chair of the Berkeley Community Health Commission and a former Chair of Sierra Club California. Prior to his election to the District Board, he served for five years as a member of the City of Berkeley Zoning Adjustments Board. Mr. Katz has a Bachelor of Arts degree and a Master of City Planning degree from the University of California, Berkeley, and a law degree from Santa Clara University. His current term expires on December 31, 2022.

**Lesia R. McIntosh** has served on the Board since 1999 and represents Ward 1, which includes the Contra Costa County cities of Crockett, Hercules, Rodeo and San Pablo; portions of Richmond and Pinole, and the communities of North Richmond and Selby. Ms. McIntosh represents the District at the Special Districts Association of Contra Costa County and the Los Vaqueros Reservoir Joint Powers Authority. She is a member of the Contra Costa County Bar Association, East Bay Community Development Corporation, and Black Women Organized for Political Action. Ms. McIntosh is an attorney with more than 30 years of experience. She has a Bachelor of Science degree in Political Science from the University of California, Berkeley and a law degree from John F. Kennedy University. Ms. McIntosh's current term expires on December 31, 2024.

**Frank G. Mellon** has served on the Board since 1994 and represents Ward 7, which includes the areas of Castro Valley, communities of Cherryland and Fairview; portions of San Leandro and Hayward in Alameda County, and a portion of San Ramon in Contra Costa County. Mr. Mellon also serves on the District's Retirement Board. He represents the District on the governing board of DERWA and on the Special Districts Association of Alameda County. Mr. Mellon is currently a consultant specializing in human resources and labor relations and has taught labor law in the California State University East Bay Human Resources Certificate Program. Mr. Mellon has a Bachelor of Arts degree in Management from the University of Hawaii and a Master's degree in Business Administration from St. Mary's College in Moraga. His current term expires on December 31, 2022.

**William B. Patterson** has served on the Board since 1997 and represents Ward 6, which includes portions of Oakland, including East Oakland and the area south of Park Boulevard/5<sup>th</sup> Avenue to the San Leandro city boundary, in Alameda County. Mr. Patterson represents the District on the boards for the Upper Mokelumne River Watershed Authority and the Freeport Regional Water Authority. He also serves as a representative for the Business Forum and the Oakland Chamber of Commerce. Mr. Patterson is a current member of Oakland's Urban Strategies Council board and previously served on the Oakland Public Ethics and Parks and Recreation Commissions and the Oakland Workforce Investment Board. He retired several years ago, after working for many years as a City of Oakland Manager of Parks and Recreation. Mr. Patterson has Bachelor's and Master's degrees from San Francisco State University. His current term expires on December 31, 2024.

**Marguerite Young** was elected to the Board in 2014 and represents Ward 3, which includes the City of Piedmont and a portion of the City of Oakland in Alameda County, and the Contra Costa County city of Orinda, the Town of Moraga, the community of El Sobrante, and portions of Pinole and Richmond. She also serves on the District's Retirement Board. Ms. Young is the principal of

Rivernstream Consulting which provides strategic planning, research and policy guidance at the confluence of climate, labor and justice. She recently retired from the Service Employees International Union (“SEIU”) where she was the Assistant Director for the union’s Climate and Environmental Justice program. Prior to this she was Assistant Director and Senior Policy Analyst for the SEIU Capital Stewardship Program. Ms. Young was co-chair of the CALFED Bay-Delta Program’s Water Quality Committee, which instigated regional cooperation among water agencies to address drinking water quality issues related to Bay-Delta water supplies. As California Director of Clean Water Action, her work also included service as an appointed member of California’s Source Water Assessment Advisory Committee, the United States Environmental Protection Agency (“USEPA”) Federal Advisory Committee on the Multiple Disinfection By-product Rule, and California’s Recycled Water Task Force. She co-founded the League of Conservation Voters-East Bay and is a former board member of Friends of the River. Ms. Young has a Bachelor of Science degree in Natural Resource Economics from the University of California, Berkeley. Her current term expires on December 31, 2022.

## **District Management**

**Clifford C. Chan** joined the District in 1997 and was appointed General Manager in 2020. Mr. Chan has nearly 25 years of water industry related experience. Prior to his appointment as General Manager, Mr. Chan served as the District’s Director of Operations and Maintenance and was responsible for overseeing nearly one-half of the District’s employees tasked with operating and maintaining the District’s water system. Previously, he held engineering and management positions in the District’s Operations and Maintenance Department, including serving as Manager of Maintenance and Construction. Before joining the District, Mr. Chan was employed as an engineering consultant. He serves on committees for the American Water Works Association and the California Urban Water Agencies. He has a Bachelor of Science degree and a Master’s degree in Civil Engineering from the University of California, Berkeley and is a licensed Civil Engineer in California.

**Derek T. McDonald** joined the District in 2007 and was appointed General Counsel in 2021. Mr. McDonald has extensive experience in public agency law, including construction, public bidding and procurement, real estate, water rights, tort and contract litigation, the Public Records Act, and the Brown Act, having worked on a number of significant cases and issues for the District during his tenure in the District’s Office of General Counsel. Before joining the District, he was a court research attorney and clerked for a law firm and a public defender’s office. Mr. McDonald also worked with local and international nonprofit and nongovernmental organizations in the areas of youth development, environmental restoration, international elections and human rights advocacy. He has a Bachelor’s degree in Sociology from the Boston College and a law degree from the University of San Francisco.

**Sophia D. Skoda** joined the District in 2006 and was appointed Director of Finance in 2015. Prior to her appointment as Director of Finance, Ms. Skoda served as Treasury Manager. In addition, Ms. Skoda has previously served as a Senior Civil Engineer for the District. Before joining the District, Ms. Skoda provided a range of financial consulting services to water and wastewater utility clients throughout California. She has a Bachelor of Science degree in Civil Engineering from Stanford University and a Master’s degree in Civil Engineering from the University of California, Berkeley.

**Olujimi Yoloye** joined the District in 1985 and was appointed Director of Engineering and Construction in 2019. Mr. Yoloye is responsible for over 280 employees tasked with planning, design and construction of water system infrastructure. Prior to his current appointment, he held progressively more responsible positions managing engineering design and construction projects

in the Water and Wastewater Departments. He has more than 30 years of experience in the engineering field. Mr. Yolo has a Bachelor's degree in Civil Engineering from the University of Manchester Institute of Science and Technology (England) and a Master's degree in Civil Engineering from Stanford University and is a licensed Civil Engineer in California.

**Michael T. Tognolini** joined the District in 1996 and was appointed Director of Water and Natural Resources in 2018. Mr. Tognolini is responsible for managing divisions that develop and administer programs to protect existing water resources, develop additional water supplies and manage 57,000 acres of water, watershed lands and related facilities. During his tenure with the District, Mr. Tognolini has held a number of engineering and management positions in drought planning and water supply development in the Water and Natural Resources Department. He has more than 32 years of experience in the water industry. Mr. Tognolini has a Bachelor's degree and a Master's degree in Civil Engineering from Stanford University.

**David Briggs** joined the District in 2017 and is presently the Director of Operations & Maintenance and the Emergency Operations Director for the District. In this capacity he manages the operation and maintenance of water facilities and power generation facilities. Prior to joining the District, Mr. Briggs spent 10 years at the San Francisco Public Utilities Commission and 13 years at the Contra Costa Water District ("CCWD"). He has been a manager since 2003. During his 27-year career, Dr. Briggs has developed experience in water resources, engineering, construction management, facilities planning, and operations and maintenance. He obtained his Bachelor's degree in mechanical engineering from UC Davis, and his Master's degree and Ph.D. from Stanford University, also in mechanical engineering. He is a licensed Civil Engineer in California.

**Eileen M. White** joined the District in 1987 and was appointed Director of Wastewater in 2017. Prior to that appointment, she held progressively more responsible positions managing the operations of the water system and managing engineering design and construction projects in the Wastewater and Water Departments. Prior to joining the District, Ms. White worked as a design engineer for Pacific Gas and Electric Company. She has more than 30 years of experience in the engineering field. Ms. White has a Bachelor of Science degree in Civil Engineering from the University of California, Berkeley and is a licensed Civil Engineer in California.

**Rischa S. Cole** joined the District in 1997 and was appointed Secretary of the District in 2017. Ms. Cole has served in a variety of lead administrative roles during her career at the District including Executive Assistant II in the Office of the Secretary and, prior to her appointment as Secretary, as Assistant to the General Manager. Ms. Cole received her Bachelor of Science degree in Business Administration from California State University, East Bay. She is a Member of the International Institute of Municipal Clerks and is completing requirements to obtain her credentials as a Certified Municipal Clerk.

**Andrea M. Miller** joined the District in 2020 as the Controller. She has more than 30 years of experience in accounting and finance and is responsible for oversight of the District's annual audit, accounting, and payroll. Prior to joining the District, Mrs. Miller served as Finance Director, Assistant Finance Director, and Budget Administrator for three other local governments. She serves on the California State Controller's Office Advisory Committee on Financial Reporting, and on the Government Finance Officers Association Committee on Governmental Budgeting and Fiscal Policy. Mrs. Miller has a Bachelor of Arts degree in Human Development with a minor in Business Administration from California State University, Hayward, and a Master of Public Administration degree from Golden Gate University.

**Robert L. Hannay** joined the District in 2018 as Treasury Manager. Mr. Hannay is responsible for the oversight of the District's debt management, investment management, and rate planning. Mr.

Hannay additionally provides financial management support to the District's retirement system. Prior to joining the District, Mr. Hannay worked in consulting, at a rating agency, at a financial advisory firm, and in public finance investment banking. Mr. Hannay has a Bachelor of Science degree in Civil Engineering from Texas A&M University and Master's degrees in Civil Engineering and City Planning from the University of California, Berkeley. He is also a Chartered Financial Analyst (CFA) charterholder.

**Samuel A. Feldman** joined the District in 2021 as the District's Debt Administrator. Prior to this role, Mr. Feldman was a local government rating analyst at Moody's Investors Service covering local governments in the West region. Prior to this, Mr. Feldman worked in the City Manager's Office of the City of Phoenix, Arizona and was part of the 61<sup>st</sup> class of the Phoenix Management Intern Program. Mr. Feldman has a Bachelor of Arts degree in Urban & Metropolitan Studies from Arizona State University and his Master's degree in Public Administration from Arizona State University, where he was a Marvin Andrews Fellow in Urban Management.

## **Employees and Employee Relations**

As of January 1, 2022, the District had 1,680 (full-time equivalent) employees in the Water System and 267 (full-time equivalent) employees in the Wastewater System.

The District has four unions representing approximately 1,799 workers out of a total full-time equivalent workforce of 1,947 employees: Local 2019 of the American Federation of State, County and Municipal Employees ("AFSCME") represents white collar workers including professionals; Local 444 of AFSCME represents blue collar workers; Local 21, International Federation of Professional and Technical Engineers represents supervisory employees; and Local 39, International Union of Operating Engineers represents water treatment/distribution workers.

Locals 444, 21 and 39 are each operating under a Memorandum of Understanding (collectively, "MOUs"), approved by the District Board in 2022. The term of the MOUs began on April 26, 2021 and extends through April 20, 2025. The MOU with Local 2019 expired on April 25, 2021. Until a successor contract is executed, the terms of the expired MOU will continue to govern. *{Monitor for update}*. The MOUs are comprehensive in scope and provide for binding arbitration for the resolution of grievances. The District has not had a strike or work stoppage since 1985. For a discussion of the District Employees' Retirement System, see "WATER SYSTEM FINANCES – Employees' Retirement System."

## **Geographic Area and Services**

Originally formed to include nine cities covering 92.6 square miles, the District has grown by more than 450 separate annexations to a present area of 332 square miles in 20 incorporated and 15 unincorporated communities in both Alameda and Contra Costa Counties. It covers the eastern shore of San Francisco Bay from Carquinez Strait on the north to and including San Lorenzo on the south and it extends approximately 20 miles east, beyond the Oakland-Berkeley hills, into Contra Costa County.

The District's Water System serves this entire area, reaching approximately 50% of the combined population of Alameda County and Contra Costa County. Approximately two-thirds of the population within the District's service area resides in the cities of Alameda, Berkeley, Oakland, San Leandro, Richmond and Walnut Creek.

The land area between the present service area boundary and the ultimate service area boundary, approximately 69 square miles, includes some areas of potential development. However, a large part of this land area is parklands and other undeveloped lands that are not anticipated to be developed in the foreseeable future. Another 81 square miles within the ultimate service area boundary outside the District's

present service area boundary is under the waters of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the west and north by the shorelines of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the south and northeast by adjoining water agencies which have sources of supply independent of the District. There is limited potential for new development at the southern end of the San Ramon Valley, now in the early stages of land use planning and environmental documentation, which is located just outside the ultimate service area boundary. The District's service area population, currently 1.4 million, is projected to grow by 2035 to a population of 1.65 million, with much of that growth expected to come from infill development within the urbanized parts of the service area.

The Municipal Utility District Act was amended in 1941 to enable formation of special districts for wastewater service provision. In 1944, voters elected to form the District's Special District No. 1 to treat wastewater released into the San Francisco Bay. The District's Wastewater System presently serves approximately 740,000 people in an 88-square-mile area of the two counties along the east shore of the San Francisco Bay, extending from Richmond on the north, southward to Oakland's border with San Leandro. Domestic, commercial and industrial wastewater is treated for the six participating cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and for the Stege Sanitary District (which includes El Cerrito, Kensington and part of Richmond). Each of these participating agencies operates a sewer collection system that discharges into the District's intercepting sewers. In addition to treating waste received from the participating agencies' sewer collection systems, the District accepts high-organic waste streams delivered in trucks. The wastes include domestic waste from septic tanks, fat, oil and grease from restaurants, and other food and drink wastes. The District's trucked-waste program continues to expand in the scope of wastes accepted. The District anaerobically digests the high-organic wastes with municipal solids to create renewable energy. This energy is used to power the wastewater treatment facility, with excess energy sold to the Port of Oakland under a power purchase agreement.

## **California Drought**

The 2020 and 2021 Water Years combined ranked as the two driest years in California's statewide precipitation record. (A Water Year begins on October 1 and ends on the following September 30). Beginning in April 2021, Governor Newsom issued a series of drought emergency proclamations affecting various counties throughout the State, culminating in an October 19, 2021 proclamation declaring a drought state of emergency to be in effect statewide and directing local water suppliers to implement water shortage contingency plans at a level appropriate to local conditions. In April 2021, the District's Board took action implementing the first step in District's Drought Management Program. This action included declaring a Stage 1 Moderate Drought. See "THE WATER SYSTEM – Current Water Conditions" and "– Drought Management."

On March 28, 2022, Governor Newsom issued an executive order directing the State Water Resources Control Board (the "SWRCB") to consider adopting regulations by May 25, 2022 that require urban water suppliers with water shortage contingency plans to implement, at a minimum, shortage response actions for a shortage level of up to 20% (the State's Level 2 shortage). For the District, these shortage levels are based on the water supply condition and hydrological conditions on the Mokelumne watershed and in the East Bay. Under the District's Water Supply Contingency Plan a State Level 2 water shortage level correlates with the District's Stage Zero Drought stage. The District plans to consider its drought stage at its April 26, 2022 Board meeting. *{Monitor for updates from the April 26, 2022 Board meeting.}*

The District's Water Shortage Contingency Plan outlines the District's drought response. The District's plan reflects decades of investment and planning for multi-year droughts and is based on local hydrologic conditions and District customer usage patterns. In dry periods, the District will generally meet demands through a combination of voluntary water conservation efforts, utilization of available storage (not below certain threshold levels) and supplemental supply resources, and when appropriate,

implementation of mandatory use restrictions. Consistent with the District's Water Shortage Contingency Plan and the Drought Management Program Guidelines included in such plan, in April 2021, the District Board established a District-wide voluntary water use reduction goal of 10% and approved the purchase of certain supplemental water supplies. *{Monitor for updates from the April 26, 2022 Board meeting.}* See "THE WATER SYSTEM – Water Supply – *Supplemental Supply–United States Bureau of Reclamation Central Valley Project Contract*" and "*– Supplemental Supply–Water Transfers and Other Arrangements.*"

The District's financial reserves, which includes contingency/rate stabilization reserves (including a transfer of \$55 million made to the Rate Stabilization Fund for Fiscal Year 2021), and approved rate structure, which includes a staged system of drought surcharges that may be implemented by the Board during ongoing drought conditions which the Board has declared to be a Stage 2 Significant Drought or higher, provide the District with mechanisms to manage reductions in revenues from decreased water sales, and cover costs associated with purchasing and treating additional supplies and funding drought response activities and programs. See "WATER SYSTEM FINANCES – Drought Surcharges," "*– Financial Management Policies*" and "*– District Management's Discussion of Fiscal Year 2021 Operating Results.*"

## COVID-19

The spread of the novel strain of coronavirus (and variants thereof) and the disease it causes (known as "COVID-19") has had significant negative impacts throughout the world, including in California. In March 2020, the World Health Organization declared the COVID-19 outbreak to be a pandemic, and states of emergency have been declared by the United States, the State, and numerous counties throughout the State, including in each of Alameda and Contra Costa Counties, major portions of which comprise the service areas of the District's Water System. The purpose behind these declarations was to coordinate and formalize emergency actions and across federal, state and local governmental agencies, and to proactively prepare for a wider spread of the virus.

On March 19, 2020, in an effort to slow the spread of COVID-19, Governor Newsom issued Executive Order N-33-20 ordering individuals living in the State to stay home or at their place of residence except for specified exceptions, including exceptions for certain sectors of the workforce that were classified as providing essential services and products. The District's Water System and Wastewater System are in federally designated critical infrastructure sectors with exemptions under the Governor's Executive Order N-33-20. This classification permitted certain of the District's workforce to be excepted from the portion of Executive Order N-33-20 that ordered non-essential workers to remain in their place of residence. The District has continued to operate in accordance with the health guidelines established by Alameda and Contra Costa Counties, the State of California, and the federal government. The District's ability to provide water and wastewater services and to conduct billing and collection functions continued without interruption. Adequate staffing levels were maintained, construction and maintenance activities continued and necessary supplies were received without detrimental delays. As of the date of this Official Statement, the District has not experienced significant material adverse impacts to its annual revenues or operations as a result of COVID-19.

To help mitigate the economic impact of COVID-19 on its customers, beginning in March 2020, the District restored water service to residential customers in occupied residences whose service was discontinued for non-payment during the state of emergency, and suspended the discontinuance of water services due to non-payment. The District's action was consistent with Executive Order N-42-20, signed by Governor Newsom on April 2, 2020. The District has not yet determined when the discontinuance of water services for non-payment may be re-imposed. To further assist its customers, the District also has in place certain extended payment plans for the payment of past due water and wastewater charges, and a Customer Assistance Program, which provides discounts to qualified low-income customers. From Fiscal Year 2018-19 to Fiscal Year 2020-21, the number of accounts delinquent for more than 100 days increased from 1% of customers to approximately 3% of customers.

The District was allocated approximately \$9.9 million under the SWRCB California Water and Wastewater Arrearage Payment Program (“CWWAPP”) to aid the Water System accounts that have fallen behind during the period of March 4, 2020 through June 15, 2021, which in turn is expected by the District to lower the uncollectible revenue amount. In addition, \$116 million in funds was allocated from the American Rescue Plan Act to the California Department of Community Services and Development for the Low-Income Household Water Assistance Program (“LIHWAP”) to provide benefit payments for eligible households with service disconnected or pending shut-off. Under this program, customers seeking assistance are required to apply directly through the LIHWAP and if approved, benefit payments will be made to the District to be applied as a bill credit to the applicable customer account. The anticipated statewide rollout of LIHWAP benefit payments is expected to begin in May 2022 to eligible households.

With widespread vaccination currently underway in the United States and many countries worldwide, the governmental-imposed stay-at-home orders and restrictions on operations of schools and businesses implemented to respond to and control the outbreak have generally been lifted; however, new variants of the disease continue to emerge and the State and local governments located within the State have from time-to-time implemented temporary measures and restrictions meant to suppress increases in the number of COVID-19 cases. No assurance can be given that governmental authorities will not reinstate the prior, more restrictive measures in the event that the COVID-19 outbreak worsens. In addition, the pace of the resumption of normal economic conditions and the economic recovery are uncertain and no assurance can be given the District’s operations or finances will not be negatively impacted in the future. To date, the District does not believe the impacts of the COVID-19 pandemic will have a material adverse impact on its ability to pay debt service on its bonds or other debt obligations.

## **Taxation of the District**

All property of the District within the District’s boundaries generally is exempt from property taxation. District-owned land outside of the District’s boundaries is taxable, but improvements constructed on that land by the District are not taxable. As a public agency, the District is exempt from the payment of State of California (the “State”) income taxes and federal income taxes.

## **THE WATER SYSTEM**

### **Service Area**

The District supplies water for major parts of Alameda and Contra Costa Counties. Approximately 1.4 million people are served by the District’s Water System in an approximately 332 square-mile area extending from Crockett on the north, southward to and including San Lorenzo, encompassing the major cities of Oakland and Berkeley, and eastward from San Francisco Bay to Walnut Creek.

The District’s Water System currently serves the incorporated communities of Alameda, Albany, Berkeley, Danville, El Cerrito, Emeryville, part of Hayward, Hercules, Lafayette, Moraga, Oakland, Orinda, Piedmont, Pinole, part of Pleasant Hill, Richmond, San Leandro, San Pablo, San Ramon, and part of Walnut Creek, and the unincorporated communities of Alamo, Ashland, Blackhawk, Castro Valley, Cherryland, Crockett, Diablo, El Sobrante, Fairview, Kensington, North Richmond, Oleum, Rodeo, San Lorenzo and Selby.

Table 1 shows the population trends for the six largest cities in the District, Alameda and Contra Costa Counties and the State for the five years 2017 to 2021.

**Table 1**  
**DISTRICT SIX LARGEST DISTRICT CITIES,**  
**ALAMEDA AND CONTRA COSTA COUNTIES, AND CALIFORNIA**  
**Population Trends<sup>(1)</sup>**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Oakland	427,493	428,750	429,932	432,327	435,514
Berkeley	121,210	121,763	122,297	122,364	116,761
Richmond	109,747	109,936	109,991	110,288	110,130
San Leandro	88,877	88,389	88,328	87,840	87,289
Alameda	80,947	81,195	81,457	81,135	80,884
Walnut Creek	<u>70,088</u>	<u>70,254</u>	<u>70,755</u>	<u>70,592</u>	<u>71,317</u>
Total Six Cities	898,362	900,287	902,760	904,546	901,895
Alameda County	1,644,303	1,651,760	1,659,608	1,663,114	1,656,591
Contra Costa County	1,137,577	1,143,188	1,147,623	1,149,853	1,153,854
California	39,352,398	39,519,535	39,605,361	39,648,938	39,466,855

<sup>(1)</sup> As of January 1 of each year.

Source: State of California, Department of Finance, *E-4 Population Estimates for Cities, Counties and the State, 2011-2021, with 2010 Census Benchmark*. Sacramento, California, May 2021.

The total civilian labor force in Alameda and Contra Costa Counties, representing all people who work or are seeking work, totaled 1,355,100 in 2020 (the most recent full year information available). In 2020, the unemployment rate approximated 8.8% in Alameda County and 8.9% in Contra Costa County. In comparison, the unemployment rate averaged 10.1% in the State of California and 8.1% in the nation as a whole for the same period. These unemployment rates reflect the impact of the COVID-19 pandemic. As of December 2021, the preliminary unadjusted unemployment rate for Alameda County was 3.9% and was 4.2% for Contra Costa County.

Table 2 shows the labor force and employment trends for Alameda and Contra Costa Counties, the State and the United States for the five years 2016 to 2020.

**Table 2**  
**ALAMEDA COUNTY AND CONTRA COSTA COUNTY**  
**Labor Force and Employment**  
**Calendar Years 2016 through 2020<sup>(1)</sup>**

<b>Year and Area</b>	<b>Civilian Labor Force<sup>(1)</sup></b>	<b>Employment</b>	<b>Unemployment</b>	<b>Unemployment Rate</b>
2016				
Alameda County	831,800	796,000	35,800	4.3%
Contra Costa County	553,200	528,400	24,800	4.5
California	19,012,000	17,965,000	1,046,600	5.5
United States	159,187,000	151,436,000	7,751,000	4.9
2017				
Alameda County	838,700	807,700	31,000	3.7%
Contra Costa County	558,200	536,700	21,600	3.9
California	19,173,800	18,246,800	927,000	4.8
United States	160,320,000	153,337,000	6,982,000	4.4
2018				
Alameda County	841,500	815,700	25,800	3.1%
Contra Costa County	560,300	542,200	18,100	3.2
California	19,263,900	18,442,400	821,500	4.3
United States	162,075,000	155,761,000	6,314,000	3.9
2019				
Alameda County	841,100	815,900	25,200	3.0%
Contra Costa County	559,700	542,100	17,600	3.1
California	19,353,700	18,550,500	803,200	4.2
United States	163,539,000	157,538,000	6,001,000	3.7
2020				
Alameda County	813,800	742,400	71,400	8.8%
Contra Costa County	541,300	493,200	48,000	8.9
California	18,821,200	16,913,100	1,908,100	10.1
United States	160,742,000	147,795,000	12,947,000	8.1

<sup>(1)</sup> Most recent full calendar year information available.

<sup>(2)</sup> Total of Employment and Unemployment figures for any year and area may not add to corresponding Civilian Labor Force number due to rounding.

*Sources:* For State and County information, State of California Employment Development Department, California Labor Market Division. For U.S. information, U.S. Department of Labor, Bureau of Labor Statistics.

Median household income in Alameda and Contra Costa Counties exceeded \$100,000 in 2020 (the most recent calendar year information available). This compares to a median household income in 2020 of approximately \$83,000 in California and just over \$67,000 in the United States.

Table 3 shows the median household income for Alameda and Contra Costa Counties, the State and the United States for the five years 2016 to 2020.

**Table 3**  
**ALAMEDA COUNTY AND CONTRA COSTA COUNTY**  
**Median Household Income**  
**Calendar Years 2016 through 2020<sup>(1)</sup>**

	<b>Year and Area</b>	<b>Median Household Income<sup>(1)</sup></b>
2016	Alameda County	\$89,472
	Contra Costa County	90,920
	California	67,715
	United States	57,617
2017	Alameda County	\$95,550
	Contra Costa County	95,062
	California	71,785
	United States	60,336
2018	Alameda County	\$101,744
	Contra Costa County	101,463
	California	75,250
	United States	61,937
2019	Alameda County	\$107,589
	Contra Costa County	106,555
	California	80,423
	United States	65,712
2020	Alameda County	\$113,518
	Contra Costa County	106,484
	California	83,001
	United States	67,340

<sup>(1)</sup> Most recent full calendar year information available.

<sup>(2)</sup> Median Household Income values are not adjusted for inflation.

Source: U.S. Census Bureau, 1-Year American Community Surveys.

### **Water Supply**

**General.** The amount of water available to the District from its water supply sources for delivery to customers of the Water System can be constrained by hydrology, physical facilities, and operational considerations, including required releases for environmental protection. See “– Water Rights and Related Proceedings.” While the District has ample stable resources to meet demands in most years, stored water in District reservoirs is a critical component of the District’s annual water supply and year-to-year operations. See “– Water Supply Operations.” Storage capacity provides the Water System with year-to-year water supply carry-over capability and a mechanism to assist the District in assuring consistent water supply reliability within its service area notwithstanding fluctuations in available supply.

The District began Water Year 2022 with a provisional estimate of 436,740 acre-feet in total system storage (Pardee, Camanche and East Bay terminal reservoirs), representing 57% of capacity or 76% of average. Water Year 2021 was one of the driest years in the hydrologic record in California. Such extreme hydrology may become more common in the future due to the effects of climate change. See “– Climate Change.” See also “– Current Water Conditions.”

Through its multi-year strategic planning efforts, the District has developed long-term and dry-year water supplies that are designed to maximize the District’s ability to reliably deliver water supply and responsive service to its customers and the community, while also achieving its environmental stewardship goals and obligations. See “– Long-Term Water Supply Planning” and “– Drought Management.”

During wet and normal rainfall years, the District’s water supply is obtained from three sources: the 627-square mile Mokelumne River watershed in the Sierra Nevada, runoff from streams within the District’s service area, and recycled water produced at various locations within the service area. During drought times, the District has access to substantial additional supplies from the Sacramento River via the Freeport Regional Water Project and has secured and may seek to secure additional supplemental water supply under contractual arrangements such as water transfers. The District also plans to utilize water stored within various aquifers. Each of these supply sources is more fully described below.

***Mokelumne River Watershed.*** The District holds permits and licenses issued by the SWRCB which enable the District to utilize waters of the Mokelumne River as the primary source of the water supply for the District’s service area. The average annual runoff of the Mokelumne River is about 745,000 acre-feet. (An acre-foot is the amount of water that will cover one acre to a depth of one foot and equals approximately 326,000 gallons, which generally represents the needs of two average families in and around the home for one year.) As described below, the District’s water rights permit the total diversion of approximately 364,000 acre-feet per year from the Mokelumne River, subject to certain prior water rights. In the last ten fiscal years (2012 through 2021), annual water production in the District to serve its customers has been below 210,000 acre-feet. Annual water production in the District to serve its customers has not previously exceeded 252,000 acre-feet. Water production includes the total water produced at the District’s water treatment plants and water moved through the distribution system that was delivered to customers, as well as water lost through leaks in the transmission system, water used in the treatment process, evaporation, and water used for fighting fires and other miscellaneous causes.

Annual water production in the District since Fiscal Year 2012 is shown in Table 4.

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**Table 4**  
**WATER PRODUCTION BY FISCAL YEAR<sup>(1)</sup>**

<i><b>Fiscal Year</b></i>	<i><b>Annual Production (Acre-Feet)</b></i>	<i><b>Annual Production (Thousands of Ccf)</b></i>	<i><b>Annual Production (Million Gallons)</b></i>	<i><b>Average Production Per Day (Million Gallons per Day)</b></i>
2012	200,220	87,216	65,242	178
2013	205,889	89,685	67,089	184
2014	209,467	91,244	68,255	184
2015	174,411	75,974	56,832	156
2016	162,562	70,812	52,971	145
2017	173,641	75,638	56,581	155
2018	185,790	80,930	60,540	166
2019	183,142	79,776	59,677	164
2020	187,966	81,878	61,249	167
2021	188,890	82,280	61,550	169

<sup>(1)</sup> Water production includes water used in the treatment process and for fighting fires, as well as water lost through leaks in the transmission system, evaporation and other miscellaneous causes. These losses represent approximately 10.0% of gross production.

*Source:* The District.

Average water production, as reflected in the table above, in the last ten fiscal years has been approximately 17% lower than the prior ten Fiscal Years 2002 through 2011 levels due to factors that include increased water conservation, reduced consumption during drought and post-drought periods and the effects of State and local economic conditions.

See also “– Water Supply Operations.”

Runoff is water that enters the District’s reservoir system from precipitation within the watershed. Each of the District’s reservoirs receives runoff, and the runoff is broadly categorized as Mokelumne River runoff or terminal reservoir runoff. In an average year, the Mokelumne River runoff represents approximately 95% of the total runoff. Runoff provides the water storage that is used for water production. During the ten-year period from 2012 to 2021, the annual Mokelumne River runoff has ranged from a low of approximately 218,000 acre-feet in Water Year 2021 to a high of 1.929 million acre-feet in Water Year 2017. In 1977, the lowest year of record since records have been kept, the annual runoff from the Mokelumne River was 129,000 acre-feet. Faced with fluctuating runoff volumes and periodic drought conditions, the District has developed a comprehensive approach to ensuring a reliable water supply. The District’s Water Supply Management Plan utilizes demand management and multiple supply options to meet long-term water needs. The plan is discussed under “– Long-Term Water Supply Planning.”

The Mokelumne River watershed also serves municipal, industrial and agricultural water needs in three Sierra Nevada foothill counties (Amador, Calaveras and San Joaquin), in addition to the municipal and industrial needs of the District’s service area. The agencies and individual diverters on the Mokelumne River each operate and divert water under separate entitlements, permits and licenses, along with a number of contracts and agreements among various agencies and under certain court decrees.

In the Mokelumne River watershed there are entities with water rights that are junior and senior to those of the District as illustrated on the graphic below. The most senior water rights are those of riparian landowners and senior appropriators who diverted water prior to 1914, including Amador County and Woodbridge Irrigation District (“Woodbridge”), or rights issued by court decree as with the City of Lodi. Amador Water Agency (“AWA”) and Jackson Valley Irrigation District divert water appropriated by Amador County up to 20,000 acre-feet per year; Woodbridge diverts 60,000 acre-feet in normal and wet years and 39,000 acre-feet in dry years in San Joaquin County. Woodbridge has the right to divert water

above 60,000 acre-feet if certain conditions are met and if the water is available in the Mokelumne River at the Woodbridge dam. The City of Lodi has a prior right to 3,600 acre-feet if certain conditions under the Lodi Decree are met. Calaveras County Water District and Calaveras Public Utility District (“CPUD”) may divert up to a total of 27,000 acre-feet per year in Calaveras County. Pacific Gas and Electric Company (“PG&E”) also has water rights which it uses to operate its hydropower facilities. Because those rights are non-consumptive, they are not depicted in the graphic on the next page.

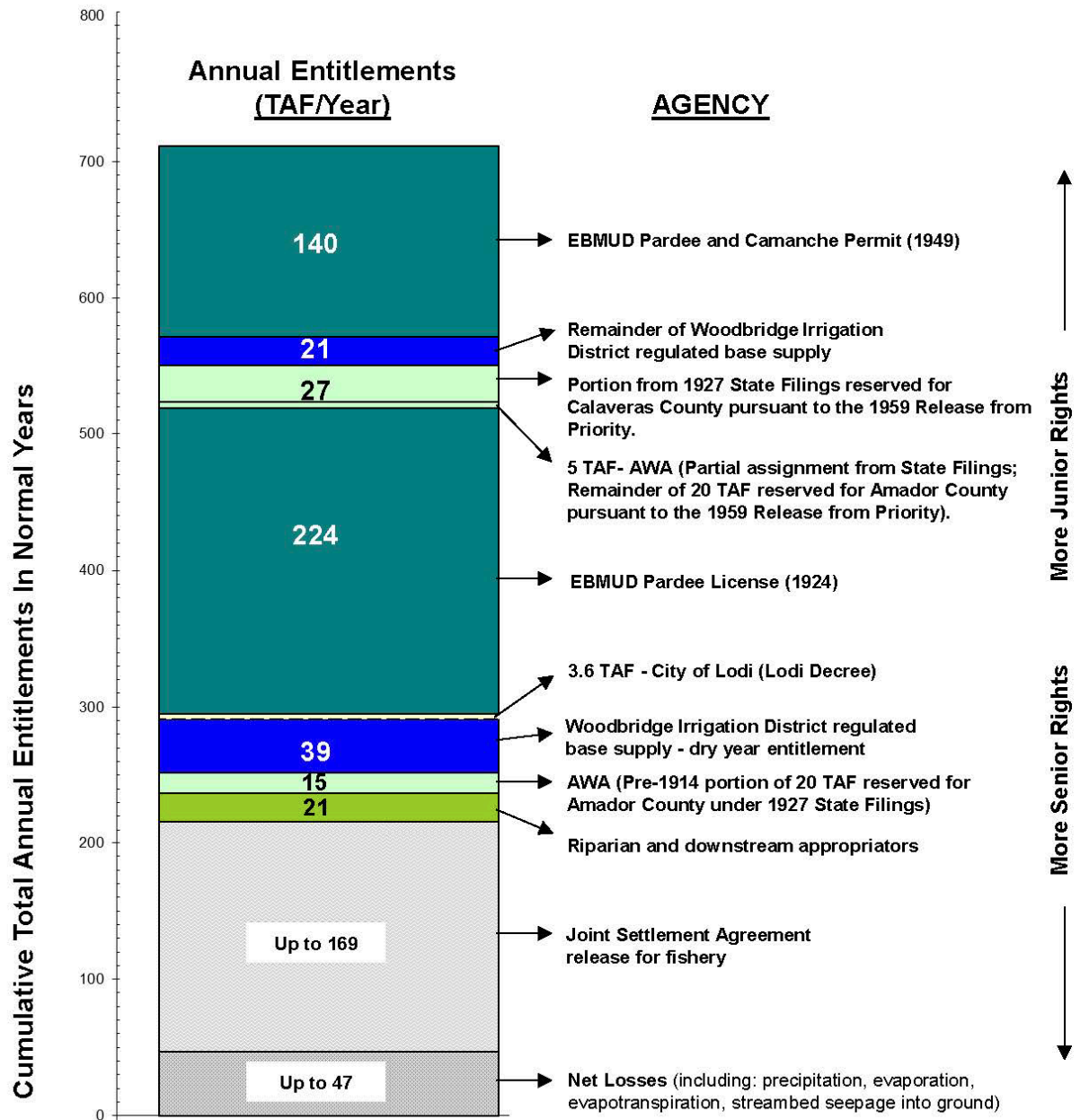
During periods of drought, when the projected runoff available in the watershed is not expected to be sufficient to support the needs of existing water right holders and in-stream uses, the SWRCB (as the agency responsible for administering water rights in California) may, from time-to-time, order the curtailment of water diversions by water rights holders based on their priority of water rights. In light of current water conditions, the SWRCB has notified certain holders of water rights on the Mokelumne River, including the District, that their diversion rights may be subject to curtailment. Should curtailment occur, the impact (if any) and magnitude of such impact on the District’s water supply will depend on the timing of the curtailment and the timing of runoff. See also “– Current Water Conditions.”

Releases by the District for Woodbridge are made pursuant to a series of agreements between the agencies. The District maintains that the parties’ longstanding interpretation of the agreements defines the District’s obligation to release water for Woodbridge at the 60,000 and 39,000 acre-feet levels described above. In January 2018, Woodbridge filed a declaratory relief action against the District seeking a new and different interpretation of the longstanding agreements. Woodbridge contends that the District must release additional water for Woodbridge. The District believes the action is without merit. In May 2021, Sacramento County Superior Court Judge Krueger issued a ruling granting the District’s motion for summary judgement and denying Woodbridge’s motion for summary adjudication, and entered a final judgement confirming the District’s interpretation of its obligations to Woodbridge. In June 2021, Woodbridge appealed the judgement. On appeal, Woodbridge has conceded that Woodbridge’s contractual agreements with the District do excuse the District from any obligation to release additional water to Woodbridge beyond the 39,000-60,000 acre-feet quality provided for by those agreements. However, Woodbridge contends that it may legally contest other potential actions by the District which it believes “exceeds EBMUD’s water rights or is otherwise unlawful.” Were Woodbridge to prevail on appeal, the consequences could adversely affect the yield under the District’s water rights.

Additionally, for a discussion of potential effects of projected increased use of senior water rights holders on District water supplies and the District’s efforts to increase future supply through multiple water supply projects, see “– Long-Term Water Supply Planning.” The District’s water rights from the State for the Camanche Reservoir, including the District’s obligations under a 1998 Joint Settlement Agreement incorporated therein (the “1998 Joint Settlement Agreement”), among the District, the U.S. Fish and Wildlife Service and the California Department of Fish and Game (now the California Department of Fish and Wildlife (“CDFW”)), also require that minimum releases be made from Camanche Reservoir for the protection of downstream fisheries before the District can exercise its water rights. Pursuant to the 1998 Joint Settlement Agreement, the District’s required minimum releases from Camanche Dam are adjusted to reflect the time of year and type of Water Year (*e.g.*, “normal/above normal,” “below normal,” “dry,” and “critically dry”). In critically dry and dry years, a minimum release of from 25,000 to 67,000 acre-feet per year must be released downstream by the District to satisfy its obligations for the protection of fisheries resources in addition to all other release requirements. In wet years, a minimum of 169,000 acre-feet must be released. See also “– Water Rights and Related Proceedings.”

The following graphic summarizes the priorities of Mokelumne River water rights and other flow commitments with respect to the Mokelumne River water supply in a normal Water Year. “TAF” as used in the graphic refers to thousand acre-feet.

## Hierarchy Of Mokelumne River Water Rights And Other Flow Commitments



*Note: Total does not include storage rights or power rights which are non-consumptive (e.g. PG&E).*

**Local Runoff.** In normal Water Years, District reservoirs in the East Bay receive an additional 30,000 acre-feet of water from local watershed runoff. Much of the local runoff is stored in the East Bay reservoirs for system use. In dry years, evaporation and other reservoir losses can total more than the runoff. Thus, little to no yield occurs from local watersheds in drier years.

**Supplemental Supply–United States Bureau of Reclamation Central Valley Project Contract.** In December 1970, the District entered into its original Central Valley Project Contract (the “Original CVP Contract”) with the United States Bureau of Reclamation (the “Bureau”), entitling the District to take up to a specified quantity of American River water from the Folsom-South Canal Unit of the Bureau’s Central Valley Project (“CVP”) annually. The Original CVP Contract was superseded on July 20, 2001 by an Amendatory Contract, which, in turn, was superseded on April 10, 2006 by a Long-Term Renewal Contract (the “Long-Term Renewal CVP Contract”). As originally executed, the Long-Term Renewal CVP Contract had a term of 40 years, with a right of renewal for an additional 40 years available to the District. As described below, in 2020, the Long-Term Renewal CVP Contract was converted to a permanent repayment contract (the “CVP Permanent Repayment Contract”) with no termination date.

The CVP Permanent Repayment Contract provides the District with a supplemental supply source which helps meet projected drought year needs. Under the CVP Permanent Repayment Contract, the District is entitled to receive deliveries of up to 133,000 acre-feet per year (119 million gallons per day (“MGD”)) of CVP water in a single dry year, and no more than 165,000 acre-feet over the course of any three consecutive dry-years.

The Central Valley Project Improvement Act (the “CVPIA”), which was enacted by Congress in 1992, mandated changes in management of the CVP, particularly for the protection, restoration, and enhancement of fish and wildlife. The CVPIA added water for the environment as one of the stated purposes of the project, requiring the dedication of 800,000 acre-feet of CVP water towards the restoration of fisheries as well as firm supplies for wildlife refuges. The CVPIA requires that all CVP contracts contain provisions consistent with the CVPIA, including provisions for conservation and tiered pricing. The District’s executed CVP Permanent Repayment Contract is consistent with the CVPIA provisions. Similar to other CVP contractors, the maximum quantity of water made available to the District in any dry year pursuant to this contractual entitlement is subject to shortages in CVP supply and potential reductions in allocations by the Bureau as required to meet the environmental requirements of the CVPIA. Due to unprecedented shortages in the CVP system in 2022, CVP allocations for 2022 have been reduced to public health and safety needs only, which means that the CVP would only provide that water determined to be necessary to meet the public health and safety needs of District customers that cannot be met by existing water sources. See “– Current Water Conditions.”

On May 24, 2018, the District notified the Bureau of its interest to convert the District’s Long-Term Renewal CVP Contract to a permanent repayment contract as authorized under the Water Infrastructure Improvements for the Nation (“WIIN”) Act. As a condition of conversion to a repayment contract, the District paid in full the estimated CVP construction costs allocated to the District, in the amount of \$3,057,419. The amount paid is subject to adjustment by the Secretary of the Interior following the completion of the 2020 Final Cost Allocation and at the end of 2030. The District’s CVP Permanent Repayment Contract was executed on February 28, 2020. The CVP Permanent Repayment Contract has no termination date and remains in effect as long as the District pays applicable rates and charges, consistent with applicable law. The CVP Permanent Repayment Contract maintains all pre-existing essential contract terms of the Long-Term Renewal CVP Contract except it removed the contract’s expiration date of 2046, and it modified the financial terms to reflect the full repayment of the District’s capital obligation for existing CVP facilities. The District’s allocable portion of construction costs for CVP facilities or other capitalized costs incurred after the effective date of the CVP Permanent Repayment Contract or not reflected in the District’s capital obligation prepaid will be required to be paid by the District to the Bureau within the time frame prescribed by the WIIN Act, within five years if less than \$5 million, or over time

through the charges paid by the District under the CVP Permanent Repayment Contract. Conversion to a permanent repayment contract protects the District's CVP supplemental supply from the uncertainty of regulatory requirements that may exist in 2046.

The Bureau's conversion of CVP contracts held by the District and dozens of other contractors to permanent repayment contracts is the subject of litigation pending in the U.S. District Court for the Eastern District of California. Plaintiffs, comprised of various environmental organizations and the Hoopa Valley Tribe, have challenged the contract conversions under several state and federal environmental laws. The Bureau, other federal agency defendants, and the District and other CVP contractors are defending the Bureau's contract conversion actions. Plaintiffs have asked the Court to set aside the contract conversions. If Plaintiffs prevail, the Court would have the discretion to order a narrower remedy which would leave the District's CVP supply contract in place in either its current permanent or previous "long-term renewal" form. Whether or not Plaintiffs prevail on the merits, the District does not currently expect the pending litigation would affect its ability to exercise its contractual rights to receive CVP water.

The Freeport Regional Water Project (hereinafter, the "FRWP"), which was placed into operation on November 15, 2011, provides the permanent infrastructure to allow the District to receive water deliveries pursuant to the CVP supply contract. Water can also be delivered through the FRWP from other supplies such as water transfers (any such supplemental supply water delivered from sources outside the District's normal watershed being hereinafter referred to as "Supplemental Supply"). When the FRWP is not being used by the District, the facilities can also be made available to other water providers to "wheel" water through the FRWP/FSCC (as hereafter defined) system to interties with neighboring agencies. See "– Water Facilities – *Freeport Regional Water Project*" for a description of the FRWP.

In 2014 and 2015 and again in 2021 and 2022, the District was entitled to receive an allocation of CVP water under its CVP supply contract to provide a source of Supplemental Supply to meet the water demands of its service area since the District's projected total system storage at the end of each of these Water Years was less than 500,000 acre-feet as a result of ongoing drought conditions. As noted above, all CVP contractors are subject to shortages in CVP supply and potentially reduced allocations during dry years. As occurred in 2014 and 2015, due to the severity of the ongoing drought and reduced levels of storage in federal reservoirs, the Bureau reduced allocations of CVP water in 2021 and 2022.

Under 2021 allocations of CVP water by the Bureau, the District was entitled to receive up to 25% of its dry year entitlement (*i.e.*, up to 33,250 acre-feet) at any time during the contract year period of March 1, 2021 through February 28, 2022 under its CVP Permanent Repayment Contract. After obtaining agreement to extend the period for CVP deliveries to March 31, 2022, the District imported approximately 32,000 acre-feet of CVP supplies through the FRWP and purchased an additional 2,000 acre-feet of transfer water from another source.

Under 2022 allocations of CVP water by the Bureau, as noted above, for the contract year period of March 1, 2022 through February 28, 2023, the District is entitled to receive only sufficient water to meet public health and safety needs not able to be met by other existing water sources under its CVP Permanent Repayment Contract. The District is evaluating public health and safety criteria. For 2022, the District has in place certain options to secure Supplemental Supply and is considering procuring transfer water from other sources, in addition to any public health and safety allocations from the CVP.

See "– Current Water Conditions."

***Supplemental Supply–Water Transfers and Other Arrangements.*** As contemplated by its Water Supply Management Plan, the District seeks to identify and secure other sources of Supplemental Supply that may be purchased in dry years through water transfers. In 2013, the District executed a memorandum of understanding with the Placer County Water Agency ("PCWA") to develop the terms of a potential long-

term water transfer agreement under which the District would purchase 10,000 to 47,000 acre-feet of water released from PCWA reservoirs to the lower American River under certain conditions during dry years pursuant to PCWA's obligations under the Sacramento-area Water Forum Agreement to which PCWA is a party. The water purchased would be diverted to the District at the FRWP intake on the Sacramento River. The memorandum of understanding also guides short-term (annual) water transfers in the interim period until the long-term agreement is executed. The District utilized the memorandum of understanding with PCWA in Water Years 2014 and 2015 to provide an additional source of Supplemental Supply through one-year water purchase agreements. Work is currently ongoing to complete the environmental reviews and permitting needed to implement the long-term agreement with PCWA. The District has developed a number of other transfer partners who either have senior water rights on the Sacramento River or have sufficient water supplies and water storage to provide dry year water to the District if needed. The District purchased transfer water in 2015 from two of these entities, Reclamation District 1004 and the Sycamore Mutual Water Company. In 2018, the District signed a memorandum of agreement with Sycamore Mutual Water Company to conduct a feasibility study of a long-term (potentially 10 years) water transfer project that, if implemented, would be expected to yield approximately 5,000 to 7,000 acre-feet of water annually through a rolling crop-idling program. The feasibility study was completed in 2019. Based on the results of the study, the District is currently considering options on proceeding with the implementation of the water project. The next steps of the project would include developing a water transfer agreement with Sycamore Mutual Water Company, conducting the necessary environmental reviews and securing permits from appropriate State and federal agencies. In 2021, the District entered into an agreement with Sycamore Mutual Water Company that provides the District an option to secure up to 6,000 acre-feet of short-term transfer water in 2022, if needed. However, due to the unprecedentedly low allocations to the Sacramento River Settlement Contractors, which includes Sycamore Mutual Water Company, the Bureau is not approving any crop-idling water transfers from the Sacramento River Settlement Contractors to take place in 2022. In 2018, the District also signed a memorandum of agreement with Yuba County Water Agency ("YCWA") to complete an environmental review of a potential five-year water transfer project that, if implemented, would be expected to deliver 10,000 acre-feet per year during dry years. The environmental review is based on the Yuba Accord which is slated to expire in 2025. Given the expiration of the Yuba Accord in 2025, the District is considering options before proceeding with the environmental review. In 2022, the District entered into a three-party agreement with YCWA and CCWD District that provides the District an option to secure up to 10,000 acre-feet or more short-term transfer water in 2022, if needed. On April 12, 2022, the Board authorized the General Manager to exercise the District's option under the three-party agreement with YCWA and CCWD to (i) purchase up to 10,000 acre-feet of water from YCWA during the period April 12, 2022 through June 30, 2022 and to reimburse CCWD for its costs to divert, convey and store such water in CCWD's Los Vaqueros Reservoir to be returned to the District through a CVP water exchange with CCWD, and (ii) purchase up to 10,000 acre-feet of water from YCWA during the period July 1, 2022 through November 30, 2022 and divert the water at the FRWP.

***Bayside Groundwater Project.*** The Bayside Groundwater Project, a local supplemental supply project, consists of facilities designed to store treated drinking water in a deep aquifer during wet years for future recovery, re-treatment and distribution to customers during times of drought. Implementation of the project is planned in two phases. The District completed Phase 1 of the Bayside Groundwater Project in December 2009. The Bayside Groundwater Project Phase 1 provides a modest, locally available supplemental water supply that helps reduce the need for rationing in the event of a prolonged drought or an emergency (e.g., earthquake on the Hayward fault). Phase 1 is used to store up to an annual average of one MGD (1,120 acre-feet per year) of water within a deep aquifer that extends beneath the community of San Lorenzo. Primary Phase 1 facilities include an injection/extraction well (and pump), a treatment plant, a groundwater monitoring network and instruments used to measure minute changes (if any) in ground surface elevation (subsidence) during Phase 1 operations. Storage operations take place when water can be made available. Injection into the basin is regulated under a Statewide General National Pollutant Discharge Elimination System ("NPDES") Permit for Drinking Water System Discharges. The timing and availability of water for injection is limited to wetter years which is a function of permit requirements, availability of

pre-1914 water derived from San Leandro Creek, and concurrent operation of the Upper San Leandro Treatment Water Plant. The District first stored (injected) water for an eight-week period beginning on June 2, 2011 and ending at the end of July 2011. The estimated volume of water stored is in the range of 30 to 40 million gallons (92 to 123 acre-feet). Due to the drought, no additional water was stored from 2012 through 2016. In 2017 to 2019, hydrologic conditions allowed the District to resume injections. From 2017 through 2019, approximately 18 million gallons of water (55 acre-feet) was injected into the deep aquifer. The District intends to continue to operate Phase 1 facilities in either a storage mode or possibly an extraction mode (based on water supply available for storage and/or drought conditions coupled with the need for water). The District is working with the SWRCB to acquire the permit needed to operate the facility in the extraction mode. For extraction, the facility is designed to produce up to 2 MGD over a six month period, or 1 MGD annual average. Information gathered from Phase 1 operations will be used in part to determine the feasibility, timing, and scope of Phase 2 relative to the sustainability management criteria in the Groundwater Sustainability Plan for the basin that was adopted in December 2021.

***Water Recycling.*** The District has undertaken a Water Recycling Program to develop and implement projects that reduce demands on potable water supplies. Recycled water has been used for landscape irrigation, cooling, equipment washdown and construction purposes at the District's Main Wastewater Treatment Plant since the early 1970s, as well as at a number of golf courses in the District's service area, beginning in 1984. The District's current Water Recycling Program includes four operating recycled water projects with approximately 9 MGD of recycled water capability in place.

The District's Nonpotable Water Policy was adopted by the District Board on April 9, 1996. The Nonpotable Water Policy requires customers of the District to use nonpotable water (recycled water and other nonpotable water sources) for nondomestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant life, fish and wildlife. In February 2019, the District completed an Updated Recycled Water Master Plan, in which the District confirmed its long-term water recycling goal of 20 MGD by the year 2040. In furtherance of this goal, the District has undertaken, or will undertake in the future, several water recycling project expansions. See also "— Long-Term Water Supply Planning."

The District's largest recycled water project in terms of numbers of customers served is a joint project with the Dublin San Ramon Services District ("DSRSD"). The DSRSD/EBMUD Recycled Water Authority (as previously defined, "DERWA"), a joint exercise of powers agency formed by the District and DSRSD, was created to implement a program, known as the San Ramon Valley Recycled Water Program (the "SRVRWP"), to produce and deliver recycled water to the District and DSRSD for distribution within portions of their existing and future service areas. The SRVRWP is being implemented in several phases within the two districts' existing service areas. As part of the SRVRWP, DERWA constructed and operates, through a contract with DSRSD, the Jeffrey G. Hansen Water Recycling Facility ("WRF"). The WRF was originally constructed with an initial treatment capacity of 9.7 MGD (peak). The Phase 2 expansion of the WRF to 16.2 MGD (peak) was constructed and has been operational since the end of 2019. The WRF is located in the City of Pleasanton and processes secondary treated wastewater received from the City of Dublin, and portions of the cities of San Ramon and Pleasanton. Wastewater for treatment at the WRF will also be provided under a temporary wastewater diversion agreement (August 2019) with Central Contra Costa Sanitary District ("Central San") in order to produce sufficient recycled water to meet peak summer demand days. It is anticipated that DERWA's current recycled water supply will be insufficient to meet irrigation demands on peak summer days, and securing supplemental supplies, such as Central San's wastewater, will help to meet peak summer demands in the near term while efforts for long-term supplies and demand management are underway. Wastewater was diverted under the wastewater diversion agreement with Central San for the first time during the summer of 2021.

The WRF began recycled water deliveries in 2006 and currently serves 77 irrigation customers in the District's service area in the San Ramon Valley. With the completion of Phase 2 in 2022, the WRF is expected to provide approximately 1.3 MGD of recycled water for delivery to District customers.

If implemented, future phases of the program beyond Phase 2 could extend the recycled water system to the northern portions of San Ramon, the town of Danville and community of Blackhawk. In early 2019, the DERWA Board approved a demand management program requesting the member agencies to implement a connection moratorium beyond the District's Phase 2 connections and also implement other additional demand management practices to curtail the use of recycled water. The timing of future phases (Phases 3-5) will depend on demand and availability of sufficient supplies of treated wastewater to the WRF for processing, and costs and availability of funding resources. At full implementation, the SRVRWP is expected to provide approximately 2.5 MGD of recycled water for delivery to District customers.

The District and DSRSD entered into an agreement for the sale of recycled water by DERWA to the District and DSRSD pursuant to which each of the District and DSRSD are responsible for paying their respective share of the costs incurred by DERWA in implementing the SRVRWP (including among other things, administrative costs, construction costs, operation and maintenance costs and costs of debt service on any obligations issued or incurred by DERWA for the purposes of the recycled water program). A portion of the costs of the SRVRWP have been financed by DERWA from State loans and grant funds (in the form of a principal forgiveness loan) obtained by DERWA. Payments made and to be made by the District under such recycled water sales agreement for the purchase of recycled water are payable as a Water Operation and Maintenance Cost of the District regardless of whether any recycled water is made available to the District from such facilities. The District's aggregate annual payment obligation to DERWA in connection with the DERWA recycled water program is currently approximately \$1.6 million per year.

The largest single user of recycled water in the District's service area is the Chevron Oil Refinery in Richmond. The District's recycled water project serving the Chevron Oil Refinery comprises two distinct projects. Each of these projects receives secondary-treated wastewater from nearby West County Wastewater District and treats it to a higher standard (tertiary recycled water) in order to supply refinery uses. The first project was the North Richmond Recycled Water Project, which provides approximately 4 MGD of recycled water to three cooling towers located at Chevron's Richmond refinery. Service from this project began in 1996. An additional project, the Richmond Advanced Recycled Expansion ("RARE") Water Project, became operational in 2011. The RARE Water Project consists of a high-purity recycled water treatment plant at the refinery, an influent pump station, flow equalization and a standby generator. The RARE Water Project provides 3.5 MGD of recycled water for boiler feedwater at the refinery. Chevron reimbursed the District approximately \$55 million in the aggregate for capital costs of the RARE Water Project. The District is interested in exploring an expansion of recycled water use at the refinery with a goal of 10 MGD, however additional water supply is needed.

Another recycled water project of the District is the East Bayshore Recycled Water Project. The East Bayshore Recycled Water Facility (EBRWF) produces unrestricted non-potable recycled water at the District's Main Wastewater Treatment Plant (SD-1). The East Bayshore Recycled Water Project became operational in 2008. The project currently serves 45 commercial and governmental customers in the Oakland and Emeryville area, providing approximately 0.2 MGD of recycled water primarily for landscape irrigation. Recycled water is also used at SD-1 for in-plant uses such as pump seal water and irrigation with demands ranging from 0.5 MGD to 1.0 MGD. Pilot studies at the EBRWF will determine additional treatment required to improve recycled water quality suitable for use in commercial cooling systems to expand the system to serve additional customer types. Future system expansion could include additional sites in Oakland and Emeryville as well as Alameda, Berkeley, and Albany. When fully implemented, the East Bayshore Recycled Water Project is designed to provide up to 2.6 MGD of recycled water for delivery to customers.

## Current Water Conditions

Water Year 2021, which ended September 30, 2021, was the second driest year on record in the Mokelumne Basin, and the driest year on record in the East Bay area served by the District's water system. At its regularly scheduled April 27, 2021 Board meeting, the District Board declared a Stage 1 Moderate Drought, established a District-wide voluntary water use reduction goal of 10%, declared the need to purchase supplemental supplies from the CVP pursuant to the terms of the District's CVP Permanent Repayment Contract with the Bureau and directed additional demand management measures to promote water conservation. These actions are the first step in the District's Drought Management Program. See "– Drought Management."

The District began Water Year 2022, which commenced on October 1, 2021, with a provisional estimate of 436,740 acre-feet in total system storage (*i.e.*, Pardee, Camanche and East Bay terminal reservoirs), representing 57% of capacity or 76% of average.

The District monitors precipitation and reservoir levels daily. As of March 24, 2022, the District had 538,830 acre-feet of water stored in all of its reservoirs combined. As of such date, the District's reservoirs were approximately 70% of capacity, or approximately 87% of average (based on 10-year average from 2001-2011). Season-to-date precipitation in the Mokelumne basin was 31.74 inches, or approximately 80% of average (based on 60-year average from 1952-2012). Additionally, the water content in the 2022 snowpack as of March 24, 2022 was approximately half the average.

Table 5 sets forth the capacity and water storage levels at the District's water reservoirs as of March 24, 2022. For a description of the District's reservoirs and other Water System facilities, see "– Water Facilities." See also "– Dam Licensing and Safety Issues" and "– Water Supply Operations."

**Table 5**  
**DISTRICT WATER RESERVOIRS**  
**Current Capacity and Storage Levels**

<b>Data as of March 24, 2022</b>	<b>Capacity (acre-feet)</b>	<b>Current Storage (acre-feet)</b>	<b>% of Capacity</b>	<b>% of Average<sup>(1)</sup></b>
<b>Mokelumne</b>				
Pardee	203,795	169,260	83	91
Camanche	<u>417,120</u>	<u>236,940</u>	57	81
Total Mokelumne	<b>620,915</b>	<b>406,200</b>	<b>65</b>	<b>85</b>
<b>Terminal Reservoirs</b>				
Briones	58,960	49,600	84	88
Upper San Leandro	38,905	35,440	91	105
San Pablo	37,915	36,170	95	107
Chabot	10,350	8,670	84	93
Lafayette	<u>4,250</u>	<u>2,750</u>	65	71
Total Terminal Reservoirs	<b><u>150,380</u></b>	<b><u>132,630</u></b>	<b>88</b>	<b>97</b>
<b>Total System Storage</b>	<b>771,295</b>	<b>538,830</b>	<b>70</b>	<b>87</b>

<sup>(1)</sup> Based on 10-year average from 2001-2011.

Source: The District.

*{to be updated as develops}* [As described under "– Water Supply" above, in light of ongoing dry conditions, the District was entitled to receive up to 33,250 acre-feet of water (25% of its full contractual

amount) under its CVP Permanent Repayment Contract for the contract year 2021, which commenced on March 1, 2021 and ended on February 28, 2022. The District took delivery through the FRWP of approximately 32,000 acre-feet of these CVP supplies through March 31, 2022, and purchased an additional 2,000 acre-feet of transfer water from another source. In addition, as described under “ – Water Supply – Supplemental Supply–Water Transfers and Other Arrangements” above, on April 12, 2022, the District Board authorized the General Manager to exercise the District’s option under a three-party agreement with YCWA and CCWD to purchase up to an additional 10,000 acre-feet of transfer water between April 12, 2022 and June 30, 2022. The District estimates the total incremental cost to purchase, pump and treat Supplemental Supply from these sources to be approximately \$ \_\_\_\_\_. The cost of Supplemental Supplies incurred in Fiscal Year 2022 are expected to be paid from the District’s normal water rates and from reserves.

During the contract year 2022, which is March 1, 2022 through February 28, 2023, the District’s allocation of CVP water under its CVP Permanent Repayment Contract has been reduced to public health and safety needs only, which means that the District is only entitled to take delivery of CVP water determined to be necessary to meet the public health and safety needs of District customers that cannot be met by existing water sources. The District has in place certain options to secure Supplemental Supply, if needed, and is considering procuring transfer water from other sources, in addition to any public health and safety allocations from the CVP. As described under “ – Water Supply – Supplemental Supply–Water Transfers and Other Arrangements” above, on April 12, 2022, the District Board also authorized the General Manager to exercise the District’s option under the three-party agreement with YCWA and CCWD to purchase up to an additional 10,000 acre-feet of transfer water between July 1, 2022 and November 30, 2022. The District estimates the total incremental cost to purchase, pump and treat the Supplemental Supply under existing options for this period to be approximately \$ \_\_\_\_\_.

The District Board will consider the need to obtain additional Supplemental Supply in April 2022 as part of the annual water supply and deficiency report and recommendations presented by District staff at that time. As described under “WATER SYSTEM FINANCES – Drought Surcharges,” the District has adopted a system of drought surcharges that may be implemented by the Board during ongoing drought conditions at any time during which the Board has declared a Stage 2 Significant Drought or higher to exist pursuant to its Water Shortage Contingency Plan. The drought surcharges correspond to increasingly severe stages of water shortages and, when implemented, are designed to recover costs of providing Supplemental Supply, increased costs of water shortage-related customer service and loss of revenue.

As of March 31, 2022, the Board’s April 2021 Stage 1 Moderate Drought declaration remains in place and drought surcharges have not been imposed since July 2016.]

## **Water Rights and Related Proceedings**

The District’s appropriative rights to its Mokelumne River water supply include a license, which has a priority date of 1924, entitling the District to divert up to 200 MGD (approximately 224,000 acre-feet per year) to its service area from the Mokelumne River, and a permit, which has a 1949 priority date, entitling the District to divert up to an additional 125 MGD (approximately 140,000 acre-feet per year) of Mokelumne River water to the service area. The District’s license and permit for its Mokelumne River water rights are issued by the SWRCB. In August 2016, the District’s Mokelumne River permit was extended to 2040, enabling the District with additional time to demonstrate buildout demand prior to perfecting the right through permanent licensure.

In addition to the water rights described above, the District also has a series of rights for the production of hydroelectric power at Pardee and Camanche Dams, and holds rights associated with its local reservoirs.

As previously noted, the State has placed conditions on operations in the District's Mokelumne River water rights requiring that minimum releases be made from Camanche Reservoir for the protection of anadromous fisheries. The District has entered into a series of agreements with State and federal agencies which are incorporated into its water rights and implemented through the annual Water System operations plan. Notably, the 1998 Joint Settlement Agreement is a multi-party agreement that provides for mitigation of the impact of the construction of Camanche Dam and Reservoir on historical spawning grounds for anadromous fish. Pursuant to the 1998 Joint Settlement Agreement, the District's required minimum releases from Camanche Dam are adjusted to reflect the time of year and type of Water Year. In critically dry and dry years, flow releases from 25,000 to 67,000 acre-feet per year must be released downstream by the District to satisfy its obligations for the protection of fisheries resources. In wet years, a minimum of 169,000 acre-feet must be released. Through prudent and adaptive management, the Mokelumne River experienced a record return for Fall Run Chinook Salmon in 2017, reaching the salmon doubling goal set by the CVPIA. See "– Water Supply – *Mokelumne River Watershed*."

The Mokelumne River is a small tributary to the Sacramento-San Joaquin Delta. As the agency responsible for setting water quality standards and administering water rights throughout California, the SWRCB exercises its regulatory authority over the Bay-Delta by means of public proceedings leading to regulations and decisions that can impose restrictions on water rights holders. These include the Water Quality Control Plan ("WQCP") for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, which establishes the water quality objectives and proposed flow regime of the estuary, and water rights decisions, which assign responsibility for implementing the objectives of the WQCP to users throughout the system by adjusting their respective water rights permits.

The WQCP gets reviewed periodically. The last review was completed in 2006, and the current review has been ongoing since approximately 2010. The District is a party to this proceeding. In 2010, as required by the Sacramento-San Joaquin Delta Reform Act of 2009, the SWRCB adopted its Delta Flow Criteria Report for the Sacramento-San Joaquin Delta, defining the timing and volume of water that will be required for a healthy Sacramento-San Joaquin Delta ecosystem. The report suggested that recent record levels of water diversions are unsustainable and that protecting the Sacramento-San Joaquin Delta's fisheries will require flows that more closely approximate the natural hydrograph. On December 12, 2018, the SWRCB completed Phase 1 of the WQCP proceedings, adopting the environmental documents to support the new flow standards for San Joaquin River tributaries, while encouraging the parties to continue developing voluntary agreements. The purpose of the voluntary agreements is to facilitate implementation of the SWRCB's WQCP with the objective of improving the health of the Sacramento-San Joaquin Delta using flow and non-flow measures while balancing the needs of water users.

In partnership with other water users, the District is working on a voluntary agreement specific to the Mokelumne River. This agreement would be considered by the SWRCB in Phase 2 of the proceedings, which also includes Sacramento River tributaries. Over the last year, the Mokelumne River parties (*i.e.*, the District, AWA, Calaveras County Water District, CPUD, and the North San Joaquin Water Conservation District ("NSJWCD")) have been negotiating with CDFW, the California Department of Water Resources ("CDWR") and the SWRCB building upon the successful implementation of the 1998 Joint Settlement Agreement over the last 20 years to enhance the protection of lower Mokelumne River fishery resources (discussed above). Although the District cannot predict the ultimate outcome of such negotiations or the WQCP proceedings, the District will continue to actively participate in reaching a voluntary agreement that would minimize significant changes in operations or significant impacts to its water rights as a result of the proceedings.

### **Long-Term Water Supply Planning**

In 2012, the District updated its long range planning with its Water Supply Management Plan, extending the planning horizon from 2020 to 2040 ("WSMP 2040"), an update to the 2020 WSMP

published in 1993. WSMP 2040 serves as the plan to ensure an adequate supply of water through the year 2040 for District customers. The primary objectives of WSMP 2040 are to maintain and improve the District's water supply reliability to its customers and help meet the growing need for water in the future. WSMP 2040 also guides adaptation of the District's water planning approach to circumstances that have changed since its prior Water Supply Management Plan (WSMP 2020) was adopted, such as competing and changing demands for water, the availability of water from the completed FRWP and Bayside Groundwater Project Phase 1, and long-term climate change. Further, the goal of the WSMP 2040 continues to be to examine what the District has done historically and what it can do in the future to ensure optimal use of the District's water resources.

WSMP 2040 assesses the supplemental supplies that are expected to be needed to serve a projected increase in water demand in the District's service area of approximately 0.8% per year between 2010 and 2040 (an additional 60 MGD from 2010 to 2040). WSMP 2040 provides for sufficient water supply reliability by making the conservative assumption that all senior water rights holders along the Mokelumne River are using their full allotment of water. Current use is far below that full allotment.

WSMP 2040 provides for the District to meet its future drought year needs for water through 2040 by:

- (1) achieving a water conservation target of 62 MGD by the year 2040;
- (2) increasing water recycling to 20 MGD;
- (3) continued rationing during times of drought by up to 15%; and
- (4) securing an additional 115,000 acre-feet (35 MGD annual average) of supplemental water supplies for use during extended droughts. Potential supplemental supplies identified include water transfers, additional surface water storage facilities, development of groundwater banking projects, and development of a desalination project.

WSMP 2040 addresses the uncertainties posed by future climate change through its multi-element approach of demand management and a wide array of potential future supply options. In 2008, the District incorporated climate change into its Strategic Plan. The District's Strategic Plan is reviewed and updated every two years. The District has also prepared a Climate Action Plan that focuses on sustainability and resilience, and acknowledges impacts and vulnerabilities, and includes mitigation measures and adaptation strategies. An interdisciplinary staff committee reviews the evolving science of climate change, assessing potential water supply impacts and vulnerabilities, and developing strategies for adaptation and mitigation. This information will continuously inform the implementation process for projects and programs under WSMP 2040. See also "– Climate Change."

The WSMP 2040 is revisited and documented in the District's Urban Water Management Plan (the "UWMP"), which is updated every five years in compliance with State regulatory requirements (California Water Code §10610-10656 and §10608). The most recent UWMP completed in June 2021 provides an overview of the District's water supply and demand assessments to a planning horizon of 2050 based on a range of scenarios and an opportunity to assess progress made on WSMP 2040. The plan describes a diversified and resilient portfolio which includes recycled water and conservation programs and outlines the strategies to respond to uncertainties in the future. The UWMP also includes as an attachment, the Water Shortage Contingency Plan, which provides guidance for response actions during times of water shortages.

The District has demonstrated its ability to meet expected water demands in the service area and other obligations for the next quarter of century, under normal conditions. However, during multi-year droughts (under the Drought Planning Sequence), even with customer demand reduction measures in place, the District will need to obtain supplemental supplies to meet customer demands.

As contemplated by WSMP 2040 and described in the UWMP, the District is undertaking efforts to identify and secure sources of supplemental water supply. Water supplies are constantly subject to uncertainties which directly affects the amount and timing of availability of the sources of water. Certain of these activities are further discussed below:

*Water Transfer Agreements.* As a part of the District's supplemental supply efforts, the District has pursued opportunities to develop additional dry-year supplies through water transfer agreements and other collaborative arrangements with other agencies. These efforts are primarily focused on opportunities with various entities within Northern California, and specifically within the Sacramento River watershed, with a view toward utilizing the FRWP to move supplies as secured via water transfers. Future supplemental water supply initiatives expected to be undertaken by the District include pursuing long-term arrangements with sellers that can provide certainty and flexibility to purchase transfer water during drought periods.

*Potential Storage Sharing Arrangement.* The District identified a possible contractual relationship and/or partnership opportunity with Contra Costa Water District, an adjacent water agency, to secure from 20,000 to 30,000 acre-feet of storage in Contra Costa Water District's Los Vaqueros Reservoir (the expansion of which was completed in 2012 to increase its total storage from 100,000 acre-feet to 160,000 acre-feet). In 2016, the District approved principles of agreement with Contra Costa Water District for the potential use of Los Vaqueros Reservoir; later that year, the District signed a cost sharing agreement with Contra Costa Water District to support planning efforts related to expanding the reservoir from 160,000 to 275,000 acre feet. The District supported Contra Costa Water District in its successful application for State grant funding for the project. In April 2019, the District joined Contra Costa Water District and nine other agencies in executing a multi-party cost sharing agreement to cover ongoing planning and preliminary design activities. In October 2021, the District worked with eight other agencies to form the Los Vaqueros Reservoir Joint-Powers Authority (the "LVR JPA"). As part of the LVR JPA, the District is currently negotiating the costs, benefits, and operational priorities associated with the District potentially securing 30,000 acre-feet of storage in connection with the proposed reservoir expansion. If constructed, the reservoir expansion is estimated to be completed by 2030. Increasing available surface water storage could help the District meet demands during dry years. The proposed project, referred to as the Phase 2 Los Vaqueros Reservoir Expansion Project (the "Phase 2 LVR Expansion") is a regional water storage and conveyance project, led by Contra Costa Water District, that is intended to help improve Delta ecosystem conditions and complement other beneficial uses of Delta water supplies. The primary purposes of the Phase 2 LVR Expansion are to develop water supplies for environmental benefits; improve operational flexibility and result in more reliable supplies for urban and agricultural partners; and increase the San Francisco Bay Area's ability to respond to drought and other emergencies. Ongoing project activities are partially funded by a grant from the California Water Commission. If Contra Costa Water District is able to secure additional grant funding from the Bureau, it is expected that the Phase 2 LVR Expansion, with an estimated construction cost of approximately \$950 million (in 2021 dollars), could potentially become more than 50% funded by grants. As currently envisioned, the District is evaluating securing the right to utilize up to 30,000 acre-feet of the reservoir's expanded capacity. In the event that the District ultimately secures storage rights in the project, if completed, it is expected that the District would provide water to the Los Vaqueros Reservoir in years when surplus water is available. The District could then obtain water from the reservoir during droughts or regional emergencies. The District is evaluating options to take delivery of water via direct conveyance from Los Vaqueros Reservoir into the District's system, or alternatively via exchanges with other agencies participating in the expansion project. The District's execution of the LVR JPA Agreement and participation in the cost-sharing of planning and preliminary design activities does not commit the District to participate in the Phase 2 LVR Expansion project. Any final decision to commit to the project and incur long-term financial obligations for a share of final design and construction costs, or ongoing costs associated with the operation of the project, if ultimately completed, would require Board approval, which is not expected to be considered until 2023 or later.

Regional Groundwater Banking Options. The District has been exploring groundwater resource development in San Joaquin County. The overdrafted aquifer within San Joaquin County, which is traversed by the Mokelumne River and the District's Mokelumne aqueducts, presented an opportunity for a joint project of mutual benefit. In 2013, a memorandum of agreement was developed and executed by San Joaquin County and the District outlining the roles and responsibilities of the two agencies in connection with implementation of a groundwater banking demonstration project. In 2014, the parties entered into a cost sharing agreement to share the expenses associated with the preliminary engineering, planning and environmental review of the demonstration project. Environmental documentation was completed in 2017. In February 2017, the San Joaquin County Advisory Water Commission voted unanimously to recommend the project to the San Joaquin County Board of Supervisors. In April 2017, San Joaquin County issued the DREAM groundwater export permit, which allows up to 500 AF of groundwater to be extracted from a well in the NSJWCD service area and conveyed to District's Mokelumne Aqueducts for use in District's service area.

In October 2017, the District executed funding and operations agreements with San Joaquin County and the NSJWCD for the Demonstration Recharge, Extraction, and Aquifer Management ("DREAM") pilot project. The DREAM pilot project provides NSJWCD with up to 1,000 acre-feet of District surface water from the Mokelumne River that participating landowners use for irrigation in lieu of pumping groundwater from the Eastern San Joaquin ("ESJ") Subbasin; thereby, storing groundwater for future use. During dry years, the District can recover up to half of the banked groundwater for use within its service area. Operation of the pilot project will enable potential project proponents and participants (which may include NSJWCD, San Joaquin County and/or other local water agencies) to evaluate the feasibility of a permanent banking project in San Joaquin County. The District made its first release to the NSJWCD as part of the DREAM project in 2018. The District has completed the design of facilities to allow it to pump groundwater into its aqueducts for delivery to the District's service area. The District expects construction of such facilities to be completed in Fiscal Year 2023.

If the DREAM pilot project yields positive results, a future expanded project can provide multiple benefits, including replenishment of the critically-over drafted ESJ Subbasin and dry year supplemental water supply for the District.

Bay Area Regional Reliability Partnership. Over the last several years, the District, along with the San Francisco Public Utilities Commission, the Contra Costa Water District, the Santa Clara Valley Water District, the Alameda County Flood Control and Water Conservation District, Zone 7, the Alameda County Water District, the Marin Municipal Water District and the Bay Area Water Supply and Conservation Agency, have been working together to advance the concept of Bay Area Regional Reliability ("BARR").

In 2015, the BARR project received partial funding from the Bureau for completion of a Bay Area Regional Reliability Drought Contingency Plan (the "BARR DCP"). The BARR DCP was completed in December 2017, and one of the early-action drought mitigation measures identified in the BARR DCP was to develop a regional water market program to facilitate voluntary transfers and exchanges and maximize efficient use of existing assets and resources.

In September 2017, the Bureau approved a \$400,000 grant for the BARR partners to identify and define processes to resolve the institutional, regulatory, and operational issues associated with water sharing among the BARR partner agencies during drought or other shortages. As part of this effort, the District, together with six BARR partners, initiated the Bay Area Shared Water Access Program ("SWAP") in the summer of 2019. The goal of the Bay Area SWAP is to develop a Strategy Report outlining an implementation plan that will facilitate water transfers to and exchanges within the Bay Area, leveraging existing infrastructure and institutional agreements. The participating BARR partners expect to submit the Strategy Report to the Bureau in early 2023.

## **Water Conservation**

Since the District completed its first Water Conservation Master Plan in 1994, the document has served an important role in guiding and tracking the development of District's conservation program. The 2021 update, which renamed the plan the Water Conservation Strategic Plan, includes existing and planned efforts to support meeting long-term water conservation planning goals to the year 2050. It presents a phased implementation of conservation measures based on threshold water production and customer demand levels designed to achieve a cumulative 70 MGD of water savings by 2050.

The Water Conservation Strategic Plan details water conservation programs, methodologies, and goals that are established in water supply planning and mandated by community-wide regulation or statute. It defines the implementation strategies, objectives, and tactics required to achieve long-term water conservation savings, presenting a ten-year implementation schedule for water conservation programs required to help meet the need for water. The ten-year planning horizon allows the District to emphasize emerging water-efficient technology and recent and anticipated regulatory and legislative code changes. The Water Conservation Strategic Plan shows how the District expects to meet the requirements of existing and emerging State regulations, including the Long-Term Framework legislation passed in 2018 (SB 606 and SB 1668). The Long-Term Framework legislation sets water use efficiency requirements that utilities must meet beginning in 2025. The District's early adoption and investment in water conservation and water recycling programs and strong customer response in reducing water use overall and during times of drought have positioned the District well to meet the mandated State water use objectives.

## **Drought Management**

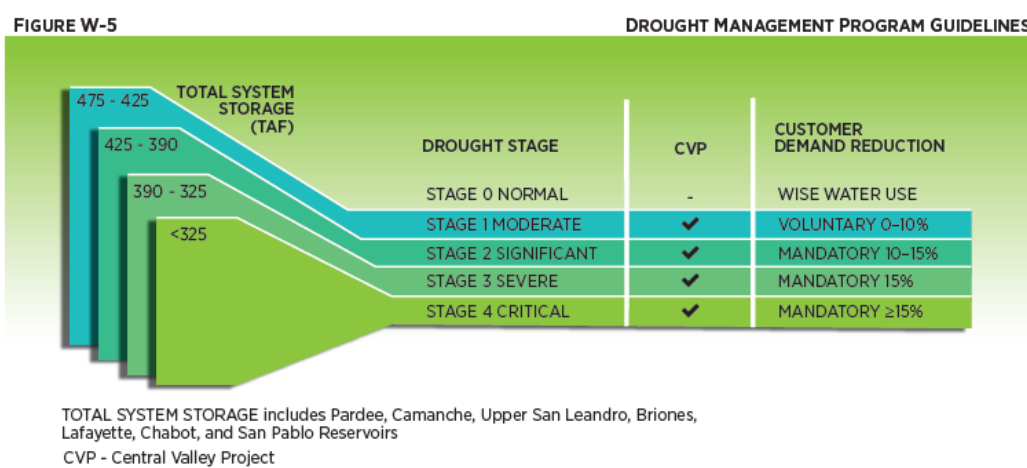
Droughts are common in California and have occurred several times in the last few decades including in 1976-1977, 1987-1992, 2007-2008 and 2012-2015. Water Year 2020 was the fifth driest year in California based on statewide runoff, followed by Water Year 2021 as the second driest. As of April 2021, Water Year 2021 had been the second driest year on record in the Mokelumne River basin and the driest year on record for the East Bay. On April 27, 2021 the District's Board declared a drought. The trigger to declare a drought shortage and related response actions is determined by the District's water supply projections for the end of the current water year. The District used this analysis, as outlined in the Drought Management Program (hereinafter, "DMP") Guidelines in the recently adopted Water Shortage Contingency Plan, to recommend declaring a Stage 1 drought and establishing a voluntary customer water reduction goal of up to 10%. In dry periods, the District will generally meet demands through a combination of voluntary water conservation efforts, utilization of available storage (not below certain threshold levels) and Supplemental Supply resources, including its CVP Permanent Repayment Contract, and when appropriate, implementation of mandatory use restrictions.

In compliance with State requirements, the UWMP also includes a Water Shortage Contingency Plan detailing actions the District would take in response to six water shortage levels – varying from a 10% shortage to a more than 50% shortage – due to drought conditions or a catastrophic supply disruption from an earthquake or other emergency. Historically, the District plans for and implements drought response in accordance with its Water Shortage Contingency Plan, which includes DMP Guidelines, as outlined in the District's UWMP. The District's declarations of drought have been typically driven by local conditions. Under a drought scenario, declaration of a drought and its associated severity, or drought stage, is tied to the District's projected total system storage at the end of the Water Year. As the District's projected total system storage at the end of the Water Year decreases, the severity of the drought increases, with a corresponding "ramp up" in drought actions, including the acquisition of Supplemental Supply resources and increasing levels of customer demand reduction.

The District's DMP provides a framework to manage customer demand and pursue a diversified portfolio to reach a goal of providing 85% reliability for customers in the District's service area while

continuing to meet all stream flow obligations on the lower Mokelumne River. The DMP guided the District in managing demand and supply during the 2014-2016 drought when mandatory and voluntary rationing were imposed, and water supplies were limited. During that recent drought, the District faced unanticipated constraints and updated and implemented measures to assist with demand and supply management. The DMP was revisited to reflect lessons learned and actions that were taken.

The District performed modeling to better understand the effects of various actions on operations, instream-flow requirements, and customer rationing. The results provided a basis to develop the revised drought stages and associated response actions as outlined in the figure below.



The DMP Guidelines are designed to be used by District staff in evaluating the District's annual water supply as part of the Water Supply Availability and Deficiency Report prepared by staff for presentation to the Board each spring. The DMP Guidelines, as revised, provide established parameters for the level of rationing the District may consider and the amount of supplemental supply that the District may require based on the District's projected total system storage at the end of a Water Year. The revised DMP Guidelines incorporate a four-stage system for classifying the level of drought severity, consistent with the rate design structure adopted by the Board in 2015.

The District adopted its updated Water Shortage Contingency Plan on June 22, 2021. The Water Shortage Contingency Plan, as updated, provides the District with additional flexibility to consider earlier drought actions and to address potential scenarios in which State-mandated water use reduction requirements exceed water use reductions that would otherwise be called for based upon the District's end-of-September total system storage. The Water Shortage Contingency Plan defines an orderly process for collecting information on water supply availability, assessing conditions, determining fiscal actions, allocating resources, enforcing regulatory water use restrictions, monitoring customer response, and planning and implementing drought communications. The Water Shortage Contingency Plan describes the District's actions to implement and enforce regulations and restrictions for managing a water shortage when it declares a water shortage emergency under the authority of the Water Code. It also describes the District's planned actions to manage supply and demand before and during a water shortage to ensure a reliable water supply. The Water Shortage Contingency Plan identifies the types of programs and actions that the District might undertake at each stage of drought (and the targeted level of voluntary or mandatory water use reduction to be applied) for the applicable total system storage scenario. Such programs and actions include, among other things, customer outreach and public information campaigns, distribution of water saving devices, water use restrictions, and imposition of corresponding drought surcharges and excess use penalties.

The District has been undertaking capital investment and planning activities for decades in order to position itself to manage through droughts. The District's investments in conservation, recycling and the construction of the FRWP facilities to deliver water from the Sacramento River to the East Bay were key components of the District's successful management of its water supply through the 2014-2016 drought, the driest four year period in the history of the District.

The District's comprehensive approach to drought response planning also includes managing the fiscal challenges posed by multi-year drought conditions. As discussed herein, the FRWP (together with certain integrated District facilities) is utilized by the District during dry years when the District's contractual right to CVP water is made available. The FRWP system also provides a means of transport to allow the District to take deliveries of other sources of Supplemental Supply from outside the District's normal watershed when secured by the District during dry years through negotiated contractual arrangements such as water transfers. Operation of the FRWP results in additional costs of water supply to the District as compared to water from the District's Mokelumne River supply. These costs include: (i) the purchase cost of the water, payable to the Bureau for CVP water or to another party in connection with any water transfer or other contractual arrangement for Supplemental Supply that may be secured by the District; (ii) the costs to convey the water from the FRWP intake to the District's Water System, which include operations costs and energy for pumping; and (iii) additional treatment costs as this supply is typically treated at the District's full conventional treatment plants which are more expensive to operate than the District's largest direct filtration plants.

Since June 2015, the District's rates and charges have included a staged system of drought rates. The specific drought surcharges are adopted along with the District's regular rates and charges, following a process which complies with the requirements of Proposition 218 and other applicable laws. The drought surcharge raises funds necessary to cover the District's water-shortage related costs noted above, as well as increased conservation and public outreach messaging, increased customer account management services, and revenue loss due to conservation. The District also maintains significant reserves in its Rate Stabilization Fund that may be drawn upon as a funding source for drought response costs.

See "WATER SYSTEM FINANCES – Drought Surcharges" and "– Financial Management Policies."

## **Water Facilities**

As described herein, the District captures rain and melted snow within the 627-square mile protected watershed of the Mokelumne River and collects it at Pardee Reservoir, just over 90 miles east of the Bay Area. Downstream from Pardee Reservoir, Camanche Reservoir stores water to meet the needs of fisheries, riparian habitat and downstream water-rights holders, and provides flood control. Raw or untreated water is transported from Pardee Reservoir west via three parallel aqueducts to East Bay water treatment plants or terminal reservoirs, and from there to 170 local reservoirs and 4,200 miles of distribution pipeline. The District also has its CVP Permanent Repayment Contract with the Bureau for a supplemental water supply from the Sacramento River in dry years. When needed, the water is conveyed through the FRWP jointly owned by the District and Sacramento County. Each of the primary facilities of the District's water delivery system are more fully described below. See also "– Seismic and Wildfire Matters – *Seismic Considerations*" for a discussion of seismic improvements made by the District to enhance the reliability of its water delivery system.

***Pardee Reservoir.*** The District's Mokelumne River water is collected and stored at Pardee Reservoir, located in the Sierra Nevada foothills approximately 90 miles east of the District and 38 miles northeast of Stockton. Pardee Reservoir has a storage capacity of 203,795 acre-feet.

***Camanche Reservoir.*** Camanche Reservoir is located ten miles below Pardee Reservoir on the Mokelumne River. Camanche Reservoir has a capacity of 417,120 acre-feet.

Although only Camanche Reservoir is designated to provide flood control (and regulated via the U.S. Army Corps of Engineers), in practice, elevations in both Pardee and Camanche Reservoirs are managed to provide necessary flood control storage. As described herein, operations of both of these District facilities are regulated through reservoir elevations and river flow requirements for a variety of purposes besides water supply for the District, including meeting the supply needs of other legal users of water downstream, temperature control, recreation and power generation.

***Terminal Reservoirs.*** Five terminal reservoirs located within the District's service area combine for a storage capacity of approximately 150,380 acre-feet: San Pablo (with a capacity of 37,915 acre-feet), Briones (with a capacity of 58,960 acre-feet), Lafayette (with a capacity of 4,250 acre-feet), Upper San Leandro (with a capacity of 38,905 acre-feet) and Chabot (with a capacity of 10,350 acre-feet).

***Aqueducts.*** Raw untreated water is transported 91.5 miles from Pardee Reservoir, through the Pardee Tunnel, the Mokelumne Aqueducts and the Lafayette Aqueducts, to the District's service area, where it is stored in terminal reservoirs or delivered directly to treatment plants prior to distribution. The Pardee Tunnel is an 8-foot high horseshoe structure 2.2 miles long. The three Mokelumne Aqueducts have a combined capacity of 200 MGD under gravity flow, and approximately 325 MGD with existing pumping facilities. The first Mokelumne Aqueduct is 5-feet, 5-inches in diameter, the second is 5-feet, 7-inches in diameter, and the third is 7-feet, 3-inches in diameter. All are steel pipelines extending 81 miles from the Pardee Tunnel to the east end of the two Lafayette Aqueducts in Walnut Creek. Approximately nine miles of pipeline is above-ground and the balance is below-ground.

Lafayette Aqueduct No. 1 is a 9-foot in diameter circular concrete pipe and three tunnels that extend 7.1 miles from Walnut Creek to the Orinda Filter Plant. Lafayette Aqueduct No. 2 is a 9-foot in diameter concrete pipe with seven tunnels extending 7.3 miles from the Walnut Creek Water Treatment Plant to the Briones Diversion Works near Orinda. The supply is then pumped (or diverted) through the 7-foot, 6-inch diameter steel Briones Aqueduct into Briones Reservoir, discharged into San Pablo Reservoir, or diverted through the 7-foot, 6-inch diameter steel Orinda Raw Water Line to Orinda Filter Plant. Either or both Lafayette Aqueducts can be used to divert Mokelumne River water from Pardee directly or indirectly to all of the District's water treatment plants.

The Mokelumne Aqueducts cross the Sacramento-San Joaquin Delta for about fifteen miles and are protected by 57 miles of levees maintained by five reclamation districts governing Lower Roberts, Woodward Island, Orwood and Palm, Jones Tract, and Sargent-Barnhart Tract. The District has established a multi-pronged approach to protect the aqueducts from flooding and to recover from failures. These strategies include levee strengthening, aqueduct interconnections, and standby materials and supplies to respond to an emergency.

The District worked with the five reclamation districts to obtain \$33.5 million in funding for levee strengthening and to purchase emergency supplies, with the District providing the \$6 million local cost share. This funding was used to bring 41 miles of levees, adjacent to the Mokelumne Aqueducts, up to the U.S. Army Corps of Engineers' standards and to purchase materials and supplies to facilitate emergency response. These levee improvements substantially improve the stability of the levees and help protect the District's water supply and the region's agriculture, cultural, and historical resources, as well as the ecosystems in the Delta.

The District has also constructed interconnections to the three Mokelumne Aqueducts on each side of the Delta. These interconnections are designed to allow the District to restore 77% of the raw water system capacity with only one pipe in operation across the Delta. The District has six months of storage

locally to serve its customers during an outage of the raw water system resulting from a failure in the Delta. This will bolster the resilience of the District's water supply system by enabling a rapid return to service after a failure, with sufficient capacity to meet customer needs and begin to recover local storage.

***Freeport Regional Water Project.*** The FRWP is a regional water supply project undertaken by the District in partnership with the Sacramento County Water Agency ("SCWA"). In February 2002, with the support of the Bureau, the District and SCWA formed the Freeport Regional Water Authority (hereinafter, "FRWA") under a joint powers agreement to develop the FRWP. As described herein, the FRWP provides the permanent infrastructure to allow the District to receive water deliveries pursuant to its CVP Permanent Repayment Contract at a new point of diversion along the Sacramento River. See "*Water Supply—Supplemental Supply—United States Bureau of Reclamation Central Valley Project Contract*". The capacity of the FRWP is designed to provide up to 100 MGD (112,000 acre-feet per year) of supplemental water supplies to the District in dry years and up to 85 MGD to SCWA in all years. The combined FRWP system was placed into commercial operation in November 2011.

The District has entered into a Dedicated Capacity Purchase Agreement, dated as of May 1, 2007 (the "Dedicated Capacity Purchase Agreement"), by and between FRWA and the District, relating to the FRWP. Pursuant to the Dedicated Capacity Purchase Agreement, FRWA sells to the District and the District acquires 100 MGD of capacity in the FRWP ("Dedicated Capacity") in accordance with the Second Amended Joint Exercise of Powers Agreement Concerning the Freeport Regional Water Authority dated as of November 20, 2006 (the "FRWA JPA Agreement"). The purchase price of the Dedicated Capacity has been paid by the District as a portion of the District's capital cost of the FRWP in accordance with the FRWA JPA Agreement. In the event of future capital improvements to the FRWP, the District may be required to make additional capital contributions for its share of such costs pursuant to the FRWA JPA Agreement.

The FRWP diverts water from the Sacramento River near the community of Freeport and conveys this water through a pipeline to a turnout serving SCWA's Vineyard Water Treatment Plant. Beyond this turnout, the pipeline extends to the Folsom South Canal ("FSC") as a District-only asset. Water can also be delivered to the District through the FRWP from other Supplemental Supply such as water transfers. CVP or transfer water received by the District is treated at existing District treatment facilities prior to delivery to customers. Short-term storage, if needed, is provided at the District's terminal reservoirs, including its San Pablo, Upper San Leandro and Briones Reservoirs.

The FRWP includes a number of significant components. Chiefly, the components consist of an intake and pumping plant, approximately 18 miles of pipeline, various easements and rights-of-way, and a communications system. The capacity of the intake and pumping plant is 185 MGD. The pipeline includes a 7-foot diameter segment which runs from the intake to the SCWA turnout, and a 5-foot, 6-inch diameter pipeline segment which supplies SCWA's Water Treatment Plant. A 6-foot diameter pipeline segment owned by the District continues for another four miles and discharges to the FSC. Fiber optic and radio systems link project facilities and key outside agencies. Downstream of the FSC, which is owned by the Bureau, District facilities convey water derived from the FRWP to the District's Mokelumne Aqueducts via two pump stations (Clay Pump Station and Camanche Pump Station) and an additional 19 miles of pipeline. The southern system (known as the FSC Connection or the "FSCC") is a District-only element, and includes two 100 MGD pumping plants (an intake and a pumping plant at the terminus of the FSC and a high head pumping plant near Camanche Reservoir).

***Raw Water Pumping Plants.*** The majority of the District's Water System is gravity-supplied, with seasonal pumping when demand is high enough. Walnut Creek No. 1, No. 2 and No. 3 Pumping Plants increase the capacities of the Mokelumne Aqueducts. When operating, these three pumping plants increase the combined capacity of the aqueducts to approximately 325 MGD. The Moraga Pumping Plant and Aqueduct supply water from the Lafayette Aqueducts to Upper San Leandro Reservoir. The plant's four

pumps have a combined delivery capacity of 105 MGD; however, the configuration of the existing outlet limits delivery to a maximum rate of 58 MGD. The Moraga Aqueduct is six miles of 5.5-foot, 5-foot and 4-foot diameter steel and concrete pipe between Lafayette and the Upper San Leandro Reservoir near Moraga. The Briones Pumping Plant and Aqueduct were placed in service following completion of Briones Reservoir. These facilities supply Briones Reservoir with Mokelumne River water. The four pumps in the Briones No. 2 Pumping Plant can deliver up to a total of 60 MGD.

**Tunnels.** Untreated water from San Pablo Reservoir is delivered to Sobrante Treatment Plant through a 5-foot, 6-inch diameter steel pipe; water from the Upper San Leandro Reservoir is delivered to the Upper San Leandro Treatment Plant through a 1.35 mile, 6-foot, 6-inch diameter horseshoe tunnel. The San Pablo Tunnel is 5-feet in diameter and can carry water 2.57 miles from the San Pablo Reservoir to the standby San Pablo Water Treatment Plant.

**Treatment Plants.** Water delivered to the District's customers is first treated at one of six treatment plants. The six water treatment plants in the District's Water System are capable of filtering and processing a combined total of approximately 390 MGD. The water treatment plants are Upper San Leandro in Oakland, San Pablo in Kensington (standby only), Sobrante in El Sobrante, and plants located in and named for Orinda, Lafayette and Walnut Creek. Orinda Water Treatment Plant is the largest, with a peak capacity of 200 MGD.

**Distribution Facilities.** From the Orinda Water Treatment Plant treated water is carried 3.41 miles through the Claremont Tunnel, a 9-foot diameter horseshoe bore to three distribution aqueducts. The water distribution network includes over 4,200 miles of pipe, 128 pumping plants and 165 neighborhood reservoirs (including approximately 143 above-ground concrete or steel reservoirs), having an operating capacity of 636 million gallons. The District's service area is divided into 124 pressure zones, ranging in elevation from sea level to 1,450 feet. About 60% of treated water is distributed to customers by gravity flow.

**Pardee and Camanche Power Plants.** The District operates hydropower plants at Pardee and Camanche Reservoirs pursuant to a Federal Energy Regulatory Commission ("FERC") license. The District's Pardee and Camanche hydropower plants are licensed as one project, the Lower Mokelumne River Project No. 2916. The current FERC license for these hydropower plants expires on March 31, 2031. These plants generate 185 million kilowatt hours of electricity in normal rainfall years. Other than a small amount of power being used at the District facilities at Pardee and Camanche, the power produced is currently being sold by the District to Marin Clean Energy ("MCE"), under a 10-year power purchase agreement which expires on June 30, 2025. See "WATER SYSTEM FINANCES – Power Sales Revenues."

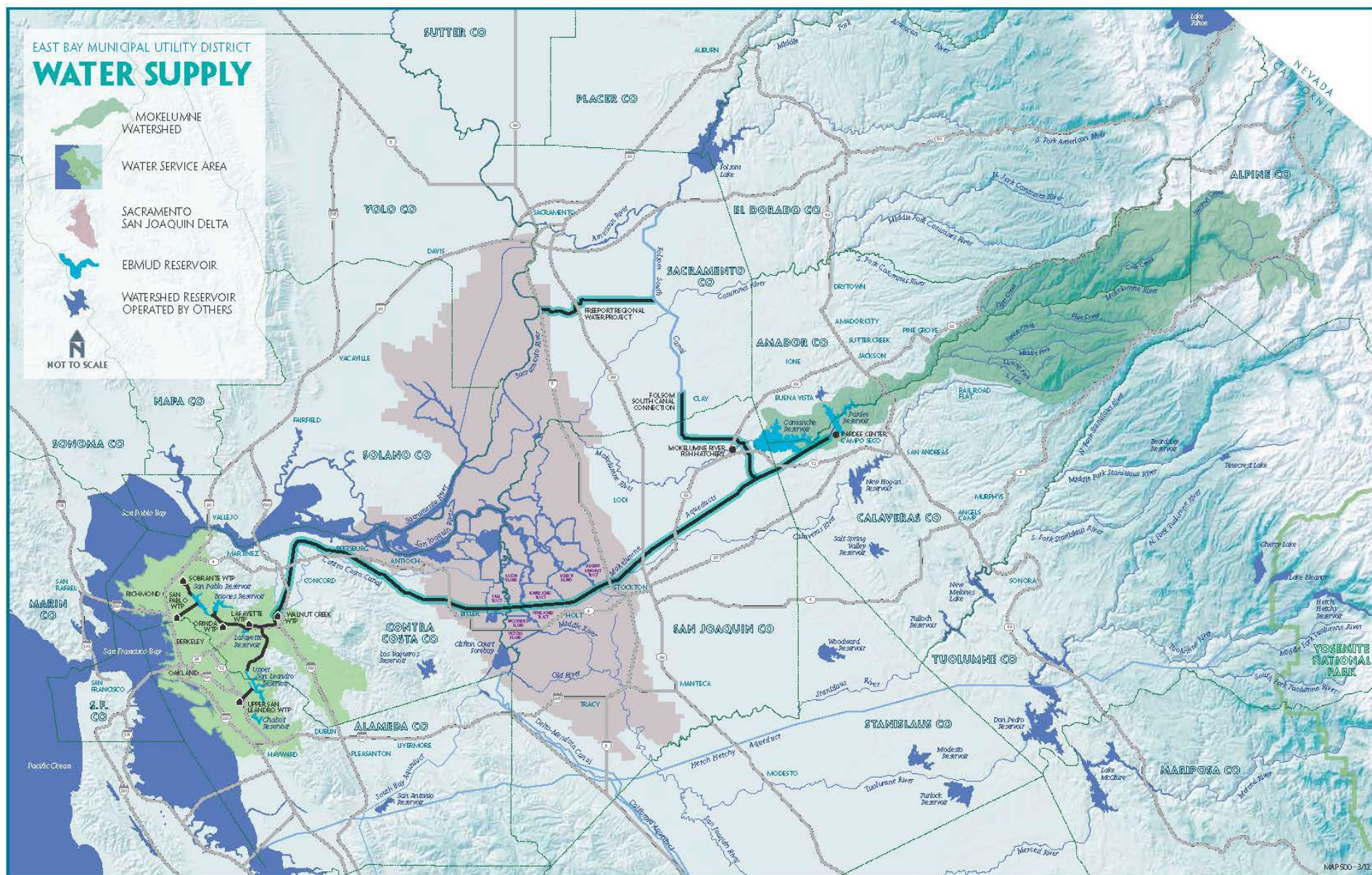
**Regional Intertie.** In 2007, the District, Hayward and SFPUC completed an intertie to allow for 30 MGD of water to be conveyed between the District and SFPUC water systems via Hayward's distribution system. This project, which was funded by the participating agencies and the State through a Proposition 50 grant, provides the District and neighboring agencies increased flexibility to provide water throughout the region during an emergency. The intertie allows sharing of water among the parties during emergencies or planned critical work on facilities that would be difficult to remove from service without an alternative water source. The project consisted primarily of improvements within Hayward's water system, although there were associated minor improvements in the District and SFPUC systems.

See also "– Capital Improvement Program" for a discussion of the District's current five-year capital plan for the maintenance and improvement of its infrastructure and facilities.

## Water Supply Operations

**General.** As described above, the District's water supply system consists of an integrated network of reservoirs, aqueducts, raw water pumping plants, treatment plants, and distribution facilities that extend from its principal water source, the Mokelumne River watershed basin in the Sierra Nevada range, across the San Francisco Bay/Sacramento-San Joaquin Delta, to the East San Francisco Bay Area. Set forth on the following page is a location map depicting the District's water supply system facilities.

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Streamflow from the Mokelumne River is collected and stored in the District's Pardee and Camanche Reservoirs, located in the Sierra foothills. Raw water from Pardee Reservoir is transported to the East Bay terminal reservoirs and treatment plants through the Pardee Tunnel, the three Mokelumne Aqueducts, and the Lafayette Aqueducts. The raw water is treated at one of the District's treatment plants before being delivered to customers.

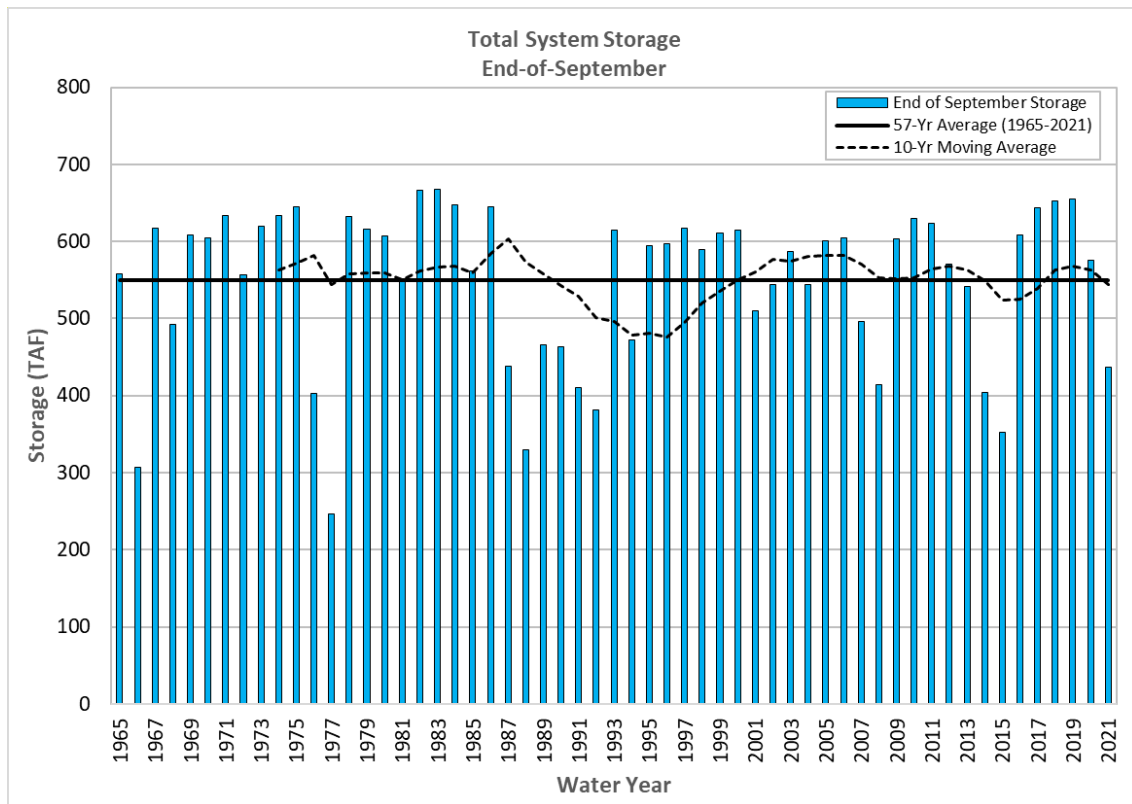
The District operates the Water System to achieve multiple objectives. These objectives are to provide municipal water supply benefits, stream flow regulation, fishery/public trust interests, flood control, recreation, temperature management and obligations to downstream diverters. All of the components of the system, including Pardee and Camanche Reservoirs, the Mokelumne Aqueducts, and the East Bay terminal reservoirs are interdependent; for this reason, the District develops an annual operations plan for the entire water supply system. The annual water supply operations plan includes scheduled operations from April through September and identifies all District requirements.

The District plans its operations according to three projections: the CDWR April 1st Water Supply Forecast, the District's End-of-September (the end of the Water Year) projected total system storage, and the District's projected November 5th combined storage for Pardee and Camanche Reservoirs. Reservoir storage levels are required to be reduced by November 5th of each year to maintain the minimum level of available space necessary for flood control purposes. The projected November 5th combined storage for Pardee and Camanche is also utilized in determining the required releases for fish flows for the October through March period each year. The District monitors projections throughout the year and adjusts reservoir operations, as conditions change, to meet its goals, objectives and requirements.

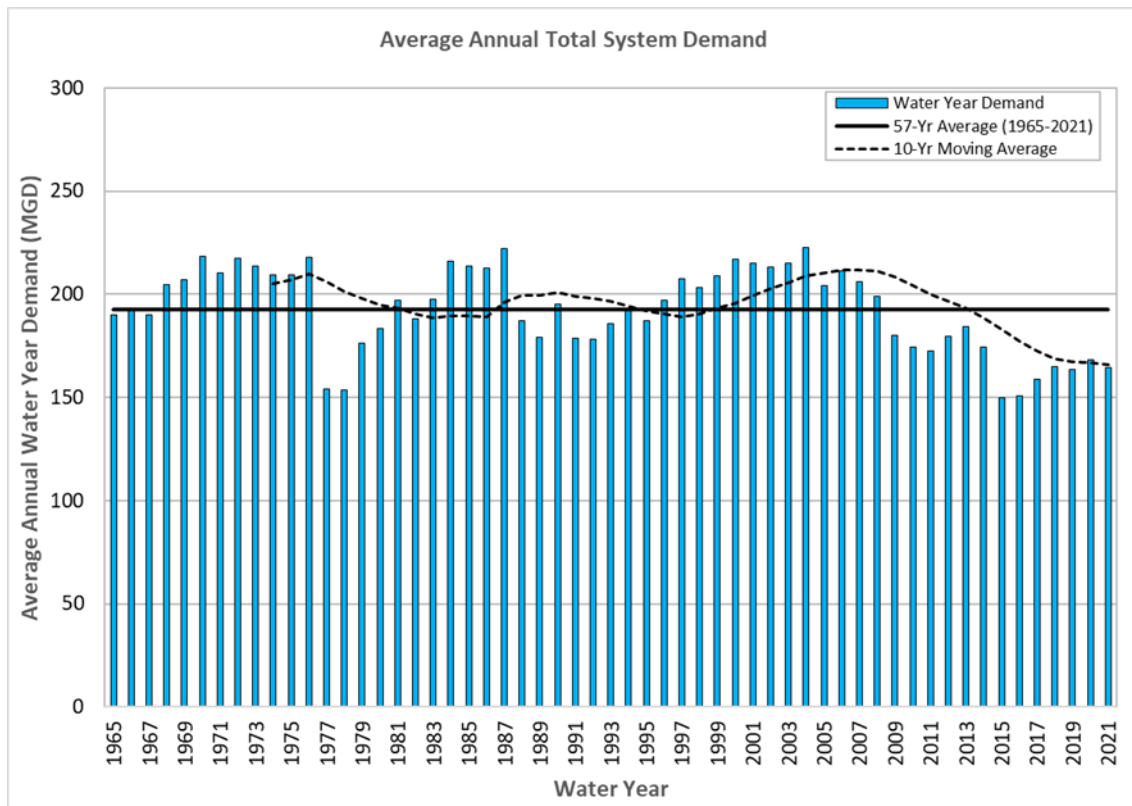
The District begins the Water Year by committing to provide the required minimum fish flows, associated with the projected November 5th storage levels for Pardee and Camanche Reservoirs, for the period October through March. Through fall and winter, the District continues to track rainfall, runoff, storage and demand to reassess reservoir operations as needed.

On April 1<sup>st</sup> of each year, CDWR releases its snow survey water supply forecast of runoff for the Mokelumne River. The District uses the forecast to develop its Annual Water Supply Operations Plan, in which it schedules operations to meet all requirements according to the forecast for the period April through September. Scheduled operations include Camanche Reservoir releases in accordance with the prescribed flow requirements. Certain obligations are not triggered if projected storage elevations for End-of-September and November 5 in Pardee and Camanche Reservoir storage are too low. As required by the District's Water Supply Availability and Deficiency Policy, the District Board is informed of the forecasted water supply condition for the end of the Water Year on September 30th. The September 30th storage forecast is used to determine if drought management measures will need to be implemented to reduce demand to ensure sufficient carryover storage for the following year. If dry year conditions exist (*i.e.*, projected total system storage on September 30th is less than 500,000 acre-feet), the Board will typically consider implementing demand management measures for the rest of the Water Year if the projected storage is significantly below 500,000 acre-feet. Projected End-of-September storage is required to be less than 500,000 acre-feet for the District to be able to utilize the Supplemental Supply made available under the CVP Permanent Repayment Contract.

The graph on the following page shows historical End-of-September storage from 1965 to 2021. The driest period for the District during such time period was 1976 to 1977. The longest dry period during such time frame was the extended drought from 1987 to 1992.



Set forth below is a graph depicting the average annual total Water System demand for each Water Year from 1965 to 2021.



The District was able to provide water to its customers during the extended five-year drought from 1987 to 1992, without Supplemental Supply, by relying on available storage. During the 1976 to 1977 drought, the District utilized 25,000 acre-feet of CVP water from the Delta via a temporary pump station on Middle River. As described herein, the completion of the FRWP facilities in 2011 provides the District with a Supplemental Supply during dry periods of up to 165,000 acre-feet of water under its CVP supply contract over a three-year period. In 2014, 2015, and 2021, the District was entitled to receive an allocation of CVP water under its CVP supply contract as a result of ongoing drought conditions. The District supplemented its available CVP allocation for such years with negotiated water transfer arrangements as needed. For 2022, the District's CVP allocation has been reduced to a "public health and safety" level. The District is evaluating the public health and safety criteria. However, based upon the current CVP allocation, available CVP supplies for 2022 may potentially be zero. In dry periods, the District will generally meet demands through a combination of voluntary water conservation efforts, utilization of available storage (not below certain threshold levels), available Supplemental Supply resources, including FRWP, and, when appropriate, implementation of mandatory use restrictions. See also "– Current Water Conditions" and "– Drought Management."

### **Water Quality and Treatment; Other Regulatory Matters**

Federal and State regulatory agencies continually monitor and establish new water quality standards. New water quality standards could affect availability of water and impose compliance costs on the District. The federal Safe Drinking Water Act establishes drinking water quality standards, monitoring, public notification and enforcement requirements for public water systems. To achieve these objectives, the USEPA, as the lead regulatory authority, promulgates national drinking water regulations and develops the mechanism for individual states to assume primary enforcement responsibilities. The Division of Drinking Water ("DDW") within the SWRCB has lead authority over California water agencies.

Currently, the State and the federal government regulate over 100 contaminants. Because the District's water supply comes primarily from a remote, semi-protected watershed, the raw water requires minimal treatment to meet or surpass all health and aesthetic standards. The District's drinking water is sampled and tested on an ongoing basis from all parts of the Water System to ensure that it meets or surpasses all primary (health related) and secondary (aesthetic) regulatory standards established by the USEPA and the SWRCB. Test results on the District's water consistently show that regulated constituents of drinking water either are not detected at all, or they are present in amounts far below limits permitted by State and federal drinking water standards.

The District is actively involved with professional organizations at the federal and State levels related to water quality, including the American Water Works Association, the Association of California Water Agencies and the Association of Metropolitan Water Agencies. The District serves on technical advisory committees that interact with the USEPA during regulatory development or alteration. In addition to working with the USEPA, the District has developed its own water quality initiatives, including developing State and federal legislation to limit lead levels in household plumbing fixtures. The District also sits on national standards organizations which set standards for all aspects of water quality. The District was a founding member of the Water Research Foundation ("WRF") and actively participates in research projects; with the WRF, the District participates on numerous project advisory committees and carries out funded research.

In addition to meeting the regulatory requirements, the District is a member of the Partnership for Safe Water (the "Safe Water Partnership"). The Safe Water Partnership is a voluntary effort between six drinking water organizations and more than 300 water utilities. The goal of the Safe Water Partnership is to improve performance beyond current regulatory requirements. The program is centered on gathering, analyzing, and reporting plant performance data, and on optimizing treatment plant performance. The Safe Water Partnership program uses standardized tools to assess the performance of treatment plants and

benchmark against the highest industry standards. Safe Water Partnership utilities have demonstrated their commitment to production and delivery of superior quality water.

As part of routine operations and maintenance activities of the Water System, the District may discharge some treated water to the environment. Public water system discharges to State and federal waters are regulated under a Statewide General NPDES Permit for Drinking Water System Discharges. The statewide permit is administered by the SWRCB and enforced by the San Francisco and Central Valley Regional Water Quality Control Boards (the respective “Regional Board”) for parts of the system in the San Francisco Bay Area and Central Valley, respectively. This permit imposes discharge limitations, monitoring, reporting, notification requirements, and application of Best Management Practices to mitigate any potential impacts to the environment. The permit was issued in 2014, the District applied for coverage in June 2015. The permit was originally scheduled to be updated in 2020 and is in extension at this time. It is unknown when the SWRCB will update the current permit but the District will participate in the public review process once it is initiated.

The District is generally operating and maintaining the Water System treatment, distribution, and transmission facilities in compliance with the NPDES permit requirements.

As described herein, the operation of the Water System is subject to a variety of federal and State statutory and regulatory requirements concerning matters such as water quality, dam safety, instream fishery flows, discharges and endangered species. The District’s failure to comply with applicable laws and regulations could result in significant fines and penalties. In addition to claims by private parties, changes in the scope and standards for public agency water systems such as the Water System may also lead to administrative orders issued by federal or State regulators. Future compliance with such orders could also impose substantial additional operating costs on the Water System.

## **Statewide Water Issues**

***Groundwater Management Developments.*** On September 16, 2014, the California Governor signed Assembly Bill No. 1739 and Senate Bill Nos. 1168 and 1319 (collectively, the “Sustainable Groundwater Management Act” or “SGMA”) into law. SGMA constitutes a legislative effort to regulate groundwater on a Statewide basis. By January 31, 2017, local groundwater users were required to establish or designate an entity (referred to as a groundwater sustainability agency, or “GSA”), subject to CDWR’s approval, to manage each high and medium priority groundwater basin.

Prior to formation of GSAs in the East Bay Plain Subbasin, the District and Hayward initiated stakeholder outreach efforts to identify eligible local agencies’ interests in the formation of the GSAs. Stakeholders requested that the District and Hayward take the lead in SGMA compliance efforts and form a GSA as they were deemed suited to undertake the SGMA compliance responsibilities. On November 29, 2016, the District became an exclusive GSA for the portion of the East Bay Plain Subbasin which underlies the District’s service area and on February 7, 2017, the City of Hayward became the GSA for the portion of the East Bay Plain Subbasin that underlies its service area.

As required by SGMA and under a cooperating agreement, the District and Hayward completed a Groundwater Sustainability Plan (“GSP”) for the East Bay Plain Subbasin and submitted the GSP to CDWR on January 26, 2022. The GSP characterized groundwater conditions in the East Bay Plain Subbasin, established a sustainability goal and sustainable yield, and described projects and management actions the District and Hayward will implement within their respective service areas to maintain sustainable groundwater management through 2042 and beyond. The District and Hayward must update the GSP every five years; the next GSP is due to CDWR by January 31, 2027.

Meanwhile, CDWR is now accepting public comments on the current GSP through April 23, 2022, *{monitor for update}* and will take up to two years to determine whether the GSP can be approved or is incomplete. If CDWR finds the GSP incomplete, the District and Hayward will have six months to revise the GSP.

The current GSP found that the East Bay Plain Subbasin is sustainable and that no undesirable results have been observed for SGMA's six sustainability criteria: (1) groundwater levels, (2) groundwater storage, (3) seawater intrusion, (4) water quality, (5) subsidence, and (6) surface water depletion. The GSP did identify significant data gaps, however, for which, the GSP identified several actions that the District and Hayward will undertake over the next five years that include installing new monitoring wells and monitoring groundwater levels and quality. The District and Hayward are only responsible for actions within their respective service areas. The District has estimated that implementing the GSP within its service area will cost approximately \$2.5 million over the next five years.

***Bay-Delta Planning Activities.*** Over the last 20 years, there has been ongoing attention at the State and federal level on restoring the Bay-Delta. In 2006, multiple State and federal resource agencies, water agencies, and other stakeholder groups entered into a planning agreement for the Bay-Delta Conservation Plan ("BDCP"). The BDCP was originally conceived as a comprehensive conservation strategy for the Bay-Delta designed to restore and protect ecosystem health, water supply, and water quality within a stable regulatory framework to be implemented over a 50-year time frame with corresponding long-term permit authorizations from fish and wildlife regulatory agencies. The BDCP would have included water conveyance infrastructure and extensive habitat restoration in the Bay-Delta.

In 2015, the State and federal lead agencies abandoned the concept of a comprehensive BDCP and instead proposed an alternative strategy to provide for the protection of water supplies conveyed through the Bay-Delta and the restoration of the ecosystem of the Bay-Delta, termed "California WaterFix" and "California EcoRestore," respectively. California WaterFix was a proposal for new water conveyance that would be built to divert Sacramento River water into a tunnel system that would bypass the Bay-Delta, through twin tunnels (in the project configuration as approved by CDWR) following a fairly direct alignment between several intake facilities on the Sacramento River and south to the Clifton Court Forebay, a reservoir on the Bay-Delta in Contra Costa County, approximately 17 miles southwest of Stockton. California EcoRestore is an assortment of ecosystem restoration measures to improve habitat and ecosystem function to benefit fish and wildlife.

On April 29, 2019, Governor Newsom issued an executive order directing identified State agencies to develop a comprehensive statewide strategy to build a climate-resilient water system, directing the State agencies to inventory and assess the current planning for modernizing conveyance through the Bay-Delta with a new single tunnel project (rather than the previously contemplated two-tunnel California WaterFix). Consistent with the Governor's direction, in January 2020, DWR commenced a formal environmental review process under CEQA for a proposed single tunnel Delta Conveyance Project. The new conveyance facilities being reviewed would include intake structures on the Sacramento River, with a total capacity of 6,000 cfs, and a single tunnel to convey water to the existing pumping plants in the south Delta. Planning, environmental review and conceptual design work by DWR is expected to be completed in the 2023-2024 timeframe.

The Mokelumne River, the District's primary source of water supply, is a small Delta tributary that originates in the Sierra Nevada mountains. Although the District does not deliver Bay-Delta water to customers, approximately 15 miles of the District's aqueducts cross the Bay-Delta. See also "– Water Facilities" and "– Water Supply Operations." The District's water rights were not directly affected by the California WaterFix proceedings because the SWRCB would only be granting permits under existing water rights held by the Bureau and CDWR, and the SWRCB had explicitly indicated that other water rights holders were not intended to be harmed by any permits granted to California WaterFix. However, the

District filed a lawsuit challenging the project’s environmental impact report and also filed a protest against the WaterFix’s water rights change petition, which sought to allow the California WaterFix to divert water from new intakes on the Sacramento River. The District’s suit and protest were based on the following:

- the District’s fishery restoration efforts on the Mokelumne could be impacted by operation of the California WaterFix;
- the California WaterFix tunnels would intersect the District’s aqueduct alignment and potential future District tunnel alignment through property owned by the District, and any construction impacts would need to be mitigated; and
- operation of the California WaterFix could result in degraded water quality at the Freeport Intake by increasing the frequency of reverse flows at that location, thereby impacting the District’s use of that facility.

As a result of the cancellation of the California WaterFix project, the associated lawsuits and administrative proceedings were dismissed. The District will continue to monitor developments with respect to the proposed single-tunnel Delta Conveyance project being developed to assure its interests in the Delta are not adversely impacted by the reconfigured Delta conveyance project or any related projects, and to assess what the operational and financial impacts of any proposed project may be.

## **Climate Change**

**General.** Global climate change is expected to create greater uncertainty in water supplies and demands in the future. The District completed a Climate Action Plan in 2021 that summarized nearly 20 years of effort and focused on future mitigation and adaptation strategies to manage changing climate and its effect on water resources. The Climate Action Plan draws on other major Climate Change strategic planning documents produced by the District, including its *Climate Change: Charting a Water Course in an Uncertain Future* (2008) and *Climate Change Monitoring and Response Plan* (2014), as well as the District’s UWMP, and Climate Action, Energy, and Sustainability and Resilience policies.

The District’s Climate Action Plan addresses the impacts and vulnerabilities throughout District operations, from the Mokelumne River and East Bay watersheds to the San Francisco Bay. Through its planning efforts, the District is preparing for the probable occurrence of more frequent and severe droughts and storms, reduced snowpack, warmer weather, longer wildfire seasons, increased water demand, and rising groundwater and sea levels.

In addition to an energy policy establishing goals to reduce greenhouse gas (“GHG”) emissions contributing to climate change, the Climate Action Plan identifies a number of mitigation measures and adaptation strategies being implemented by the District with the aim of addressing and responding to the impacts of climate change.

**Energy Policy.** The District has adopted a policy (Policy 7.07) to promote energy efficient practices within the District’s Water System and wastewater system, service area and watersheds, minimize reliance on fossil fuels, diversify its energy sources, reduce energy costs, and strive to achieve a goal of being carbon free for direct and indirect greenhouse gas (“GHG”) emissions. To support this policy, the District has adopted the following goals for GHG emission reductions: (i) for the Water System – to eliminate direct and indirect GHG emissions by 2030; and (ii) for the Wastewater System – to eliminate indirect GHG emissions by 2040 and reduce direct GHG emissions by 50% over 2000 levels.

**Mitigation Measures.** In furtherance of its identified objectives to promote energy management and energy efficiency practices, increase the use and generation of renewable energy to preserve natural resources, and reduce environmental pollution and GHG emissions, the District undertakes or has undertaken a number of initiatives, actions and projects, certain of which are described below.

The District produces approximately 150,000 megawatt-hours (“MWh”) of renewable energy annually through hydropower at its Sierra Nevada foothills facilities. Similarly, the District produces approximately 50,000 MWh of renewable energy annually by combusting biogas created through the wastewater treatment process. These sources of renewable energy produce more electricity than the District requires for its operations. The District also leverages its infrastructure and land to produce renewable energy through photovoltaic projects. Since 2003, the District has constructed ten photovoltaic projects providing almost two megawatts (“MW”) of capacity and producing up to 3,200 MWh of electricity annually. In 2022, the District plans to begin construction of an additional photovoltaic project, the five MW Duffel PV Renewable Energy Project, in the City of Orinda. This project is expected to produce an estimated 10,000 MWh of electricity annually. As a consumer, the District also purchases clean energy through community choice aggregators. The District expects to continue to identify potential new renewable energy opportunities, including in-conduit hydropower, battery storage, and micro-power.

The District utilizes anaerobic digestion to treat the solids from the wastewater treatment process, which produces biogas. This biogas is combusted and converted to energy. The District’s Wastewater System Resource Recovery Program, which the District has operated since 2002, creates additional renewable energy by accepting trucked-in organic wastes. The program reduces GHG emissions in three ways. First, the enclosed anaerobic process converts methane to carbon dioxide. Without this process, the disposal of some of these wastes would result in the uncontrolled releases of methane gas, which has 30 times more global warming potential than carbon dioxide. Second, combustion of the methane generates renewable electricity, which displaces fossil fuel use and associated GHG emissions. Third, anaerobic digestion residuals, or biosolids, are land applied whereas carbon is partially sequestered in the soil.

In its operations, for light-duty applications, the District is investing in more fuel-efficient hybrid and plug-in electric vehicles. Every passenger vehicle in the District’s fleet is either a hybrid or plug-in electric vehicle. For its medium and heavy-duty fleet, the District has transitioned to nearly 100% renewable diesel vehicles, which is manufactured using organic materials such as waste animal fat or used cooking oil. Renewable diesel reduces GHG emissions by up to 80% when compared to petroleum-based diesel, and has other benefits such as lower tailpipe particulate emissions.

***Adaptation Strategies.*** Notwithstanding its mitigation measures, the District recognizes that the impacts of climate change has the potential to affect various aspects of its operations in significant ways, including water supply planning, water quality, infrastructure projects, wastewater treatment operations, customer services, and employee safety.

The District has created a diverse water supply portfolio to better respond to the impacts of climate change over time. Water conservation reduces demand and recycling programs reduce reliance on existing supplies, while new sources of supplies provide resilience in the event one source experiences extreme shortages. Elements of the District’s long-term water supply portfolio and programs include:

- an aggressive water conservation program that has offset water demands by approximately 21% compared to 15 years ago;
- recycled water projects that have reduced the use of potable drinking water by an estimated nine million gallons per day;
- the completion of the \$950 million FRWP which provides the District with water supplies during droughts and emergencies from the Sacramento and American River watersheds; and
- investing over \$20 million in numerous water system interconnections with neighboring water agencies over the last 15 years to increase regional water supply flexibility and reliability.

As described herein, the District's UWMP contains planned goals and actions aimed at developing and ensuring a resilient and sustainable water supply, including (i) expansion of water conservation programs to achieve a total of 70 million gallons per day of water savings by the year 2050; (ii) increased use of recycled water to offset potable water use by an additional 11 million gallons per day; (iii) additional supplemental supply development including surface waters, groundwater storage, and water transfers that further diversify the District's water supply portfolio; and (iv) fostering partnerships with other water districts to develop regional solutions to water supply challenges, such as through the Bay Area Regional Reliability program.

## **Seismic and Wildfire Matters**

***Seismic Considerations.*** The District's service area is in a seismically active region of the State. The Hayward Fault runs through the entire western portion of the District and the Calaveras Fault runs through the southeastern portion of the District's service area. The Concord and Mt. Diablo Thrust Faults are located close to the east side of the District's service area and the San Andreas Fault is located to the west. The Pardee and Camanche Dams, and the District's three aqueducts that carry raw water from Pardee Reservoir to the District's service area, are in other active earthquake fault areas. Even though the District has not experienced significant earthquake-related damage to its facilities, the District's Water System and/or its water supply could be adversely affected by a major local earthquake causing damage to the District's water treatment and distribution system, the Pardee or the Camanche Dams, or the aqueducts delivering raw water to the District's service area.

In the next 30 years, there is a high probability of an earthquake occurring in the San Francisco Bay Area that is greater than magnitude 6.7, according to the United States Geological Survey. A 1994 seismic study prepared for the District examined the likely effects of earthquakes on the Hayward Fault, the Calaveras Fault and the Concord Fault at that time on the District's Water System. The study concluded that a magnitude 7.0 earthquake on the Hayward Fault would likely cause major damage to the water transmission tunnels, substantial damage to distribution pipes, damage to potable water reservoirs and operational disruptions of the District's pumping plants, rate control stations and water treatment plants. The study also indicated that the District could also experience significant damage as a result of lesser magnitude earthquakes on the Hayward Fault or earthquakes on the Calaveras or Concord Faults. If damage to the Claremont tunnel made it unusable, severe water rationing would be required in the western portion of the District's service area during an estimated 26-week repair period. Further, the study found that repair efforts on the District's Mokelumne Aqueducts after severe damage could take up to one year before water could be transported again to the District's terminal reservoirs. This would require stringent customer conservation, as the District's terminal reservoirs store roughly six months' supply under normal consumption patterns. A major earthquake could also have a severe adverse impact on the economy of the District's service area.

In response to the 1994 seismic study, the District initiated a multi-year Water System seismic improvement program. By 2007, the District had completed its Seismic Improvement Program (the "SIP"), a \$200 million investment which focused on improving seismic performance of the distribution system and facilities, thereby increasing the reliability of water service post-earthquake. The SIP included upgrades to 70 reservoirs, 130 pumping plants, six water treatment plants, three maintenance yards, the Administration Building, and various electrical equipment anchorages throughout the District. It also included completion of an alternate transmission pipeline, the Southern Loop; completion of a fault-line by-pass for the primary transmission tunnel, the Claremont Tunnel; and seismic upgrades of Mokelumne Aqueduct No. 3, which is the aqueduct most relied on by the District to carry water across 15 miles of the Sacramento-San Joaquin Delta.

Since the completion of the SIP improvements, the District continues to enhance seismic safety as part of its comprehensive capital improvement project planning process. See "– Capital Improvement

Program.” That process includes the integration of seismic upgrades into ongoing facility renewal work, as well as the completion of, and additional planned, major seismic upgrades. A \$76 million seismic upgrade to the San Pablo Reservoir dam, the largest of the local water storage reservoirs, was completed in 2010. Evaluations and/or safety reviews have also been completed at all of the District’s dams. Seismic upgrades at Chabot Dam in Alameda County, were completed in 2018. Retrofits to the Chabot, Upper San Leandro and San Pablo reservoir towers have also been completed. A previous seismic evaluation of the Pardee reservoir tower found no retrofits to that tower to be necessary. As part of the current five-year capital plan, the seismic retrofit of two additional reservoir towers (Briones and Lafayette) is anticipated. A new cycle of seismic reviews is also beginning to account for accumulated changes in seismic evaluation standards and safety requirements. Among other things, seismic studies are scheduled to commence for Pardee Dam, and structures related to Camanche Dam. In addition, the District has undertaken a comprehensive study of all of its spillways at its local and upcountry reservoirs, including condition assessments, drainage system inspections and maintenance repairs. Further detailed evaluations of structural and hydrologic conditions are underway, and if necessary, capital upgrades will be planned and implemented. In 2018, the District completed a Local Hazard Mitigation Plan that reflects the District’s most current system upgrades, improvements, and mitigation measures to reduce the community’s exposure to seismic hazards – as well as other natural hazards – and to improve the reliability of its services to the public.

Despite the completed and continuing seismic work, in the event of significant earthquake damage to the Water System and/or the District’s service area, there can be no assurance that Subordinated Water Revenues would be sufficient to pay the principal of and interest on any outstanding Water System Revenue Bonds.

***Wildfire Considerations.*** The Mokelumne River watershed and the District’s watershed lands in the East Bay are in areas with an elevated risk of wildfires. Catastrophic wildfire in these watershed areas could severely damage water quality impacting the ability to treat water at the District’s inline water treatment plants at Orinda, Lafayette and Walnut Creek and could adversely impact other resources, including soils, fish, wildlife, air quality, carbon capture, and recreation resources. The District has an active program to manage fire risk and vegetation on its District-owned properties both in the Mokelumne River watershed and in the East Bay. Within approximately 575 square miles of watershed above Pardee Reservoir, the District works with partner agencies including the United States Forest Service, local counties, and local water agencies to identify forest lands in need of rehabilitation. The District, along with five other water agencies (AWA, Calaveras County Water District, CPUD, Jackson Valley Irrigation District and Alpine County Water Agency), and the counties of Amador, Calaveras and Alpine, are members of a California joint powers agency known as the Upper Mokelumne River Watershed Authority. Through the Upper Mokelumne River Watershed Authority, the District is participating in the implementation of a 14,000-acre forest rehabilitation program. The District annually devotes resources in the Sierra Nevada foothills to the reduction of fuel loading through grazing, prescribed burns, and tree and brush removal.

## **Dam Licensing and Safety Issues**

As part of its Water System facilities, the District manages a number of dams. These include Pardee Reservoir in the Mokelumne River watershed, its main source of water supply, Camanche Reservoir, which stores water south of Pardee Reservoir and operates to meet regulatory and environmental obligations, including flood control and for downstream users, the District’s five local water supply reservoirs, and more than 20 open-cut reservoirs that hold treated water. The dams range from 8 feet to 345 feet tall and were built from the late 1800s to 1990.

Most of the District’s dams are under the jurisdiction of CDWR’s Division of Safety of Dams (“DSOD”). Pardee and Camanche Dams are also under the jurisdiction of FERC because they produce hydropower. These regulatory agencies perform independent annual dam inspections, which are the basis

of annual recertification that allows continued operation of the dams. The regulators also review plans and specifications for the enlargement, alteration, repair or removal of existing dams under their respective jurisdiction. DSOD and FERC also conduct investigations of selected dams and direct the owners to do additional investigations and detailed safety evaluations when necessary.

The District has a comprehensive Dam Safety Program guided by the District's Dam Safety Program policy (Policy 9.07). Policy 9.07 requires management of District-owned dams and accompanying facilities to assure dam safety, structural integrity and operational safety for the protection of life, property and the environment. Engineers and trained technicians monitor dams using instruments, and perform monthly visual inspections and periodic reviews to ensure the safety of dams. If any areas of concern arise, repairs are planned and completed. Operations are adjusted if necessary to maintain public safety (e.g., reducing the water level to provide additional space in the reservoir or reduce water loads). In addition, the safety of each dam is reevaluated with advances in geotechnical, structural, hydrologic and earthquake engineering, and also if there is evidence of seepage, ongoing ground movement or other deficiency. Based on the findings of dam safety studies, over the past several decades the District has proactively made, and has ongoing and planned, a number of capital improvements to its dams to ensure their ongoing safety. Major capital improvement projects include: seismic upgrades at San Pablo and Chabot dams; spillway upgrades, modifications or restoration work at Pardee, Chabot and Upper San Leandro dams; relief wells and drainage improvements at Camanche dam; GPS systems at Camanche and Pardee dams; concrete lining repairs at Lafayette dam; tower retrofits at USL, Briones and Lafayette dams and various open-cut dam reservoir replacements and improvements. See also “– Seismic and Wildfire Matters – *Seismic Considerations*” and “– Capital Improvement Program.”

Historically, the District's dam safety program has provided for the continual, safe operation of all of the District's dams, with annual recertification received from the regulatory agencies without interruption.

### **Security and Emergency Preparedness; Cybersecurity**

The District has implemented a security program to provide a secure work place; maintain safe and reliable water supply and wastewater services; and to prevent or mitigate potential damage or loss of assets from internal and external threats. The District's Security Office manages the security program which includes assessment, capital, operational and coordination elements. These efforts are guided by the Security Vulnerability Assessment (SVA), water/wastewater industry experience, actual experience at District facilities, and industry standards/guidelines. The program's systems, procedures, and personnel are designed to deter, detect, delay and assess potential criminal actions.

The District has a Security Operations Control Center (the “SOCC”) that is staffed seven days a week, 24 hours a day. The SOCC houses a proprietary centralized security system to monitor access controls, video cameras and recorders, and security alarms. The dispatchers at the SOCC monitor alarms, assess conditions using the security system, and dispatch security and law enforcement response as needed for alarms and reports of suspicious circumstances or crimes at District facilities. The security system maintains access controls for water and wastewater treatment, administrative and maintenance facilities, its storage yards and service centers, and the reservoirs and pumping plants in its water distribution system. District security includes an internal security staff and security contractors. Contract security officers are also used to supplement automated access controls at certain key facilities.

The District maintains an active emergency preparedness program that includes an Emergency Operations Plan to help manage the District's critical operations during any emergency and protect people, property, and the environment. The District also maintains a Business Continuity Program Plan to minimize impacts to critical business functions and enhance its capability to recover operations expediently and successfully following a disruptive incident. Pursuant to State law, District employees are sworn disaster

service workers, and staff is trained to use California’s Standardized Emergency Management System (referred to as SEMS) and the National Incident Management System (referred to as NIMS) in response to emergencies and security incidents. As part of its Emergency Operations Plan, the District maintains two strategically located emergency operations centers and a mobile emergency command center, and has in place an emergency operations team to lead emergency response activities. The District also has adopted business continuity plans for individual work units to ensure the District’s ability to respond to, and recover from, any emergency or other event that disrupts its normal business functions.

The District, like many other large public and private entities, relies on an extensive and complex technology environment to conduct its operations, and faces multiple cybersecurity threats including, but not limited to, hacking, phishing, executive impersonation, denial of service, malware, and other attacks on its information systems, networks, and data. Cybersecurity incidents could result from unintentional events or from deliberate attacks by unauthorized entities, nation state actors, or individuals attempting to gain access to the District’s systems for the purposes of misappropriating assets or information or causing operational disruption and damage. Cyberattacks are becoming more sophisticated and the threats continually evolve. Certain cyber incidents, such as surveillance, may remain undetected for an extended period. Attacks directed at critical Water System operations and facilities could damage distribution and storage assets, cause operational malfunctions and outages, and result in costly recovery and remediation efforts.

The District’s cybersecurity program leverages a defense-in-depth approach to maintain the confidentiality, integrity, and availability of the District’s business information systems, data, and water and wastewater control systems. There are dedicated District IT and OT Security and third-party staff who perform a variety of functions, including intrusion detection and prevention, incident response, monitoring for malware, vulnerabilities, and anomalous network traffic, promoting cybersecurity awareness to District staff, and auditing the environment to ensure that configurations remain consistent with security objectives as well as implementing new security controls as needed to stay ahead of continually evolving security threats. Third-party audits and vulnerability assessments are also utilized periodically by the District to identify any potential areas of improvement for the overall cybersecurity program. The District maintains a backup data center to facilitate recovery of critical business systems after a disaster.

## **Insurance**

The District uses a combination of self-funding/self-insuring and insurance coverage in the District’s risk management program. The program provides protection for the District’s buildings and facilities, including their contents and equipment, from fire, explosion and related perils, including flood. The District’s insurance program does not currently include earthquake coverage. The District’s reserves, self-insured retentions, deductibles, and insurance are described below.

The District self-insures liability claims up to \$10 million for bodily injury and property damage that may arise from the District’s operations, including but not limited to use of its property, facilities, or vehicles. The District also maintains fidelity protection against fraudulent acts of its employees.

The District maintains a reserve of approximately \$7 million that is earmarked to pay both liability and workers’ compensation claims that may arise from the District’s water and wastewater systems’ operations. See also “WATER SYSTEM FINANCES – Financial Management Policies.”

Selected insurance coverages include the following:

- \$90 million of commercial general and automobile liability insurance, subject to a \$10 million per occurrence self-insured retention for both the Water System and the Wastewater System;

- Statutory limits of excess workers’ compensation coverage, subject to a \$5 million self-insured retention for both the Water System and the Wastewater System;
- \$200 million in coverage for “all risk” property insurance, subject to a \$500,000 deductible, with exclusions including, but not limited to, all dams, all underground property and pipelines, earthquake and flood;
- \$25 million in coverage for flood perils (except for areas within the FEMA-designated 100-year floodplain in which a \$10 million limit is applicable), subject to a \$1.5 million minimum deductible per occurrence, except 5% of the total insurable property values at the time of the loss at each location involved in the loss subject to a minimum deductible of \$1.5 million for any occurrence in areas of 100-year flooding as defined by FEMA, all such flood insurance excluding coverage for underground property and pipelines;
- \$25 million in coverage for boiler and machinery insurance, subject to a \$25,000 deductible; and
- \$10 million in coverage for crime insurance for protection against fraudulent acts of employees (except for “faithful performance” claims in which a \$6 million limit is applicable), subject to a \$25,000 deductible.

### **Capital Improvement Program**

Since Fiscal Year 2002, the District has implemented a biennial budget. In the spring of odd-numbered years, a budget is presented to the Board for consideration for the two ensuing Fiscal Years. The biennial budget planning process includes a review of projected long-term (10 years) facilities needs and the development of a capital expenditure forecast for the ensuing five fiscal years. A series of master plans document the identified facilities needs by asset classes (*e.g.*, pipelines, reservoirs and other assets) and include assessments of key facilities, taking into consideration condition assessments, operational performance and maintenance histories. Facilities in need of rehabilitation or replacement are identified and prioritized. Project scopes are also defined (for example, replacement of aging mechanical or electrical equipment, seismic upgrades, or other defined scopes).

The master plans are considered during the biennial update to the Capital Improvement Program (the “CIP”). The most recent CIP update was completed in 2021 in connection with developing the biennial budget for Fiscal Years 2022 and 2023, which was approved by the Board on June 8, 2021. The CIP update included a five-year capital expenditure forecast for Fiscal Years 2022 through 2026. Based upon this CIP forecast, cash expenditures for capital improvements to the Water System for Fiscal Years 2022 through 2026 are estimated to aggregate approximately \$2.0 billion.

In the CIP for Fiscal Years 2022 through 2026, the District is continuing its focus on investments in infrastructure rehabilitation, repair and replacement. The projected \$2.0 billion aggregate CIP cash expenditures for the five-year forecast period represents a 6.6% increase over the prior CIP. The increase is primarily related to the District’s programs for replacing deteriorated water distribution pipelines, and large diameter pipelines, rehabilitating steel and concrete storage reservoirs and large open-cut reservoirs, and rehabilitating pumping plants. This strategy is reflected in the substantial portion of the CIP expenditure forecast dedicated to maintaining infrastructure. In the area of water quality, the CIP forecast also includes new projects related to water treatment plant upgrades.

Table 6 summarizes the District’s projected CIP cash expenditures for Fiscal Years 2022 through 2026 by major category as forecast in the biennial budget for Fiscal Years 2022 and 2023.

**Table 6**  
**Fiscal Years 2022-2026**  
**Capital Improvement Program**  
**FY 2022 and FY 2023 Biennial Budget**  
**Forecast – Cash Expenditures<sup>(1)</sup>**  
**(Thousands)**

	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>Total<sup>(3)</sup></u>	<u>% of Total</u>
Maintaining Infrastructure	\$163,556	\$169,552	\$156,721	\$204,635	\$221,383	\$ 915,847	45%
Extensions/Improvements	7,476	6,523	5,632	4,081	4,510	28,222	1
Facilities, Services & Equipment	38,663	24,414	20,433	33,831	27,081	144,422	7
Regulatory Compliance	9,159	24,021	23,411	22,466	11,225	90,280	5
Water Supply	36,048	34,714	40,106	52,027	60,970	223,863	11
Resource Management	2,846	3,206	2,548	1,241	979	10,819	1
Water Quality	32,720	62,680	83,722	73,606	90,422	343,150	17
Admin. & General Expense <sup>(2)</sup>	<u>51,000</u>	<u>52,000</u>	<u>53,040</u>	<u>54,101</u>	<u>55,183</u>	<u>265,324</u>	<u>13</u>
Total <sup>(3)</sup>	\$341,468	\$377,110	\$385,613	\$445,988	\$471,753	\$2,021,928	100%

<sup>(1)</sup> Cash expenditures include spending for projects appropriated in earlier Fiscal Years.

<sup>(2)</sup> Includes overhead, construction management and other administrative costs which are allocated to individual projects upon their completion.

<sup>(3)</sup> Totals may not add due to rounding.

Source: The District.

The cost estimates are subject to revision in connection with the subsequent five-year CIP forecast prepared as part of the biennial budget planning process. See also “– *Construction-Related Risks*” below.

The District’s estimated funding sources for its CIP for Fiscal Years 2022 through 2026 as reflected in the biennial budget for Fiscal Years 2022 and 2023 are set forth in Table 7:

**Table 7**  
**Fiscal Years 2022-2026**  
**Estimated Sources of Funds for Capital**  
**Improvement Program Expenditures**

<i><b>Funding Sources</b></i>	<i><b>(Millions)</b></i>	<i><b>% of Total</b></i>
Revenues	\$1,016.9	50.3%
Bond Proceeds <sup>(1)</sup>	852.6	42.2
Reimbursements <sup>(2)</sup>	152.4	7.5
Total	<u>\$2,021.9</u>	<u>100%</u>

<sup>(1)</sup> See footnote 10 to the Table 21 for additional regarding the District’s currently projected bond issuances to finance the District’s CIP expenditures.

<sup>(2)</sup> Includes capital projects in the Water system performed at the request of other agencies for which the District is reimbursed. Also includes work to expand the distribution system to meet new connections not covered by the system capacity charge that is paid for directly by the applicants.

Included in the five-year CIP for Fiscal Years 2022 through 2026 as reflected in the biennial budget for Fiscal Years 2022 and 2023 are the major programs and projects described below:

***Maintaining Infrastructure.*** Projects for maintaining infrastructure further the District’s objectives to improve, rehabilitate and replace aging infrastructure in a cost effective manner to ensure the sustainable

delivery of reliable, high quality water service now and in the future. Work in this category focuses on pipeline projects to improve system reliability, improvements to reservoirs and pumping plants, and installing new services.

The Pipelines/Appurtenances program is designed to maintain efficient pipeline operations by replacing appurtenances such as valves, hydrants and meters at the end of their useful life. The New Service Installations project covers installation of services for new customers and includes taps on the main, laterals, and meter sets. The need for installing new services has been increasing as housing development trends have elevated demand for new services.

The Pipeline Infrastructure Renewals project is an ongoing project to replace deteriorating water distribution pipelines, identified primarily through the evaluation of maintenance histories. Planned work includes, ramping up to replace 25 miles in Fiscal Year 2025-2026 in conjunction with the Pipeline Rebuild program which is aimed at implementing more efficient replacement processes and installation methods. The Large Diameter Pipelines project is similarly an ongoing project to replace the large transmission pipes that form the backbone of the distribution system.

The Pipeline System Extensions project is focused on service to new customers. The workload is estimated from projections of land development activity and recent trends in water service estimates in the District's New Business Office.

The Polybutylene Lateral Replacement program includes the planned replacements of polybutylene laterals and copper laterals, and unplanned replacements for all lateral material types. Crews will continue the practice of replacing laterals within areas that have suffered high failure rates (planned replacements) at roughly 130 copper laterals and 1,100 unplanned lateral replacements per year. In Fiscal Year 2022, approximately 100 planned polybutylene laterals will be replaced and then the planned polybutylene lateral replacements project will be discontinued.

In Fiscal Years 2022 through 2026, work in the Maintaining Infrastructure category also includes planning, design and construction at two to three of the District's 130 distribution pumping plants per year; the rehabilitation of two to three steel or concrete reservoirs; and the rehabilitation or replacement of the District's remaining open-cut reservoirs. Reservoir work may also include replacement or demolition to improve water quality and enhance worker safety.

***System Extensions and Improvements.*** System Extensions and Improvements projects further the District's objectives to improve the infrastructure to ensure reliable, high-quality service, and update and enhance the District's system modeling capabilities. Work under this category focuses on making improvements to various components of pressure zones by first studying individual pressure zones and compiling the studies into the Distribution System Master Plan. Improvements include upgrading or replacing reservoirs, pumping plants and transmission systems to optimize storage capacity and improve water quality for existing customers, and to provide service to new customers.

Pressure zone work for Fiscal Years 2022 through 2026 includes completion of the Maloney Pressure Zone Planning Study, Colorados Pressure Zone Improvements Update, Swainland Reservoir Study, East of Hills System Study, Lake Chabot Golf Course service relocation, biennial updates to the Distribution System Master Plan, and Collaborative and Holistic Pipeline Plan blueprints for each pressure zone.

***Facilities, Services & Equipment.*** Facilities, Services and Equipment projects further the District's objectives to ensure the security of the water supply and the water system; to evaluate facilities and implement corrective maintenance programs; to implement changes in technology; and to maintain a safe,

well-equipped workplace. Work in this category includes making security improvements at various facilities, implementing new computer systems, and replacing vehicles and equipment as needed.

The Area Service Center/Building program is comprised of various projects that improve and upgrade District buildings. The focus during Fiscal Years 2022 through 2026 will be on continued energy and security improvements at the Oakland Administration Building along with new roofing for the terraces. HVAC improvements are planned at the AMC campus. Other work includes completing the second phase of the new Fleet Maintenance East facility in Walnut Creek, development of the new Willow Street Services Center, collaborating with a non-profit to develop a multi-use facility at the Oakport Service Center and making various space and facility improvements.

The Communications program comprises projects that replace and upgrade computer and communication systems. Replacement of the Materials Management Information System that is used for purchasing and accounting purposes along with the Financial Information System and the Budget System will be completed in Fiscal Year 2022. These systems share data and are required to be integrated. Various modules of the Human Resources Information System are also scheduled to be replaced, along with various Work Management Systems such as general work orders, and concrete and paving orders.

The Vehicle Replacements project is ongoing and involves the periodic replacement of vehicles and construction equipment as needed. In Fiscal Years 2022 and 2023, the necessary equipment will be purchased to outfit additional staff, replace long-term leased vehicles and decrease the reliance on fully manned and operated contracts. Also, improvements will be made to the District's fueling facilities.

**Regulatory Compliance.** Regulatory Compliance projects further the District's objectives to operate and maintain facilities to meet all air, land and water discharge requirements; implement preventative and corrective maintenance programs; and improve the infrastructure to ensure delivery of reliable, high-quality service. The work in this category focuses on modifications to reservoir towers, trench soils management, and upcountry wastewater treatment.

Evaluations and/or safety reviews have been completed at all of the District's dams. Seismic retrofit and upgrades at two reservoir towers (Briones and Lafayette) are planned for Fiscal Years 2022 through 2024. The overall safety including seismic safety of each dam using current engineering standards is evaluated on a 5-year cycle Review for two dams is planned for Fiscal Year 2022.

Trench spoils material is generated from pipeline installations and repairs, and is stockpiled at three disposal sites for future reuse or disposal. The sites are managed in accordance with regulatory requirements, the spoils are removed periodically, and soils reduction and disposal alternatives are being evaluated. The project also includes evaluating and potentially purchasing a property for additional trench soils purposes as soils production is expected to increase as more miles of pipe are replaced under the Pipeline Rebuild Program.

**Water Supply.** Water supply projects further the District's objectives to ensure a reliable, high quality water supply for the future; to preserve current entitlements and augment the District's water supply; and to reduce the demand for potable water through conservation and recycling. The near-term focus of work in this category is on maintaining the raw water aqueducts and water recycling projects.

The Aqueducts program consists of evaluating and improving the raw water system. Various portions of Mokelumne Aqueduct No. 1 will be recoated to provide protection from the corrosive Bay-Delta environment. The program also includes replacing the deteriorated cement lining in the Mokelumne Aqueducts that protect the steel pipeline from internal corrosion. Work includes studying lining technologies and pilot testing lining materials; inspecting the interior of Mokelumne Aqueduct 2 and above-ground section of Mokelumne Aqueduct No. 3; followed by design and construction of the aqueduct

relining. The District will be planning and performing environmental review for a project to improve the resiliency of the Mokelumne Aqueducts across the Delta through a combination of a new tunnel and strengthening of Mokelumne Aqueduct No. 3. In addition the District will continue to retrofit the temperature anchors and base isolators on the Mokelumne Aqueducts, and upgrade the Briones Center and the Moraga Raw Water Pumping Plant.

The Water Supply Management program guides decisions for providing a reliable, high quality water supply to meet the growth in demand through the year 2040, while offsetting the demand for potable water through water conservation and recycled water. Water supply efforts are being pursued to ensure the reliability of the water supply into the future, particularly during dry years, emergencies, and in response to changing climate and legislation.

Work in Fiscal Years 2022 through 2026 includes evaluating the expansion of the Los Vaqueros Reservoir, developing and implementing water transfer and exchange opportunities, participating in regional partnerships, investigating groundwater banking opportunities, and developing and protecting the East Bay Plain Sub-basin.

To comply with measures associated with California Senate Bill 555, a new Water Loss Control project was created to reduce apparent and real water losses through meter replacement, leak detection and pressure management.

***Resource Management.*** Resource Management projects further the District's objectives to manage the Mokelumne and East Bay watersheds to ensure a high-quality water supply; protect natural resources; and provide public access and recreational opportunities compatible with water quality and natural resource protection. Work under this strategy focuses on making improvements to recreational facilities at Camanche, Pardee and East Bay Reservoirs, and the Mokelumne fish hatchery.

Projects include a new ADA interpretive trail, installation of a new restroom, and improvements to the access roads and public parking areas at the Mokelumne river Day Use Area, and construction of a new restroom/shower facility at the Pardee Recreation Area. Projects at the San Pablo and Lafayette Recreation Areas include; crew locker room and ship improvements; marina and dock improvements; water and sewer system upgrades; and roadway paving. Watershed projects include trail staging area upgrades fire management strategies. Improvements at the Orinda Watershed Headquarters include new roofs, upgrades to conference room technology, and repaved parking lots. Work at the Mokelumne Watershed Headquarters includes a back-up generator, construction of a modular warehouse/shop building, and vehicle access improvements.

***Water Quality.*** Water quality projects further the District's objectives to operate and maintain facilities to surpass federal and State drinking water regulations, and to make system improvements that meet or surpass regulatory requirements. Work in this category is focused on making improvements to water treatment plants to improve water quality and reliability. In Fiscal Years 2022 through 2026, work is planned at five water treatment plants and includes the rehabilitation and renovation of systems such as filters, chemicals, disinfection, air scours, disinfection, oxygenation, and controls.

***Other Potential Projects.*** The District also appropriates funds to meet unanticipated capital needs and for projects that are seeking grant funding. Such needs include replacement or repairs to facilities and equipment as a result of failures or safety deficiencies, and new projects or the acceleration of planned projects requiring funding before the next budget cycle. Funds are also available for grant funded projects that normally require the District to advance the costs and then apply for reimbursements. The District also has contingency funds in its capital budget for possible costs related to grant awards to cover Mokelumne River restoration projects for salmon spawning, nine miles of new Mokelumne Coast to Crest Trails, and water loss control acoustic leak detection surveys.

**Construction-Related Risks.** Construction projects for the Water System are subject to ordinary construction risks and delays applicable to projects of their kind, including but not limited to: (i) inclement weather affecting contractor performance and timeliness of completion, which could affect the costs and availability of, or delivery schedule for, equipment, components, materials, labor or subcontractors; (ii) contractor claims or nonperformance; (iii) failure of contractors to execute within contract price; (iv) work stoppages or slowdowns; (v) failure of contractors to meet schedule terms; (vi) errors or omissions in contract documents requiring change orders; (vii) the occurrence of a major seismic event; or (viii) unanticipated project site conditions, including the discovery of hazardous materials on the site or other issues regarding compliance with applicable environmental standards, and other natural hazards or seismic events encountered during construction. In addition, Water System construction projects may require scheduling system shutdowns to avoid impacting water deliveries and many shutdown windows are inflexible. Increased construction costs or delays could impact the Water System’s financial condition in general and the implementation of its CIP in particular. Construction bids may also be higher than anticipated for budgeting purposes due to the uncertainties and supply chain issues from the COVID-19 pandemic.

## **WATER SYSTEM FINANCES**

### **Basis of Accounting**

The District reports operations on a Fiscal Year basis (currently July 1 through June 30). Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the costs of providing goods and services to the general public are financed or recovered primarily through user charges. Enterprise funds are accounted for using the accrual basis of accounting. The accounting policies of the District conform to generally accepted accounting principles for municipal water and wastewater utilities. The accounts are maintained substantially in accordance with the Uniform System of Accounts prescribed for investor-owned and major municipally-owned water and wastewater utilities.

### **Sources of Funds**

The Water System’s principal source of revenues is water sales. In Fiscal Year 2021, approximately 81.9% of the Water System’s \$757.4 million in total sources of funds was provided from water sales. Sources of funds other than water sales include taxes, income from the sale of energy from the District’s hydroelectric power plants, investment income, system capacity charges, grants and other capital contributions. In Fiscal Year 2021, the District’s share of the countywide 1% *ad valorem* property tax levy contributed approximately 5.4%, or \$40.6 million of the total sources of funds. In Fiscal Year 2021, the Water System’s hydroelectric power plants produced power revenues of approximately \$4.6 million and the District’s income on investments was approximately \$2.1 million. Capital contributions totaled \$73.4 million, including \$50.4 million of system capacity charges collected during such year, \$21.3 million of contributions for facility relocations, main extensions and service installations (referred to as “earned contributions on construction”), and \$1.8 million of grants and other reimbursements.

Table 8 sets forth the District’s Water System sources of funds for the five most recent Fiscal Years ended June 30, 2021. The sources of funds in the table below include certain funds which do not constitute Subordinated Water Revenues for purposes of funds pledged under the Indenture. Subordinated Water Revenues include all charges received for, and all other income and receipts derived by the District from, the operation of the Water System or arising from the Water System, which includes, without limitation, the District’s water rates, system capacity charge and investment income, less Operation and Maintenance Costs. Property taxes are applied to reduce Operation and Maintenance Costs and are not pledged to the repayment of the Water System Revenue Bonds. See “– Property Tax Revenues.” Earned contributions on construction received for facility relocations, main extensions and service installations, and grants and other

reimbursements, which are restricted to use for the specified purposes are not included in Subordinated Water Revenues for purposes of the Indenture. Only Subordinated Water Revenues are pledged to the payment of the Water System Revenue Bonds. See “SECURITY FOR THE SERIES 2022 BONDS – Pledge of Subordinated Water Revenues” in the front part of this Official Statement. Comparative summaries of the Water System’s historical operating results and debt service coverage ratio for each of the last five Fiscal Years appear in Table 20 under “– Historical Operating Results.”

**Table 8**  
**WATER SYSTEM SOURCES OF FUNDS**  
**Five Fiscal Years Ended June 30, 2021**  
**(Millions)**

	<i>Fiscal Year Ending June 30</i>				
	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Operating Revenue and Other Income:					
Water sales	\$420.3	\$480.7	\$520.3	\$567.4	\$620.5
Power sales	7.8	6.4	10.7	6.3	4.6
Interest <sup>(1)</sup>	3.3	7.9	10.5	12.3	2.1
Taxes	32.0	34.7	35.7	40.3	40.6
Other <sup>(2)</sup>	<u>14.9</u>	<u>14.8</u>	<u>14.3</u>	<u>14.4</u>	<u>16.2</u>
Total Operating Revenue and Other Income <sup>(5)</sup>	<u>\$478.3</u>	<u>\$544.6</u>	<u>\$591.5</u>	<u>\$640.7</u>	<u>\$684.0</u>
Capital Contributions:					
System Capacity Charge <sup>(3)</sup>	\$ 51.5	\$ 69.3	\$ 73.5	\$ 53.3	\$ 50.4
Earned contributions on construction <sup>(4)</sup>	14.4	15.5	23.7	17.8	21.3
Grants and reimbursements	<u>10.1</u>	<u>2.8</u>	<u>0.9</u>	<u>0.8</u>	<u>1.8</u>
Total Contributions <sup>(5)</sup>	<u>\$ 75.9</u>	<u>\$ 87.6</u>	<u>\$ 98.1</u>	<u>\$ 71.9</u>	<u>\$ 73.4</u>
 Total <sup>(5)</sup>	 <u>\$554.2</u>	 <u>\$632.2</u>	 <u>\$689.7</u>	 <u>\$712.6</u>	 <u>\$757.4</u>

<sup>(1)</sup> Includes interest earnings on Water System Fund, including earnings on proceeds of the District’s Water System Revenue Bonds.

<sup>(2)</sup> Other revenues include receipts from property sales, rental of District property, fees for use of District recreational facilities and other miscellaneous receipts. Beginning in Fiscal Year 2010, Other Revenues also includes interest subsidy payments received and due in each year to the District in connection with its Series 2010B Bonds which are Build America Bonds. Excludes reimbursements and other receipts applied directly to operating expenses.

<sup>(3)</sup> System capacity charge collections presented in the table above include the “buy-in” portion and the “future water supply” portion of SCC charges when collected. See also “– System Capacity Charge” below.

<sup>(4)</sup> Includes contributions for facility relocations, main extensions and service installations.

<sup>(5)</sup> Totals may not add due to rounding.

Source: The District.

## Water Sales Revenues

In the Fiscal Year ended June 30, 2021, water sales to residential accounts provided approximately 57.1% of the District’s water sales revenues. Approximately 89.1% of the District’s accounts are residential, but because residential consumption per account is lower than for other customer types, residential sales account for only 53.3% of consumption. The ten largest customers of the District’s Water System consumed approximately 13.2% of the District’s water in Fiscal Year 2021 and accounted for approximately 10.0% of water sales revenues. The largest account consumed 5.8% of the District’s water sold and contributed

3.9% of total water sales revenues and the smallest of the ten largest accounts consumed 0.4% of the total water sold and accounted for approximately 0.2% of water sales revenues.

Table 9 sets forth water sales revenues, consumption and number of connections by customer type for the Fiscal Year ended June 30, 2021.

**Table 9**  
**WATER SALES REVENUES, CONSUMPTION AND NUMBER**  
**OF CONNECTIONS BY CUSTOMER TYPE**  
**Fiscal Year Ended June 30, 2021**

<i>Type of Customer</i>	<i>Sales Revenues<sup>(2)</sup></i>	<i>Percent of Revenues</i>	<i>Consumption (MGD)</i>	<i>Percent of Consumption</i>	<i>Number of Accounts<sup>(1)</sup></i>	<i>Percent of Accounts</i>
Residential	\$354,268,802	57.1%	81.4	53.3%	351,042	89.1%
Commercial	188,685,923	30.4	47.2	30.9	38,079	9.7
Industrial	51,406,394	8.3	17.3	11.3	1,906	0.5
Public Authority	26,109,514	4.2	6.8	4.4	2,992	0.8
Total <sup>(3)</sup>	<u>\$620,470,634</u>	<u>100.0%</u>	<u>152.7</u>	<u>100.0%</u>	<u>394,019</u>	<u>100.0%</u>

(1) This table referred to number of connections in prior disclosures. The data presented are more accurately referred to as number of accounts and the table has been re-labeled accordingly. The data presented are consistent with prior disclosures.

(2) Does not include account establishment fees, recycled water fees and certain other miscellaneous charges.

(3) Totals may not add due to rounding.

Source: The District.

## **Rates and Charges**

The District's rates and rate structure are established by the District's Board after a public hearing process, and are not subject to regulation by any other agency. Under California law, the imposition of, or any increase in, a property-related fee or charge, including fees and charges for ongoing water service, is subject to specified procedural requirements (including notice, hearing and protest procedures). In addition, pursuant to California law all such property-related fees and charges are required to meet certain substantive standards, including that such fees and charges must be proportional to the cost of providing service. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES – Proposition 218" in the front part of this Official Statement for a discussion of the procedural and substantive requirements to which the District's rate increases are subject.

From Fiscal Year 2017 through Fiscal Year 2021, residential rates for water service have increased by an average of approximately 7.58% per Fiscal Year. The overall average rate increase, which includes the rate increases for all customer classes and rate components, for the same period was approximately 7.60%. The District's increases in water service rates and charges for Fiscal Years 2022 and 2023 were enacted by the adoption on June 8, 2021 of overall average rate increases (including meter, volume, elevation charges, non-potable (recycled) water and private fire service) of 4.00% for Fiscal Year 2022 and 4.00% for Fiscal Year 2023.

Table 10 sets forth the average residential and overall average rate increases enacted by the District for the five Fiscal Years 2017 through 2021, and the average residential and overall average rate increases as adopted by the Board on June 8, 2021 for Fiscal Years 2022 and 2023:

**Table 10**  
**WATER RATE INCREASES**

<i>Fiscal Year</i>	<i>Average Residential Rate Increase</i>	<i>Overall Average Rate Increase<sup>(1)</sup></i>
2017 <sup>(2)</sup>	7.02% <sup>(2)</sup>	7.00% <sup>(2)</sup>
2018	9.21	9.25
2019	8.99	9.00
2020	6.45	6.50
2021	6.24	6.25
2022 <sup>(3)</sup>	3.99 <sup>(3)</sup>	4.00 <sup>(3)</sup>
2023 <sup>(3)</sup>	4.03 <sup>(3)</sup>	4.00 <sup>(3)</sup>

<sup>(1)</sup> Overall average rate increase includes water rates for all customer classes (including residential) and water rate components.

<sup>(2)</sup> Excludes drought surcharge.

<sup>(3)</sup> The adopted rate increase for Fiscal Year 2022 is effective on bills issued on and after July 1, 2021 and the adopted rate increase for Fiscal Year 2023 will be effective on bills issued on and after July 1, 2022.

*Source:* The District.

The District's water rate structure is based on a cost of service methodology. The District's rate structure consists of two components: a monthly service charge and a commodity charge for water delivered. With the exception of single family residential customers, commodity charges for water delivered are based on a uniform volume rate. Single family residential customers are billed on a three-tier inclining block rate structure.

Table 11 shows the rate schedule effective July 1, 2021 for Fiscal Year 2022, and the rate schedule to be effective July 1, 2022 for Fiscal Year 2023 as approved by the Board on June 8, 2021. For Fiscal Year 2022, the monthly water bill for a typical residential account consuming 800 cubic feet (8 Ccf or 5,980 gallons) per month, excluding any drought surcharge, is \$66.00. As noted above, the District's rates for Fiscal Year 2023, as approved on June 8, 2021, will become effective on July 1, 2022, under which the monthly water bill for a typical residential account consuming 800 cubic feet (8 Ccf or 5,980 gallons) per month, excluding any drought surcharge, would be \$68.66, representing an average increase of 4.03% for residential customers from Fiscal Year 2022 rates. See also Table 21 under "– Projected Operating Results" for a description of projected future rate increases.

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**Table 11**  
**WATER SYSTEM RATES AND CHARGES**

**Service Charge**

<i>Meter Size</i>	<i>Effective July 1, 2021</i>	<i>Effective July 1, 2022</i>
	<i>Per Month</i>	<i>Per Month</i>
5/8-inch and ¾-inch	\$ 28.98	\$ 30.14
1-inch	43.78	45.53
1 ½-inch	80.79	84.02
2-inch	125.16	130.17
Over 2-inch	Various	Various

**Charge for Water Delivered**

<i>Rate Class</i>	<i>Effective July 1, 2021</i>	<i>Effective July 1, 2022</i>
	<i>Per Hundred Cubic Feet (Ccf)</i>	<i>Per Hundred Cubic Feet (Ccf)</i>
Basic Rate – Single Family <sup>(1)</sup>	\$4.42	\$4.60
Basic Rate – Multi Family	6.25	6.50
Basic Rate – Other	6.22	6.47
Elevation Band Surcharges <sup>(2)</sup> –		
Band 2: Pressure Zones 2 through 5	0.89	0.93
Band 3: Pressure Zones 6 and higher	1.86	1.93

<sup>(1)</sup> Applies to first 172 gallons per day (7 Ccf) for single family residential customers. Additional consumption by residential customers is billed at \$6.08 per Ccf for consumption between 173 and 393 gallons per day (16 Ccf), and \$8.03 for all water used in excess of 393 gallons per day. For a household using 8 Ccf in Fiscal Year 2022, the water usage charge for the first 7 Ccf at the first tier rate of \$4.42 per Ccf would be \$30.94 and the water usage charge for the additional 1 Ccf at the second tier rate of \$6.08 per Ccf would be \$6.08, for a total charge for water delivered of \$37.02; the monthly service charge would be \$28.98, resulting in a total monthly bill of \$66.00. Under the adopted rates for Fiscal Year 2023, additional consumption by residential customers will be billed at \$6.32 per Ccf for consumption between 173 and 393 gallons per day (16 Ccf), and \$8.35 for all water used in excess of 393 gallons per day. For a household using 8 Ccf in Fiscal Year 2023, the water usage charge for the first 7 Ccf at the first tier rate of \$4.60 per Ccf would be \$32.20 and the water usage charge for the additional 1 Ccf at the second tier rate of \$6.32 per Ccf would be \$6.32, for a total charge for water delivered of \$38.52; the monthly service charge would be \$30.14, resulting in a total monthly bill of \$68.66.

<sup>(2)</sup> The water elevation surcharge provides for the increased power and facility costs needed to pump water to locations (zones) 200 or more feet above sea level.

Source: The District.

**Litigation Challenging Tiered Water Rates.** Litigation has been filed challenging the District’s tiered water rates for single-family residential customers. The lawsuit generally alleges that the District’s tiered water rates violate the substantive requirement of Proposition 218 that such rates must be proportional to the cost of providing service. The complaint is seeking a refund, on behalf of the plaintiff (a Water System customer) and a class of all others similarly situated, of a portion of the water charges billed and paid by the plaintiffs and the class on or after October 4, 2020, and other relief. This litigation is ongoing. For a discussion of such litigation, see “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES – Proposition 218 – *Article XIID*” in the front part of this Official Statement.

## Drought Surcharges

Since June 2015, the District’s Board has adopted drought surcharges that may be implemented in the event of ongoing drought conditions when the Board declares specific drought stages pursuant to its Water Shortage Contingency Plan. The drought surcharges, corresponding to increasingly severe stages of water shortages, are applied to each unit of potable water used during the billing period, and are calculated to recover costs of providing supplemental water, increased costs of water shortage-related customer service and loss of revenue. The surcharges do not apply to non-potable water. The District’s adopted rates and charges for Fiscal Years 2022 and 2023 include a staged system of drought surcharges. The District’s Board approved surcharges do not impose a drought surcharge for Stage 1 when only voluntary customer demand reductions are being implemented. [As of the date of this Official Statement, drought surcharges have not been put into effect since bills issued on or after July 1, 2016.] *{monitor for update}* See also “THE WATER SYSTEM – Current Water Conditions” and “– Drought Management.”

Drought stages are based on the District’s 2020 Water Supply Contingency Plan which was most recently adopted by the District’s Board as a component of the Urban Water Management Plan on June 22, 2021. The DMP Guidelines for declaring drought stages is based on projected end-of-September total system storage.

The expected water use restrictions and supplemental supply needs for each of the four drought stages as identified in the District’s DMP Guidelines and the staged system of drought surcharges from the District’s adopted rate schedules for Fiscal Years 2022 and 2023 are summarized below.

Drought Management Program (DMP) Guidelines				Maximum Applicable Drought Surcharge Percentage
<i>Total System Storage (000s Acre-Feet) Projected for September 30</i>	<i>Drought Stage</i>	<i>CVP (Supplemental Water Purchases)</i>	<i>Customer Demand Reduction</i>	<i>Applied to all potable water flow charges</i>
>475	Stage 0 Normal	N/A	Wise Water Use	N/A
475-425	Stage 1 Moderate	Yes	Voluntary 0-10%	0%
425-390	Stage 2 Significant	Yes	Mandatory 10-15%	8%
390-325	Stage 3 Severe	Yes	Mandatory 15%	20%
<325	Stage 4 Critical	Yes	Mandatory ≥ 15%	25%

## Comparison of Annual Water Service Charges

Table 12 shows comparative average annual water service charges by various Bay Area water agencies for a typical residential account with a 5/8-inch meter using 800 cubic feet of water (5,980 gallons) per month. Charges are for the minimum cost zone or area served by the agency based on rates effective (or proposed) as of July 1, 2021. The water service charges for the District in the table below reflect the rates approved on June 8, 2021 to become effective as of July 1, 2021.

**Table 12**  
**COMPARATIVE ANNUAL RESIDENTIAL WATER CHARGES**  
**For 8 Ccf/Month and 5/8" Meter**  
**Effective Rates as of July 1, 2021<sup>(1)(2)</sup>**

<i><b>Water Supplier</b></i>	<i><b>Average Annual Household Water Service Charge<sup>(3)</sup></b></i>
City and County of San Francisco	\$1,157
City of Palo Alto	964
City of San Jose	926
City of Livermore	824
<b>East Bay Municipal Utility District<sup>(5)</sup></b>	<b>792</b>
Alameda County Water District	781
City of Los Altos	754
City of Hayward	749
Contra Costa Water District	749
North Marin Water District	739
Marin Municipal Water District <sup>(4)</sup>	730
Dublin San Ramon Services District	711
City of Pleasanton	460

(1) Unless otherwise noted, the table reflects charges based on rates applicable as of calendar year 2021 or fiscal year 2022 regardless of characterization as base rates or other characterization.

(2) Rates have been obtained from publicly available sources and have not been independently verified by the District.

(3) Chart does not reflect a comparison of average single family residential bill for each agency. The comparison is based on 8 Ccf/mo usage, which represents the average for the District. Average or typical single family residential water use at the other agencies may be lower or higher than 8 Ccf/mo.

(4) Rate effective calendar year 2021 and does not include capital maintenance fee collected on property tax bill.

(5) Reflects the District's rates for Fiscal Year 2022 as adopted on June 8, 2021.

*Source:* The District.

### **Billing and Collection Procedures**

All water service customers are billed directly by the District bimonthly, with the exception of approximately 1,000 accounts consisting of the largest users in the District, which are billed monthly. Billing is staggered throughout the billing cycle by geographic location within the District. Service may be discontinued if an overdue account is not paid after appropriate customer notification. Since March 12, 2020, the District has suspended the discontinuance of water services due to non-payment in order to assist customers experiencing negative economic impacts as a result of the COVID-19 pandemic. See "THE DISTRICT – COVID-19."

The District considers its rates of payment delinquency, service discontinuance for non-payment, and write-offs for uncollectible accounts to be low by water industry standards for urban areas. Following retention of a new collection vendor and implementation of a new delinquent payment process, write-offs for uncollectible revenues have been further reduced. Write-offs for uncollectible accounts for the last five Fiscal Years are set forth in Table 13.

**Table 13**  
**WATER SALES UNCOLLECTIBLE REVENUES<sup>(1)</sup>**  
**Last Five Fiscal Years**

<i>Fiscal Year Ended June 30</i>	<i>Uncollectible Revenues</i>	<i>Percent of Gross Billings</i>
2017	\$ 951,861	0.23%
2018	904,840	0.19
2019	811,487	0.16
2020	972,993	0.17
2021	793,100	0.13

<sup>(1)</sup> Since the suspension of the discontinuance of service for past due residential accounts was implemented in March 2020, the District has not written off past due residential accounts as uncollectible while potential collection or recovery through State and federal economic assistance programs is pending. See also “THE DISTRICT – COVID-19.”

*Source:* The District.

### **System Capacity Charge**

The District’s system capacity charge (“SCC”) is designed to recover from new accounts a portion of the costs of existing facilities, as well as the costs of additional facilities (primarily water supply projects) to be constructed in the future to provide water service to new customers based on land use plans. Under the existing SCC policy, funds collected from SCCs are applied toward the costs of the District’s capital program for such facilities, and in the case of future water supply projects, to reimburse the Water System for the payment of debt service on Water System Revenue Bonds issued to finance such facilities.

The SCC includes both a “buy-in” portion and a “future water supply” portion. The “buy-in” portion includes the costs of existing District storage, treatment and distribution facilities, as well as existing water supply facilities (including reservoirs and aqueducts) and administration facilities. As the “buy-in” portion of the SCC, new accounts are charged for their share of the costs of these existing District facilities (escalated to current dollars). The “future water supply” portion of SCC receipts is collected to fund the costs of additional facilities required to serve new accounts. The “future water supply” portion of SCC receipts when collected are deposited in the Future Water Supply Fund, a segregated account of the Revenue Fund, to be applied to offset debt service costs attributable to SCC-related capital facilities. In Fiscal Year 2021, SCCs collected totaled \$50.4 million (the “buy-in” portion of \$34.5 million and the “future water supply” portion of \$15.9 million).

The calculations used in establishing the SCC were updated for Fiscal Year 2022 in connection with a consultant’s study. The study updated the projected water demands for new customers and re-evaluated the costs of the facilities used in calculating the SCC. The District’s SCC is based on the expected annual water use for new customers not on the peak capacity of the new water connection. Over the last ten years, the customer water use has declined as customers have permanently adjusted their water use patterns after experiencing two major droughts. As a result, the update to the SCC calculations for Fiscal Year 2022 reduced the SCC rates for most customers by approximately 30% when compared to the Fiscal Year 2021 rates. The District’s recent financial planning has been conservative with respect to its projection of overall SCC revenues, even during the current new construction boom in the District’s service area. Therefore, the impact of the new lower SCC will not have a major impact on the District’s current financial planning activities.

Since Fiscal Year 2016, all SCC Revenues are treated as Water Revenues when collected for purposes of the Indenture. For financial statement purposes, however, the District has elected to account for both the “buy-in” portion of SCC charges when collected and the debt service repayment component of the SCC when applied as part of capital contributions in the Statements of Revenues, Expenses, and

Changes in Net Position. As a result, no SCC amounts are reflected as operating revenues in the District's financial statements.

### **Property Tax Revenues**

The District's share of the countywide 1% *ad valorem* property tax levy has provided approximately 5% to 6% of the revenues of the Water System in each of the past five Fiscal Years for the District. The District's share of the countywide 1% *ad valorem* property tax is not pledged as a source of payment for the Water System Revenue Bonds, although such amounts are applied to pay Water Operation and Maintenance Costs in accordance with the Indenture.

Table 14 shows a five-year record of assessed valuations, secured roll levies and delinquencies for the taxable property included within the District. Assessed valuations are expressed by county assessors as "full cash value" as defined by Article XIII A of the State Constitution. The tax levy shown is the District's allocated share of the maximum *ad valorem* tax levy by each county of 1% of full cash value.

Pursuant to California Revenue and Taxation Code Sections 4701 *et seq.*, Contra Costa County and Alameda County each maintain a reserve fund for the purpose of guaranteeing 100% of the secured levies of the electing governmental jurisdictions for which such county collects taxes (commonly referred to as the "Teeter Plan"). The District has elected to participate in Contra Costa County's Teeter Plan program but has elected not to participate in Alameda County's Teeter Plan program. Consequently, the District is exposed to the effect of delinquencies in collections only for property located in Alameda County.

A Teeter Plan remains in effect unless the board of supervisors of the county that has established a Teeter Plan orders its discontinuance or unless, prior to the commencement of any fiscal year of such county, such board of supervisors receives a petition for its discontinuance joined in by a resolution adopted by at least two-thirds of the participating revenue districts within the county, in which event such board of supervisors is to order the discontinuance of the Teeter Plan effective at the commencement of the subsequent fiscal year. If the Board of Supervisors of the Contra Costa County, or in the event that the District elects to participate in Alameda County's Teeter Plan, the Board of Supervisors of Alameda County, is to order the discontinuance of the Teeter Plan, only those secured property taxes actually collected would be allocated to political subdivisions (including the District) for which such county acts as the tax-levying or tax-collecting agency.

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**Table 14**  
**TAXABLE PROPERTY WITHIN THE WATER SYSTEM**  
**Assessed Valuation and Tax Collection Record**

*Fiscal Year Ending June 30*

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Assessed Valuation for Taxation Purposes <sup>(1)(2)</sup>					
Alameda County	\$119,325,397,941	\$127,263,417,316	\$135,672,349,929	\$145,333,769,595	\$156,691,168,950
Contra Costa County	<u>102,560,510,616</u>	<u>108,186,306,742</u>	<u>114,735,931,344</u>	<u>120,648,243,577</u>	<u>126,401,657,570</u>
Total	\$221,885,908,557	\$235,449,724,058	\$250,408,281,273	\$265,982,013,172	\$283,092,826,520
District Secured Roll Tax Receipts <sup>(3)</sup>					
Alameda County	\$17,152,223	\$19,017,612	\$20,043,690	\$21,733,964	\$23,676,751
Contra Costa County	<u>14,818,866</u>	<u>15,687,955</u>	<u>15,664,950</u>	<u>18,603,287</u>	<u>16,901,006</u>
Total	\$31,971,089	\$34,705,567	\$35,708,640	\$40,337,251	\$40,577,757
Delinquent June 30 <sup>(4)</sup>					
Amount	\$236,737	\$213,655	\$211,662	\$277,522	\$289,340
Percent	0.74%	0.62%	0.59%	0.69%	0.71%

<sup>(1)</sup> Historical Assessed Valuation for Tax Purposes numbers differ from those previously reported for certain years to realign the fiscal year of the County figures with the applicable Fiscal Year in the table. In some previous reports, the amounts were offset by one year. In addition, minor differences in assessed valuation numbers from amounts previously reported occur from time to time due to a change in source data used.

<sup>(2)</sup> Net of all exemptions except homeowner's exemptions, the taxes on which are paid by the State. All valuations are stated on a 100% of full cash value basis as defined by law. Assessed valuations shown include redevelopment project area incremental valuations.

<sup>(3)</sup> Net basis excluding all exemptions. Levies reflect the tax reductions effected by the adoption of Article XIII A of the State Constitution in 1978, the "Jarvis-Gann Initiative." For Alameda County, receipts include District's share of prior years' delinquencies when collected.

<sup>(4)</sup> Amounts apply to Alameda County only, since Contra Costa County guarantees 100% payment of the District's secured roll levy. The delinquency percentages are calculated based on the two counties' secured roll levies.

Sources: Reports of the Auditor-Controller's Offices of Alameda and Contra Costa Counties, table data as compiled by the District.

Historically, from time to time, legislation was enacted as part of the State budget to provide for the reallocation of local governments' shares of the countywide 1% *ad valorem* tax, including by shifting a portion of the property tax revenues collected by the counties from special districts (such as the District) to school districts or other governmental entities. Subsequently, certain amendments to the State Constitution have been enacted to reduce the State Legislature's authority over local revenue sources by placing restrictions on, among other things, the State's access to local governments' property tax revenues. For example, on November 2, 2004 voters within the State approved Proposition 1A, which prevented the State from reducing local government's share of the 1% *ad valorem* property tax below levels in effect as of November 3, 2004, except in the case of fiscal emergency. Proposition 1A provided that in the case of fiscal emergency, the State could borrow up to 8% of local property tax revenues to be repaid within three years. Following the exercise by the State of its authority to borrow such local property tax revenues as part of the 2009-10 State budget act, on November 2, 2010, voters within the State approved Proposition 22, which prohibits any future action by the State Legislature to take, reallocate or borrow money raised by local governments for local purposes, and prohibits changes in the allocation of property taxes among local governments to aid State finances or pay for State mandates. Proposition 22 thereby effectively repealed the provisions of Proposition 1A allowing the State to borrow local property tax revenues from local governments, and prohibits any such future borrowing.

There can be no assurances that legislation or voter initiatives enacted or approved in the future will not reduce or eliminate the District's share of the 1% countywide *ad valorem* property tax revenues. See also "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES" in the front part of this Official Statement.

The tax rolls for property located within the District's Water System service area for the Fiscal Year ended June 30, 2021, aggregated a total assessed valuation of approximately \$283.1 billion, including redevelopment project areas incremental valuations of which the taxes payable were due to the redevelopment agency. In 2011, the State enacted legislation commonly referred to as "AB1X 26," which required the dissolution of California redevelopment agencies and the dissolution and winding up of the operations of those agencies, which dissolution occurred on February 1, 2012. AB1X 26 provides a framework for the management of the remaining obligations of the dissolved redevelopment agencies by their respective successor agencies and oversight boards to oversee those successor agencies. Pursuant to AB1X 26, tax increment will continue to flow to the payment of "enforceable obligations" (such as tax allocation bonds) of the dissolved redevelopment agencies.

### **Power Sales Revenues**

The District operates hydropower plants at Pardee and Camanche Reservoirs. These plants generate 185 million kilowatt hours of electricity in normal rainfall years. Commencing July 1, 2015, the energy is being sold to MCE under a 10-year power purchase agreement which expires on June 30, 2025. This power purchase agreement includes the sale of hydroelectric energy, and Renewable Energy Credits ("RECs") (*i.e.*, credits, from the generation of renewable energy). Separately, the District sells Resource Adequacy (Capacity) from the hydro facilities to energy service providers and energy marketers. This sale of capacity will result in up to \$1.5 million of additional revenue in 2022. Additionally, the operating capacity at Pardee is occasionally sold as spinning reserve to the grid operator. Annual revenues from power sales have ranged from approximately \$4.6 million to \$10.7 million over the last five fiscal years. Power sales revenues for Fiscal Year 2021 totaled \$4.6 million. In its biennial budget for Fiscal Years 2022 and 2023, the District has budgeted \$5 million annually in hydropower revenue based upon an assumed normal year of precipitation. The March 1 projection for Fiscal Year 2022 revenue is \$7.2 million.

### **Earned Contributions on Construction and Grants**

Cash contributions for main extension and other facilities to serve new customers are affected by the level of development within the service area. In addition to payment of its SCC (as described under "– System Capacity Charge" above), District policy requires new applicants for service to pay direct charges for mains, hydrants, pipeline extensions and relocations, and other services necessary to serve them. In Fiscal Year 2021, these earned contributions on construction totaled \$21.3 million. For the first six months of Fiscal Year 2022 (the six-month period through December 31, 2022), the District received \$5.2 million in earned contributions on construction. Grants and other reimbursements are received for specific projects. In Fiscal Year 2021, the District collected approximately \$1.8 million in grants and other reimbursements for the Water System. For the first six months of Fiscal Year 2022 (the six-month period through December 31, 2022), the District received \$1.6 million in grants and reimbursements.

In the District's biennial budget for Fiscal Years 2022 and 2023, earned contributions on construction, grants, and other reimbursements are budgeted at \$30.3 million and \$29.4 million, respectively. The increases in these years are due in part to anticipated increases in new service requests. These amounts are treated as capital contributions and are not included in Subordinated Water Revenues for purposes of the Indenture.

### **Operation and Maintenance Costs**

The primary component of the District's Operation and Maintenance Costs is labor costs, including wages, salaries and benefits. See also "– Employees' Retirement System." Operation and Maintenance Costs also include materials, supplies and services such as costs of chemicals for water treatment and electrical power, costs of purchased water such as water delivered to the District under the CVP Permanent

Repayment Contract and/or water purchased by the District under other negotiated water purchase agreements, when applicable, and other general and administrative expenses.

## **Outstanding Debt**

Table 15 shows the District's Water System debt outstanding as of April 30, 2022. As provided in the Municipal Utility District Act, prior to the exercise by the District of its power to issue Water System revenue bonds, a preliminary resolution is adopted by the Board declaring its intention to authorize the issuance of revenue bonds and specifying, among other things, the maximum principal amount of bonds then proposed to be issued (excluding refunding bonds) pursuant to such resolution. As of April 30, 2022 (prior to the Series 2022 Bonds to be issued), the District has \$602,410,000 of authorized but unissued Water System revenue bonds under Resolution No. 34031-15 adopted on April 28, 2015, pursuant to which the Board declared its intention to authorize the issuance of an additional \$653,000,000 of Water System revenue bonds, to be issued from time to time in one or more series. The issuance of revenue bonds by the District is not subject to prior voter approval, although such resolutions of intention to authorize the issuance of bonds are subject to a 60-day referendum period (which, with respect to Resolution No. 34031-15, expired without challenge). The District may from time to time in the future adopt other resolutions authorizing the issuance of additional Water System revenue bonds and may incur other Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. See "SECURITY FOR THE SERIES 2022 BONDS – Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations" in the front part of this Official Statement.

Low-interest loans were made by the SWRCB and the CDWR to the District under the Safe Drinking Water State Revolving Fund and Clean Water State Revolving Fund loan programs (both programs now administered by the SWRCB) to finance certain drinking water infrastructure projects and certain water reclamation and reuse facilities within the District to conserve fresh water supplies. Borrowings under each of the District's outstanding State loans ("State Loans") are treated by the District as Parity Debt under the Indenture for purposes of calculating debt service coverage ratios. The District may from time-to-time in the future apply for, additional low-interest loans under State or federal loan programs. Any future State or federal loans received by the District would likely constitute Parity Debt under the Indenture. See "– Parity State Loans" below.

Pursuant to the authority of the Municipal Utility District Act, the Board has declared its intention to authorize the issuance of short-term indebtedness of the District (which may include commercial paper notes and/or other forms of bonds, notes or other evidences of short-term indebtedness, including bank credit) in a maximum outstanding principal amount not exceeding the lesser of (1) the annual average of the District's total revenue for the three preceding years or (2) 25% of the District's total outstanding bonds issued pursuant to Chapters 6, 7 and 8 of the Municipal Utility District Act (which includes District revenue bonds). The District determined the maximum authorized principal amount of short-term indebtedness (including short-term indebtedness of both the Water System and the Wastewater System) pursuant to the above limit to be an amount not to exceed \$669,174,000 as of June 30, 2021. Commercial paper notes issued for the benefit of the Water System (and the District's repayment obligation for amounts borrowed, if any, under any applicable bank credit therefor), are payable from and secured by a pledge of Water Revenues on a basis subordinate to the Water System Revenue Bonds. See "– Subordinate Commercial Paper Programs" below.

**Table 15**  
**OUTSTANDING WATER SYSTEM DEBT**  
**(as of April 30, 2022)**

<i>Issue</i>	<i>Date of Issue</i>	<i>Last Maturity</i>	<i>Amount Issued</i>	<i>Outstanding April 30, 2022</i>
<b>Water System Revenue Bonds:</b>				
Revenue Refunding Bonds, Series 2008A <sup>(1)(5)</sup>	03/20/08	06/01/38	\$ 322,525,000	\$ 105,250,000
Revenue Bonds, Series 2010B (Build America Bonds)	02/23/10	06/01/40	400,000,000	400,000,000
Revenue Refunding Bonds, Series 2012A <sup>(5)</sup>	10/10/12	06/01/37	191,750,000	81,750,000
Revenue Refunding Bonds, Series 2012B	11/13/12	06/01/26	358,620,000	86,390,000
Revenue Refunding Bonds, Series 2014A	06/11/14	06/01/35	128,315,000	128,315,000
Revenue Refunding Bonds, Series 2014B	06/11/14	06/01/30	242,730,000	199,185,000
Revenue Bonds, Series 2014C	06/26/14	06/01/44	75,000,000	75,000,000
Revenue Refunding Bonds, Series 2015A	03/03/15	06/01/37	429,360,000	429,360,000
Revenue Bonds, Series 2015B (Green Bonds)	06/17/15	06/01/45	74,335,000	74,335,000
Revenue Bonds, Series 2015C	06/17/15	06/01/45	110,715,000	110,715,000
Revenue Bonds, Series 2017A (Green Bonds)	06/22/17	06/01/45	185,355,000	185,355,000
Revenue/Refunding Bonds, Series 2017B	06/22/17	06/01/37	309,665,000	296,160,000
Revenue Bonds, Series 2019A (Green Bonds)	06/27/19	06/01/49	161,820,000	156,990,000
Total Water System Revenue Bonds			\$2,990,190,000	\$2,328,805,000
<b>Parity Debt:</b>				
State Water Resources Control Board Loan (East Bayshore Recycled Water Project)	05/22/08 <sup>(2)</sup>	04/01/28	20,100,000 <sup>(3)</sup>	6,965,000
State Water Resources Control Board Loan (South Reservoir Replacement)	12/14/17 <sup>(2)</sup>	07/01/48	13,998,165 <sup>(3)</sup>	13,134,000
State Water Resources Control Board Loan (MacArthur Davenport Pipeline Replacement Project)	04/18/18 <sup>(2)</sup>	07/01/49	12,044,901 <sup>(3)</sup>	11,333,000
Total Parity State Loans			\$ 46,143,066	\$ 31,432,000
<b>Subordinate Debt:</b>				
Commercial Paper Notes (Water Series)	Various	Various	312,800,000 <sup>(4)</sup>	312,800,000
<b>Total Debt</b>			<u>\$3,358,133,066</u>	<u>\$2,673,037,000</u>

<sup>(1)</sup> Liquidity support currently provided by Standby Bond Purchase Agreements with Wells Fargo Bank, National Association (Series 2008A-1 Bonds and Series 2008A-4 Bonds, expiring December 9, 2022) and U.S. Bank National Association (Series 2008A-2 and Series 2008A-3 Bonds, expiring December 27, 2024). See “Table 16 – Liquidity Facilities and Expiration Dates” below. The District has entered into interest rate swap agreements that provide a hedge for the Series 2008A Bonds. See “Table 17 – Water Interest Rate Swap Agreements” below. See also “SECURITY FOR THE SERIES 2022 BONDS – Outstanding Water System Revenue Obligations – *Interest Rate Swap Agreements*.”

<sup>(2)</sup> Date of State Loan contract execution.

<sup>(3)</sup> Full amount disbursed to the District.

<sup>(4)</sup> Commercial paper notes may be issued by the District in an amount up to the statutory limit described herein. In Fiscal Year 2021, the District paid down \$23.0 million of outstanding Commercial Paper Notes (Water Series) from available cash.

<sup>(5)</sup> Anticipated to be refunded in full in connection with the issuance of the Series 2022 Bonds (subject to market conditions). See “PLAN OF FINANCE” in the front part of this Official Statement.

Source: The District.

## Variable Rate and Swap Obligations

**Liquidity Supported Bonds.** As of April 30, 2022, of the District's \$2,328,805,000 aggregate principal amount of outstanding Water System Revenue Bonds, the District's Water System Revenue Refunding Bonds, Series 2008A (the "Series 2008A Bonds") outstanding in the principal amount of \$105,250,000, are variable rate obligations. The Series 2008A Bonds were issued in four subseries, each of which, at the election of the District, may bear interest in any of several interest rate modes. The interest rates for each subseries of the District's Series 2008A Bonds are currently re-set on a weekly basis (hereinafter, "Weekly Rate Bonds"), and such bonds are subject to tender prior to maturity, including optional tender by the owners thereof upon seven days' notice. Liquidity support for the purchase of the Weekly Rate Bonds is provided by standby bond purchase agreements between the District and various liquidity providers. A decline in the creditworthiness of a liquidity provider will likely result in an increase in the interest rate of the applicable Weekly Rate Bonds, as well as an increase in the risk of a failed remarketing of such tendered Weekly Rate Bonds. The obligation of the District to repay any draws on such liquidity facilities is payable from Subordinated Water Revenues on parity with the outstanding Water System Revenue Bonds to the extent such repayment is not thereafter provided from remarketing proceeds of the related Weekly Rate Bonds.

Table 16 sets forth a listing of the liquidity providers, the expiration date of each facility and the principal amount of outstanding bonds covered under each facility as of April 30, 2022.

**Table 16**  
**LIQUIDITY FACILITIES AND EXPIRATION DATES**

<i>Water System Revenue Bond Issue</i>	<i>Outstanding Principal Amount</i>	<i>Liquidity Provider</i>	<i>Facility Expiration</i>
Series 2008A-1	\$32,395,000	Wells Fargo Bank, National Association	December 9, 2022
Series 2008A-2	24,285,000	U.S. Bank National Association	December 27, 2024
Series 2008A-3	24,285,000	U.S. Bank National Association	December 27, 2024
Series 2008A-4	24,285,000	Wells Fargo Bank, National Association	December 9, 2022
Total	\$105,250,000		

<sup>(1)</sup> As described under "PLAN OF FINANCE" in the front part of this Official Statement, the Series 2008A Bonds are expected to be refunded in connection with the issuance of the Series 2022 Bonds. Upon the retirement of the Series 2008A Bonds, the liquidity facilities will terminate by their terms.

Source: The District.

Tendered Weekly Rate Bonds purchased with funds drawn under the related liquidity facility would constitute "bank bonds" until remarketed in accordance with the terms of the Indenture (which may include by conversion to another interest rate mode) and the terms of the related liquidity facility. bank bonds would bear interest at a per annum interest rate equal to the greater of (i) the Prime Rate plus up to 5.5% (depending on the applicable liquidity facility and the length of time for which such Weekly Rate Bonds were bank bonds), (ii) the Federal Funds Rate plus up to 6.5% (depending on the applicable liquidity facility and the length of time for which such Weekly Rate Bonds were bank bonds), and (iii) up to 11.0% (depending on the applicable liquidity facility and the length of time for which such Weekly Rate Bonds were bank bonds). The principal of the bank bonds would generally be payable in ten semi-annual installments on each June 1 and December 1, commencing on the earlier of the first such date occurring at least 91 days following the

date of purchase under the standby bond purchase agreement or the end of the commitment period of the applicable liquidity provider thereunder, and ending on the fifth anniversary of the date of purchase under such standby bond purchase agreement. While the District may attempt in such event to refinance the Weekly Rate Bonds to avoid this additional debt burden, there can be no assurance that the District will have access to the debt markets on favorable terms.

Upon the occurrence of an event of default under a standby bond purchase agreement, including, among other things, a failure by the District to pay principal or interest due thereunder; a failure by the District to perform or observe its covenants; a default in other specified indebtedness of the District; the occurrence of certain bankruptcy or insolvency-related events; or the reduction of the long-term credit ratings of the Water System Revenue Bonds of the District below “A–” by S&P or Fitch or below “A3” by Moody’s, the applicable liquidity provider has the right to declare all outstanding payment obligations of the District under the related agreement to be immediately due and payable.

**Swap Obligations.** In connection with the District’s \$105,250,000 principal amount of outstanding variable rate Water System Revenue Bonds, the District has entered into various interest rate swap agreements (collectively, the “Water Interest Rate Swap Agreements”). By virtue of these Water Interest Rate Swap Agreements, the related variable rate Water System Revenue Bonds are essentially treated by the District as fixed rate debt for the purpose of calculating debt service requirements, although the variable payments that the District receives from the Swap Providers (defined below) do not usually equal the payments that the District makes on associated variable rate debt. There is no guarantee that the floating rate payable to the District pursuant to each of the Water Interest Rate Swap Agreements will match the variable interest rate on the associated Water System Revenue Bonds to which the respective Water Interest Rate Swap Agreement relates at all times or at any time. Under certain circumstances, the Swap Providers may be obligated to make a payment to the District under their respective Water Interest Rate Swap Agreement that is less than the interest due on the associated Water System Revenue Bonds to which such Water Interest Rate Swap Agreement relates. In such event, the District would be obligated to pay such insufficiency from Subordinated Water Revenues.

As of April 30, 2022, the District had outstanding the following Water Interest Rate Swap Agreements relating to variable rate Water System Revenue Bonds with the following counterparties (collectively, the “Swap Providers”) in the aggregate notional amount of \$105,250,000.

**Table 17**  
**WATER INTEREST RATE SWAP AGREEMENTS<sup>(1)</sup>**

<i>Related Water System Revenue Bond Issue</i>	<i>Outstanding Notional Amount</i>	<i>Swap Provider or Guarantor</i>	<i>District Pays</i>	<i>District Receives</i>	<i>Scheduled Maturity/Termination Date</i>
Series 2008A Bonds	\$ 16,195,000	Bank of America Corporation	3.115%	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	37,240,000	Bank of America, N.A.	3.115%	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	14,575,000	The Bank of New York Mellon	3.115%	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	<u>37,240,000</u>	JPMorgan Chase Bank, N.A.	3.115%	62.3% of 30-day LIBOR	06/01/2038
	\$105,250,000				

<sup>(2)</sup> As described under “PLAN OF FINANCE” in the front part of this Official Statement, the District’s variable rate Water System Revenue Bonds are expected to be refunded and the Water Interest Rate Swap Agreements to be terminated in connection with the issuance of the Series 2022 Bonds.  
Source: The District.

As shown in the table above, the periodic payments due to the District from counterparties under its outstanding Water Interest Rate Swap Agreements are calculated by reference to the London interbank offering rate (“LIBOR”). On July 27, 2017, the Financial Conduct Authority (the “FCA”), the U.K. regulatory body currently responsible for the regulation and supervision of LIBOR, announced that it will no longer persuade or compel banks to submit rates for the calculation of the LIBOR rates after 2021 (the “FCA Announcement”). Following a consultation announced in November 2020 by the Intercontinental Exchange Benchmark Administration (“IBA”), the administrator of LIBOR authorized and regulated by the FCA, with the support of the Federal Reserve Board and the FCA, the IBA made a formal announcement on March 5, 2021 that the date for the cessation of the publication of various tenors of USD LIBOR (or date on which any published USD LIBOR rate for such tenors would cease to be representative) would be: (1) December 31, 2021, for the one-week and two-month USD LIBOR, and (2) June 30, 2023, for all other tenors of USD LIBOR, including the one-month LIBOR, a widely used tenors of USD LIBOR which is used to determine the periodic payments due to the District from swap counterparties. District staff is monitoring alternate benchmark rates and, in the event the Water Interest Rate Swap Agreements are not terminated in connection with the issuance of the Series 2022 Bonds, the District expects to seek amendments to its Water Interest Rate Swap Agreements to provide for an alternate benchmark rate thereunder upon the cessation of the publication of one-month LIBOR rates. As a result of the prospective phasing out of LIBOR as a reference rate and transition to an alternate benchmark rate, increased volatility in reported LIBOR rates may occur. The level of the District’s LIBOR-based swap payments may also be affected by the transition to an alternate benchmark rate when it occurs.

Under certain circumstances, the Water Interest Rate Swap Agreements may be terminated and the District may be required to make a termination payment to the respective Swap Providers, which payment could be substantial. Pursuant to the Water Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Water System Revenue Bonds but prior to the District’s Water System CP Notes (defined below).

Early termination of an interest rate swap agreement could occur due to a default or the occurrence of a termination event, including a default under other specified swaps and indebtedness, or certain events of insolvency, or if a party may not legally perform its swap obligations, or if the credit rating of certain debt obligations of a party are downgraded below specified levels (which, with respect to the District, is the downgrade of the credit rating on the Water System Revenue Bonds below “Baa3” or “BBB–“ by Moody’s or S&P, respectively). In the event of early termination of any of the Water Interest Rate Swap Agreements, there can be no assurance that (i) the District will receive any termination payment that may be payable to the District by the respective Swap Providers, (ii) the District will at all times have sufficient available cash on hand to pay any termination payment that may be payable by it to the respective Swap Providers, or (iii) the District will be able to obtain a replacement Water Interest Rate Swap Agreement with comparable terms. As of March 31, 2022, the District would have been required to pay to the Swap Providers termination payments if its then outstanding Water Interest Rate Swap Agreements were terminated on that date. The District estimated its net exposure to its Swap Providers for all such termination payments as of March 31, 2022 to be approximately \$21.0 million. As of March 31, 2022, the largest aggregate termination payment that would be owed to a single Swap Provider was estimated by the District to be approximately \$7.4 million. The District does not presently anticipate early termination of any of its Water Interest Rate Swap Agreements due to default by either party or the occurrence of a termination event. The District routinely monitors its Swap Providers’ creditworthiness and performance under the Water Interest Rate Swap Agreements and may from time to time replace existing Swap Providers and Water Interest Rate Swap Agreements with new replacement interest rate swap agreements if the District determines such action is warranted. Additional information regarding the terms of the Water Interest Rate Swap Agreements may also be found in Note 7(F) in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.”

Pursuant to the terms of certain of the Water Interest Rate Swap Agreements, the District is required to post collateral in favor of the respective Swap Provider to the extent that the District's total exposure for termination payments to that Swap Provider exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement. The applicable collateral posting threshold amounts specified in such Water Interest Rate Swap Agreements would be lower in the event certain ratings assigned to the Water System Revenue Bonds were to be revised downward or withdrawn. In the case of a ratings withdrawal or significant downward rating revision, such decline in the applicable threshold amounts could significantly increase the District's collateral posting obligation thereunder. If the District's ratings are revised upward, the amount of collateral required to be posted by the District under certain of the Water Interest Rate Swap Agreements could be reduced.

Under the terms of the Water Interest Rate Swap Agreements, the Swap Providers are required to release collateral to the District as market conditions become favorable to the District and may be required to post collateral for the benefit of the District to the extent that such Swap Provider's total exposure for termination payments to the District exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement. The highest amount of collateral the District has been required to post in connection with the Water Interest Rate Swap Agreements on any date was approximately \$24.70 million, as of November 30, 2011 (at which time the District's outstanding notional amount of Water Interest Rate Swap Agreements totaled approximately \$861.97 million). The amount of collateral varies from time to time due primarily to interest rate movements and can change significantly over a short period of time. In the future, the District may be required to post additional collateral, or, if it has previously posted collateral to a Swap Provider, may be entitled to a reduction or return of the required collateral amount. Collateral deposited by the District is held by the respective Swap Provider or an agent therefor. A bankruptcy of any Swap Provider holding collateral posted by the District could adversely affect the return of the collateral to the District. Moreover, posting collateral limits the District's liquidity. If collateral requirements increase significantly, the District's liquidity may be adversely affected. As of April 30, 2022, the District had \$0.00 in collateral posted in favor of the Swap Providers for its Water Interest Rate Swap Agreements.

### **Parity State Loans**

The District has entered into and may apply for additional State Loans in the future under the Safe Drinking Water State Revolving Fund and Clean Water State Revolving Fund loan programs to obtain long-term financing for a portion of its CIP costs. State Loans under these programs are administered by the SWRCB on a project-by-project basis. The State Loan programs offer loans to applicant entities based on available moneys and placement on a statewide priority list. Although placement on the priority list is a necessary condition to receiving State Loan program moneys, placement on the priority list does not create an obligation on the part of the applicant to accept State Loan program moneys.

State Loan program moneys are disbursed on a cost-incurred basis pursuant to disbursement requests submitted by the borrower under the State Loan documents. The District is obligated to repay a State Loan only after it has submitted a disbursement request and received State Loan program moneys from the State. The SWRCB's obligation to disburse any sum to the District under a State Loan is contingent upon the availability of sufficient funds to permit the disbursements provided for therein. The SWRCB may withhold all or any portion of the funds available under any State Loan in the event that: (a) the District has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of any State Loan; or (b) fails to maintain reasonable progress toward completion of the project funded thereby.

As set forth in Table 15 above, as of April 30, 2022, the District has three approved State Loans. One of these loans, the East Bayshore Recycled Water project loan, is being amortized over a 20-year term and bear interest at a per annum interest rate equal to 2.4% (inclusive of the service charge rate). The other two State Loans, the South Reservoir Replacement project loan and the MacArthur Davenport Pipeline

Replacement project loan, are being amortized over a term of 30 years. Amounts disbursed under each of these State Loans bear interest at a per annum interest rate of 1.7%.

Each State Loan may be terminated by written notice during construction of the project funded thereunder, or thereafter at any time prior to complete repayment by the District, at the option of the SWRCB, upon violation by the District of any material provision of the related State Loan after such violation has been called to the attention of the District and after failure of the District to bring itself into compliance with the provisions of the related State Loan within a reasonable time as established by the SWRCB. In the event of such a termination, the District agrees, upon demand, to immediately repay to the SWRCB an amount equal to the current balance on the State Loan, including accrued interest, and all amounts due. The repayment obligations of the District under the State Loans are treated as Parity Debt under the Indenture.

### **Subordinate Commercial Paper Programs**

The District currently maintains two commercial paper note programs for the benefit of the Water System and the District's Wastewater System. Under the extendable municipal commercial paper program, commercial paper may be issued for the Water System or the Wastewater System at prevailing interest rates for periods of not more than 120 days from the date of issuance with the option by the District to extend the maturity for another 150 days. The extendable municipal commercial paper program is not supported by any liquidity or revolving credit agreement. Under the District's traditional commercial paper program, commercial paper notes may be issued for the Water System or the Wastewater System at prevailing interest rates for periods of not more than 270 days from the date of issuance. In connection with its traditional commercial paper program, the District has covenanted to procure and maintain in effect for any series or subseries of commercial paper notes issued thereunder one or more liquidity facilities enabling it to borrow an aggregate amount at least equal to the principal amount of such series or subseries of commercial paper notes. As of April 30, 2022, the District had outstanding \$312,800,000 aggregate principal amount of tax-exempt Commercial Paper Notes (Water Series) ("Water System CP Notes") issued under the District's traditional commercial paper program. As of April 30, 2022, the District had outstanding no Extendable Municipal Commercial Paper Notes (Water Series) issued under the District's extendable municipal commercial paper program. The Water System CP Notes, together with any additional commercial paper notes issued by the District for the benefit of the Water System under either the District's extendable municipal commercial paper program or its traditional commercial paper program (and the District's repayment obligation for amounts borrowed, if any, under any applicable liquidity facility therefor), are payable from and secured by a pledge of Water Revenues on a basis subordinate to the Water System Revenue Bonds and Parity Debt.

In order to provide an additional source of repayment for the Water System CP Notes, the District has entered into the following liquidity arrangements for the Water System CP Notes: (i) a standby letter of credit and reimbursement agreement with Sumitomo Mitsui Banking Corporation, acting through its New York Branch, under which up to \$176,000,000 may be advanced to the District to pay the principal of maturing Water System CP Notes, which expires on May 6, 2024, and (ii) a revolving credit agreement with Bank of America, N.A., under which up to \$137,000,000 may be advanced to the District to pay the principal of maturing Water System CP Notes, which expires on June 28, 2024. The District's repayment obligation for amounts borrowed, if any, under the liquidity facilities for the Water System CP Notes are payable from and secured by a pledge of Water Revenues on a basis subordinate to the Water System Revenue Bonds. The liquidity facilities supporting the Water System CP Notes are subject to early termination upon the occurrence of certain events, including, among other things, the failure of the District to make certain payments, the occurrence of certain bankruptcy or insolvency-related events or the reduction (by two rating agencies if three rating agencies are then rating the Water System Revenue Bonds) of the long-term credit ratings of the Water System Revenue Bonds of the District below "A-" by S&P or Fitch or below "A3" by Moody's. Upon the occurrence of such termination or certain other specified events

of default, one or more of the following would likely occur: (a) the District would be prohibited from issuing additional commercial paper notes supported by such liquidity facility; (b) any outstanding obligations of the District to the liquidity provider, including any repayment obligation for amounts advanced under any such liquidity facility for the payment of Water System CP Notes, could bear interest at rates substantially higher than the rates borne by the Water System CP Notes; and (c) any outstanding repayment obligations of the District to the liquidity provider could be accelerated and become immediately due and payable.

### **Debt Service Requirements**

Table 18 on the following page shows estimated future payments on outstanding debt.

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**Table 18: WATER SYSTEM ESTIMATED DEBT SERVICE<sup>(1)</sup>**

<i>Fiscal Year Ending June 30</i>	<i>Outstanding Water System Revenue Bonds<sup>(2)</sup></i>			<i>Series 2022 Bonds</i>			<i>State Parity Loans<sup>(4)</sup></i>	<i>Total Bonds and Parity Debt</i>	<i>Water System CP Notes<sup>(5)</sup></i>	<i>Total Debt Service<sup>(6)</sup></i>
	<i>Principal</i>	<i>Interest<sup>(3)</sup></i>	<i>Total</i>	<i>Principal</i>	<i>Interest</i>	<i>Total</i>				
2022	\$ 70,280,000	\$ 115,228,313	\$ 185,508,313				\$ 2,395,700	\$ 187,904,013	\$ 9,384,000	\$ 197,288,013
2023	73,710,000	111,852,863	185,562,863				2,395,700	187,958,563	9,384,000	197,342,563
2024	77,005,000	108,254,813	185,259,813				2,395,700	187,655,513	9,384,000	197,039,513
2025	80,835,000	104,534,163	185,369,163				2,395,700	187,764,863	9,384,000	197,148,863
2026	82,540,000	100,612,813	183,152,813				2,395,700	185,548,513	9,384,000	194,932,513
2027	86,660,000	96,493,813	183,153,813				2,395,700	185,549,513	9,384,000	194,933,513
2028	90,940,000	92,210,813	183,150,813				2,395,700	185,546,513	9,384,000	194,930,513
2029	96,745,000	87,663,813	184,408,813				1,135,452	185,544,265	9,384,000	194,928,265
2030	101,555,000	82,855,963	184,410,963				1,135,452	185,546,415	9,384,000	194,930,415
2031	106,635,000	77,778,213	184,413,213				1,135,452	185,548,665	9,384,000	194,932,665
2032	111,785,000	72,666,536	184,451,536				1,135,452	185,586,988	9,384,000	194,970,988
2033	117,180,000	67,304,900	184,484,900				1,135,452	185,620,352	9,384,000	195,004,352
2034	122,560,000	61,959,154	184,519,154				1,135,452	185,654,606	9,384,000	195,038,606
2035	128,170,000	56,395,219	184,565,219				1,135,452	185,700,671	9,384,000	195,084,671
2036	134,270,000	50,331,570	184,601,570				1,135,452	185,737,022	9,384,000	195,121,022
2037	140,965,000	43,682,395	184,647,395				1,135,452	185,782,847	9,384,000	195,166,847
2038	148,390,000	36,485,448	184,875,448				1,135,452	186,010,900	9,384,000	195,394,900
2039	156,330,000	28,401,651	184,731,651				1,135,452	185,867,103	9,384,000	195,251,103
2040	72,765,000	19,474,770	92,239,770				1,135,452	93,375,222	9,384,000	102,759,222
2041	56,955,000	15,627,800	72,582,800				1,135,452	73,718,252	9,384,000	83,102,252
2042	59,690,000	12,890,200	72,580,200				1,135,452	73,715,652	9,384,000	83,099,652
2043	62,565,000	10,020,200	72,585,200				1,135,452	73,720,652	9,384,000	83,104,652
2044	65,495,000	7,091,150	72,586,150				1,135,452	73,721,602	9,384,000	83,105,602
2045	47,410,000	4,023,550	51,433,550				1,135,452	52,569,002	9,384,000	61,953,002
2046	8,670,000	1,868,500	10,538,500				1,135,452	11,673,952	9,384,000	21,057,952
2047	9,105,000	1,435,000	10,540,000				1,135,452	11,675,452	9,384,000	21,059,452
2048	9,560,000	979,750	10,539,750				1,135,452	11,675,202	9,384,000	21,059,202
2049	10,035,000	501,750	10,536,750				823,643	11,360,393	9,384,000	20,744,393
2050	--	--	--				258,829	258,829	9,384,000	9,642,829
2051	--	--	--				--	--	9,384,000	9,384,000
2052	--	--	--				--	--	9,384,000	9,384,000
Total <sup>(6)</sup>	<u>\$2,328,805,000</u>	<u>\$1,468,625,119</u>	<u>\$3,797,430,123</u>				<u>\$40,561,412</u>	<u>\$3,837,991,535</u>	<u>\$290,904,000</u>	<u>\$4,128,895,535</u>

(1) Debt service is calculated on a cash basis.

(2) Includes debt service on the Series 2008A Bonds and Series 2012A Bonds to be refunded.

(3) Includes gross interest payable before application of any cash subsidy received by the District from the United States Treasury relating to the Series 2010B Bonds ("BABs Interest Subsidy Payments"). Upon the effective date of the amendments to the Indenture pursuant to the Sixteenth Supplemental Indenture, the BABs Interest Subsidy Payments reasonably expected to be received by the District will be treated as an offset to debt service on the Series 2010B Bonds for purposes of the Indenture. See "AMENDMENTS TO THE INDENTURE" in the front part of this Official Statement.

(4) See "SECURITY FOR THE SERIES 2022 BONDS – Outstanding Water System Revenue Obligations–Parity State Loans."

(5) Assumes \$312,800,000 principal amount outstanding at assumed interest rate of 3.00%. Includes interest only (no principal amortization). While the commercial paper program is limited by statute to seven years, it is the District's intention to reestablish the commercial paper program prior to the expiration of each seven-year period.

(6) Totals may not add due to rounding.

## **Financial Management Policies**

The District has detailed management policies that include guidelines for debt, capital planning, investments, derivatives, and formal reserves. It is the current Board-approved policy of the District to seek to maintain a debt service coverage ratio of 1.6 times on its outstanding Water System Revenue Bonds and to fund no more than 65% of its capital program over each five-year planning period from proceeds of debt. The debt policy also limits unhedged variable rate debt to 25% of the total debt portfolio. Derivatives use is governed by a comprehensive derivatives policy and related set of procedures with guidelines for counterparties, termination, and risk exposure. The District's current policy target for debt service coverage is higher than that required by the rate covenant under the Indenture and may be changed at the Board's discretion. See "SECURITY FOR THE SERIES 2022 BONDS – Rate Covenant."

In accordance with its current cash reserves policy, the District budgets for a number of formal reserves for the Water System, including the following:

- a working capital reserve of at least three times monthly net operating and maintenance expenses;
- a self-insurance liability program reserve in an amount based upon established actuarially determined funding guidelines or, if not yet available at the end of the fiscal year, 1.15 times the prior year reserve target (which reserve amount was approximately \$8.0 million as of December 31, 2021);
- a workers' compensation program reserve in an amount based upon established actuarially determined funding guidelines or, if not yet available at the end of the fiscal year 1.15 times the prior year reserve target (which amount was approximately \$6.1 million as of December 31, 2021); and
- a contingency/rate stabilization reserve of at least 20% of projected annual water volume sales revenues (which contingency/rate stabilization reserve is included in the Rate Stabilization Fund provided for in the Indenture (see "SECURITY FOR THE SERIES 2022 BONDS – Pledge of Subordinated Water Revenues"))).

The aggregate reserves maintained by the District for these four formal reserves for the Water System as of December 31, 2021 was approximately \$242.6 million, which satisfies or exceeds the reserve policy target level.

The current investment policy dictates investment criteria, reporting, and administrative requirements. See "– District Investment Policy" below.

## **District Investment Policy**

Funds of the District are invested in accordance with the Government Code of the State, the Municipal Utility District Act and the District's investment policy. The four primary investment criteria set forth in the District's written investment policy are (in order of priority): (1) safety; (2) liquidity; (3) yield; and (4) diversification. In order to keep funds available to meet commitments, the District's investment policy provides that the maturity date (or put provision) of individual investments shall not exceed five years and that the average maturity of the portfolio shall not exceed 900 days. Investments permitted by the District's current investment policy include U.S. Treasury Obligations, U.S. Government Agencies Obligations, State of California's Local Agency Investment Fund (LAIF), a Local Government Investment Pool (LGIP), including the California Asset Management Program (CAMP) and the Investment Trust of California (CalTRUST), Money Market Mutual Funds, Certificates of Time Deposit, Negotiable Certificates of Deposit, Commercial Paper, Medium Term Corporate Notes, Repurchase Agreements and Municipal Obligations, limited to California issuers, including the State of California. Monies in the funds

and accounts held by the Trustee under the Indenture may be invested only in Investment Securities, as defined therein. The District does not enter into reverse repurchase agreements or otherwise borrow for purposes of investing. The District does not invest in highly volatile derivatives and other such securities. The District has, however, entered into interest rate swap transactions to hedge interest rate exposure on outstanding variable rate Water System Revenue Bonds as described herein.

Pursuant to the District's investment policy, all securities purchased from dealers and brokers are held in safekeeping by the District's custodial bank. All transactions require delivery of the security prior to payment for the security (delivery vs. payment). Collateral, when required, would only be in U.S. Treasury or U.S. Government Agencies Obligations, with a Master Repurchase Agreement on file with the District. Trade confirmations are reviewed for conformity to the original transaction by an individual other than the one who originated the transaction. On a monthly basis, a report listing transactions is submitted to the General Manager and the District's Board; and on a quarterly basis, an investment report is submitted to the General Manager and the Finance/Administration Committee of the District's Board. This quarterly report includes the type of investment, issuer, date of maturity, par and dollar amount invested for all securities, investments and moneys held by the District, and provides an investment summary by security type, percent of the portfolio, investment yield and the remaining period of investment to maturity.

## Cash and Investments

The District's cash and investments are segregated by restricted and unrestricted amounts. Restricted cash and investments generally include bond proceeds and debt service reserve funds, developer advances and capital contributions, and other miscellaneous restricted amounts. At June 30, 2021, the breakdown between restricted and unrestricted amounts for the Water System is as follows:

**Table 19**  
**WATER SYSTEM**  
**CASH AND INVESTMENTS**  
**(As of June 30, 2021)**  
**(Thousands)**

Cash and investments included in current and unrestricted assets	\$509,075
Cash and investments included in restricted assets	<u>42,062</u>
Total cash and investments	<u>\$551,137</u>

Source: The District.

See also “– *Cash and Investment by Fund*” in the Management's Discussion and Analysis included in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.” Additional information regarding the District's investment portfolio may also be found in Note 2 in the District's financial statements included in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.”

## Historical Operating Results

The Basic Financial Statements of the District for the Years ended June 30, 2021 and 2020, and the Report of Maze & Associates, independent accountants, are included as Appendix B to this Official Statement, and should be read in their entirety. The summary of operating results for Fiscal Years 2017 through 2021 contained in Table 20 is derived from information from the audited financial statements for such Fiscal Years and is qualified in its entirety by reference to such statements, including the notes thereto. See also “INDEPENDENT ACCOUNTANTS” in the front part of this Official Statement.

**Table 20**  
**WATER SYSTEM**  
**Historical Operating Results and Debt Service Coverage<sup>(1)</sup>**  
**Fiscal Years 2017 through 2021**

	2017	2018	2019	2020	2021
<b>WATER REVENUES<sup>(2)</sup>:</b>					
Water Sales <sup>(3)</sup>	\$420,293,252	\$480,745,249	\$520,344,215	\$567,393,958	\$620,470,633
Power Revenue	7,806,642	6,435,118	10,730,731	6,307,502	4,573,453
Interest	3,345,710	7,941,217	10,460,203	12,254,262	2,087,045
SCC Revenue <sup>(4)</sup>	51,463,496	69,272,188	73,496,282	53,307,284	53,838,236
Seismic Rate Surcharge <sup>(5)</sup>	9,270	392	(400)	42	(13)
Other Revenues <sup>(6)</sup>	<u>14,852,674</u>	<u>14,765,959</u>	<u>14,264,876</u>	<u>14,361,981</u>	<u>16,205,518</u>
<b>TOTAL WATER REVENUES</b>	<b><u>\$497,771,044</u></b>	<b><u>\$579,160,123</u></b>	<b><u>\$629,295,907</u></b>	<b><u>\$653,625,029</u></b>	<b><u>\$697,174,872</u></b>
<b>RATE STABILIZATION FUND TRANSFERS:</b>					
Deposits to the Rate Stabilization Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$(55,000,000)
Withdrawals from Rate Stabilization Fund for Inclusion in revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>WATER REVENUES AFTER RATE STABILIZATION TRANSFER</b>	<b><u>\$497,771,044</u></b>	<b><u>\$579,160,123</u></b>	<b><u>\$629,295,907</u></b>	<b><u>\$653,625,029</u></b>	<b><u>\$642,174,872</u></b>
<b>WATER OPERATION &amp; MAINTENANCE COSTS<sup>(7)</sup>:</b>					
Operating Expenses	\$219,844,980	\$232,959,911	\$246,619,873	\$264,262,808	\$270,759,257
(Less Tax Receipts) <sup>(8)</sup>	<u>(31,971,089)</u>	<u>(34,705,567)</u>	<u>(35,708,641)</u>	<u>(40,337,251)</u>	<u>(40,577,757)</u>
<b>TOTAL WATER OPERATION &amp; MAINTENANCE COSTS</b>	<b><u>\$187,873,891</u></b>	<b><u>\$198,254,344</u></b>	<b><u>\$210,911,232</u></b>	<b><u>\$223,925,557</u></b>	<b><u>\$230,181,500</u></b>
<b>NET WATER REVENUES</b>	<b>\$309,897,153</b>	<b>\$380,905,779</b>	<b>\$418,384,675</b>	<b>\$429,699,472</b>	<b>\$411,993,372</b>
<b>PARITY DEBT SERVICE:</b>					
Water System Revenue Bonds <sup>(9)</sup>	\$164,213,889	\$175,759,278	\$176,560,990	\$186,586,103	\$186,122,162
Parity State Loans	<u>1,400,108</u>	<u>1,401,897</u>	<u>1,496,594</u>	<u>2,017,889</u>	<u>2,870,695<sup>(10)</sup></u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$165,613,997</b>	<b>\$177,161,175</b>	<b>\$178,057,584</b>	<b>\$188,603,992</b>	<b>\$188,992,857</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.87</b>	<b>2.15</b>	<b>2.35</b>	<b>2.28</b>	<b>2.18</b>
<b>SUBORDINATE WATER SYSTEM DEBT SERVICE<sup>(11)</sup></b>	<b>\$ 3,627,676</b>	<b>\$ 5,011,892</b>	<b>\$ 6,824,219</b>	<b>\$ 5,421,978</b>	<b>\$ 1,623,661</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$169,241,673</b>	<b>\$182,173,067</b>	<b>\$184,881,803</b>	<b>\$194,025,970</b>	<b>\$190,616,518</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.83</b>	<b>2.09</b>	<b>2.26</b>	<b>2.21</b>	<b>2.16</b>

(1) Calculated in accordance with the Indenture as footnoted.

(2) Revenues exclude grant receipts, taxes, and certain developer contributions which are treated as contributions (not Water Revenues).

(3) Reflects average daily billed consumption of 132.7 MGD in Fiscal Year 2017, 144.5 MGD in Fiscal Year 2018, 142.7 MGD in Fiscal Year 2019, 147.8 MGD in Fiscal Year 2020 and 152.7 MGD in Fiscal Year 2021.

(4) System Capacity Charge ("SCC") Revenues presented in the table above include the "buy-in" portion of SCC charges and the "future water supply" portion of SCC charges when collected. SCC Revenues are treated as capital contributions and are not recognized as operating revenues for purposes of the District's audited financial statements.

(5) The sunset of the District's seismic surcharge became effective July 1, 2015 and beginning with Fiscal Year 2016 the seismic surcharge has no longer been collected. However, a small amount of seismic surcharge collections were made in Fiscal Years 2017, 2018 and 2020 and a small refund was made in 2019 and 2021. Collections primarily represent late payments or bill collections.

(6) Includes Build America Bonds (BABs) Interest Subsidy Payments received and due to the District in connection with the Series 2010B Bonds.

(7) Excludes depreciation and amortization expenses. Also reflects certain adjustments for non-cash pension and OPEB expenses.

(8) Operation and Maintenance Costs exclude those expenses paid from District's share of countywide 1% property tax revenues.

(9) Includes net swap payments. Debt service on the Series 2010B Bonds is gross of the BABs Interest Subsidy Payments received by the District.

(10) In Fiscal Year 2021 includes the early repayment of the balance (approximately \$405,000 including accrued interest) of the District's Safe Drinking Water State Revolving Fund Loan (Upper San Leandro Reservoir).

(11) Includes interest only on outstanding Water System commercial paper notes with no principal amortization.

Source: The District.

## **District Management’s Discussion of Fiscal Year 2021 Operating Results**

As reflected in the preceding table summarizing the District’s operating revenues, operating expenses and debt service coverage ratios for the five Fiscal Years ended June 30, 2017 through June 30, 2021, recent Fiscal Years have been characterized by annual rate increases leading to generally increasing revenues and stable-to-increasing debt service coverage. The operating results for Fiscal Year 2021 were strong, largely due to rate increases, increased water consumption, and continued high System Capacity Charges. Water sales revenue increased by \$53.1 million, or 9.4%, in Fiscal Year 2021 due to a 3.3% increase in billed water consumption and a 6.25% water rate increase. System Capacity Charge revenue increased \$0.5 million in Fiscal Year 2021 due to continued infill development within the water service area. Property tax receipts were stable in Fiscal Year 2021, growing \$0.2 million, or 0.6%, year-over-year.

Operating expenses increased by \$6.5 million, or 2.5% in Fiscal Year 2021 due in part to increases in raw water expenses, water treatment and distribution expenses, and general administration expenses.

The District anticipates that water consumption will continue to vary from year-to-year based on varying hydrology in California and the service area’s exposure to economic cycles. The Rate Stabilization Fund provides the District with a tool to help maintain stable revenues and policy level coverage as it addresses the current and anticipated future impacts of variable weather conditions. The Rate Stabilization Fund totaled \$150 million as of June 30, 2021.

Parity lien debt service coverage in Fiscal Year 2021 was approximately 2.18 times, above the District’s policy target of 1.6 times. The coverage reflects rate increases, increased water consumption and continued high System Capacity Charges, offset by the District’s determination to transfer \$55.0 million to the Rate Stabilization Fund (which reduces Net Water Revenues for coverage calculation purposes). This is a decrease from the prior Fiscal Year’s coverage level of 2.28 times. Overall debt service coverage was 2.16 times in Fiscal Year 2021, down from 2.21 times in Fiscal Year 2020. In each of the last four Fiscal Years, parity lien debt service coverage has been above 2.00 times.

See also the “Management’s Discussion and Analysis” contained in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.”

## **Projected Operating Results**

In the preparation of the projections in this section, the District has made certain assumptions with respect to conditions that may occur in the future. While the District believes these assumptions are reasonable for the purpose of the projections, they are dependent on future events. See the footnotes to Table 21 below for relevant assumptions, including projected average daily billed consumption for water sales, and assumed future average annual rate increases in water rates. See also “– Discussion of Projected Operating Results for Fiscal Year 2022” and “– Discussion of Budget Projections for Fiscal Years 2022 through 2026” for a discussion of potential impacts. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur. To the extent actual future factors differ from those assumed by the District or provided to the District by others or unanticipated events or circumstances occur, the actual results will vary from those forecasted, and such variations may be material. The projected information has not been compiled, reviewed or examined by the District’s independent accountants.

Table 21 sets forth the projected operating results and calculation of the debt service coverage ratio for the Water System for the current Fiscal Year and as derived from the Five-Year Financial Forecast for the five Fiscal Years 2022 through 2026. Projected results for Fiscal Year 2022 were originally developed in connection with the District’s biennial budget for Fiscal Years 2022 and 2023, and were subsequently

updated in connection with the District's semi-annual budget performance review to reflect actual results experienced through December 31, 2021 and expectations as of such date for the remainder of Fiscal Year 2022. The Five-Year Financial Forecast for Fiscal Year 2022 through 2026 was developed in connection with the District's biennial budget for Fiscal Years 2022 and 2023. The District's biennial budget and rate increases for Fiscal Years 2022 and 2023 were approved and adopted by the Board on June 8, 2021. In the preparation of the projected operating results and five-year forecast, the District developed forecasts of water consumption for the projection period, taking into account historical consumption levels, the continuing effects of conservation measures taken by customers in response to the recent drought in California, modest growth in the service area, and the expectations for the future economic environment. See also "– Discussion of Projected Operating Results for Fiscal Year 2022" and "– Discussion of Budget Projections for Fiscal Years 2022 through 2026" below.

The District does not expect that growth will significantly bolster net revenues. As such, maintaining the District's policy target of at least 1.60 times for debt service coverage on its Water System Revenue Bonds will require annual rate increases. The projection period reflects the approved overall rate increases of 4.0% for Fiscal Year 2022 and 4.0% for Fiscal Year 2023. Annual rate increases of 4.0% are assumed for each of Fiscal Years 2024, 2025 and 2026. Any such assumed rate increases will be subject to future Board approval. Projected Operating Expenses incorporate salary and benefit expectations. The District's service area is mature and significant increases in SCC revenues are not expected. A higher level of cash funded capital spending is planned because of the nature of the District's CIP which is largely comprised of renewal and replacement projects. See "THE WATER SYSTEM – Capital Improvement Program."

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**Table 21**  
**WATER SYSTEM**  
**Projected Operating Results and Debt Service Coverage (Millions)**  
**Fiscal Years 2022 to 2026**

	<i>FY 2022 Projected Results</i>	<i>FY 2022 and 2023 Budget Five-Year Financial Forecast</i>				
	<i>2022<sup>(1)</sup></i>	<i>2022<sup>(2)</sup></i>	<i>2023<sup>(2)</sup></i>	<i>2024<sup>(2)</sup></i>	<i>2025<sup>(2)</sup></i>	<i>2026<sup>(2)</sup></i>
<b>WATER REVENUES<sup>(3)</sup>:</b>						
Water Sales <sup>(4)</sup>	\$613.0	\$610.2	\$640.0	\$671.4	\$704.3	\$738.9
Power Revenue	6.0	5.0	5.0	5.0	5.0	5.0
Interest Earnings <sup>(5)</sup>	1.2	1.2	2.5	2.5	3.7	4.9
SCC Revenue <sup>(6)</sup>	31.0	25.0	25.7	26.5	27.3	28.1
Other Revenue <sup>(7)</sup>	<u>14.7</u>	<u>13.4</u>	<u>13.5</u>	<u>13.6</u>	<u>13.7</u>	<u>13.8</u>
TOTAL WATER REVENUES	\$665.9	\$654.8	\$686.8	\$719.0	\$754.0	\$790.7
<b>RATE STABILIZATION FUND TRANSFERS:</b>						
Deposits to the Rate Stabilization Fund	\$0.0	\$0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0
Withdrawals from Rate Stabilization Fund for Inclusion in revenues	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
WATER REVENUES AFTER RATE STABILIZATION TRANSFER	\$665.9	\$654.8	\$686.8	\$719.0	\$754.0	\$790.7
<b>WATER OPERATION &amp; MAINTENANCE COSTS:</b>						
Operating Expense <sup>(8)</sup>	\$309.4	\$297.4	\$310.9	\$323.2	\$336.1	\$349.4
(Less Tax Receipts) <sup>(9)</sup>	<u>(41.0)</u>	<u>(40.0)</u>	<u>(40.0)</u>	<u>(40.0)</u>	<u>(40.0)</u>	<u>(40.0)</u>
TOTAL WATER OPERATION & MAINTENANCE COSTS	<u>\$268.4</u>	<u>\$257.4</u>	<u>\$270.9</u>	<u>\$283.2</u>	<u>\$296.1</u>	<u>\$309.4</u>
<b>NET WATER REVENUES</b>	\$397.5	\$397.4	\$415.9	\$435.7	\$458.0	\$481.3
<b>PARITY DEBT SERVICE:</b>						
Water System Revenue Bonds <sup>(10)</sup>	\$187.9	\$194.7	\$203.6	\$211.8	\$224.1	\$234.0
Parity State Loans	<u>2.4</u>	<u>2.6</u>	<u>2.6</u>	<u>2.5</u>	<u>2.4</u>	<u>2.4</u>
<b>TOTAL PARITY DEBT SERVICE</b>	\$190.3	\$197.3	\$206.2	\$214.3	\$226.5	\$236.4
<b>PARITY DEBT SERVICE COVERAGE</b>	2.09	2.01	2.02	2.03	2.02	2.04
<b>SUBORDINATE WATER SYSTEM CP NOTES DEBT SERVICE<sup>(11)</sup></b>	<u>\$2.2</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.9</u>	<u>\$5.6</u>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	\$192.5	\$201.4	\$210.3	\$218.4	\$231.3	\$242.0
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	2.07	1.97	1.98	1.99	1.98	1.99

<sup>(1)</sup> Fiscal Year 2022 projected results are based upon the District's biennial budget for Fiscal Years 2022 and 2023 which was approved by the Board on June 8, 2021, as subsequently updated in connection with the District's Fiscal Year 2022 semi-annual budget performance review to reflect actual results through December 31, 2021. See also "– Discussion of Projected Operating Results for Fiscal Year 2022" below.

<sup>(2)</sup> Reflects Fiscal Years 2022 through 2026 projected results as derived from the District's Five-Year Financial Forecast prepared in connection with the proposed biennial budget for Fiscal Years 2022 and 2023 which was approved by the Board on June 8, 2021. Certain figures have been adjusted to account for the treatment of revenues and expenses under the Indenture which differs in certain respects from treatment for budgetary purposes.

<sup>(3)</sup> Revenues exclude grant receipts, taxes, reimbursements and certain developer contributions which are treated as contributions (not Water Revenues). Revenues as projected do not take into account any amounts to be derived from the drought surcharges if implemented. See "– Rates and Charges."

(Table footnotes continued on following page.)

(Footnotes to table continued from prior page.)

- (4) Fiscal Year 2022 projected results assumes projected average daily billed consumption per day of 142 MGD. For the Five-Year Financial Forecast assumed average daily billed consumption was 144.3 MGD in Fiscal Year 2022, 145.8 MGD in Fiscal Year 2023, 147.3 MGD in Fiscal Year 2024, 148.8 MGD in Fiscal Year 2025, and 150.3 MGD in Fiscal Year 2026. See “– Rates and Charges” above. Reflects adopted average annual rate increase (excluding drought surcharges) of 4.00% in Fiscal Years 2022 and 2023, and assumes average annual rate increases (excluding any drought surcharges) of 4.00% in each of Fiscal Year 2024, Fiscal Year 2025, and Fiscal Year 2026. Any such assumed rate increases will be subject to Board approval. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES.”
- (5) Fiscal Year 2022 is based on estimated earnings. Excludes non-cash change in fair market value of investments.
- (6) SCC Revenues presented in the table above include both the projected “buy-in” portion of SCC charges and the “future water supply” portion of SCC charges when collected. See “– System Capacity Charge” above. SCC Revenues are capitalized and are not recognized as operating revenues for purposes of the District’s audited financial statements.
- (7) Other Revenue includes the anticipated receipt of BABs Interest Subsidy Payments relating to Series 2010B Bonds. In light of the potential effect of ongoing sequestration, the District has assumed cash receipts of approximately 33% of the interest payable on the Series 2010B Bonds (93% of the BABs Interest Subsidy Payments of 35% provided for under the American Recovery and Reinvestment Act of 2009) for Fiscal Years 2022 through 2026.
- (8) Projected Operating Expenses do not take into account the incremental costs of any supplemental water supplies purchased by the District. When the District is in a Stage 2 Drought or higher it is expected that costs associated with the purchase, treatment and delivery of supplemental water supplies, when taken, would be funded from receipts to be derived from the system of drought surcharges adopted by the Board. The cost of supplemental water supplies taken during a Stage 1 Drought is expected to be paid from normal water rates and from reserves. See “THE WATER SYSTEM – Drought Management.” See also “WATER SYSTEM FINANCES – Drought Surcharges.”
- (9) Water Operation and Maintenance Costs exclude those expenses paid from *ad valorem* taxes.
- (10) Debt service for the Fiscal Year 2022 projected results is actual projection for Fiscal Year 2022 and for the Five-Year Financial Forecast is as projected in the biennial budget for Fiscal Years 2022 and 2023, which does not reflect the actual structure and timing of the issuance of the Series 2022 Bonds. See “PLAN OF FINANCE” in the front part of this Official Statement. For the Five-Year Financial Forecast, assumes that interest with respect to the outstanding Series 2008A Bonds have been swapped to fixed rates. See “SECURITY FOR THE SERIES 2022 BONDS – Outstanding Water System Revenue Obligations – *Water Interest Rate Swap Agreements*” in the front part of this Official Statement. Also includes assumed liquidity fees and additional amount budgeted by the District (not included in Table 18) for estimated basis differential between variable rate bond interest rates and related swap receipts. Assumes issuance of additional Water System Revenue Bonds of approximately \$150 million in Fiscal Year 2022, \$150 million in Fiscal Year 2023, \$150 million in Fiscal Year 2024, \$210 million in Fiscal Year 2025 and \$210 million in Fiscal Year 2026. The actual size and timing of future debt issuances undertaken by the District will be determined by the District based on market considerations and other factors.
- (11) Includes assumed liquidity fees. Fiscal Year 2022 projected results is based on estimated interest for that year. For the Five-Year Financial Forecast, assumes interest only at 1.0%, 1.0%, 1.0%, 1.25%, and 1.50% per annum, respectively, for Fiscal Years 2022 through 2026. There were \$312.8 million of Water System CP Notes outstanding as of the start of Fiscal Year 2022.

Source: The District.

## Discussion of Projected Operating Results for Fiscal Year 2022

Total Water System revenues for Fiscal Year 2022 are projected to be \$665.9 million or \$11.1 million more than originally budgeted. This is primarily due to estimated System Capacity Charge revenue of \$31.0 million compared with \$25.0 million in the budget. Based on the District’s Semi-Annual Budget Performance Report prepared in April 2022, water sales for Fiscal Year 2022 are projected at a level near the budgeted amount of 144.3 MGD with the corresponding water sales revenue projected to be slightly higher than budgeted based on revenues collected during the first half of the year. Water operation and maintenance costs are projected to be \$11.0 million above budget due to an anticipated \$15.4 million cost for drought-related expenses, though actual expenses through December 31, 2021 were \$4.2 million. Partially offsetting the increased drought costs are savings primarily sourced from unspent contingency. Parity debt service is projected to be \$190.3 million which is \$7.0 million less than budgeted due to the delay in issuing debt until the end of the fiscal year as well as lower interest rates on variable rate debt than budgeted. Parity debt service coverage is projected to be 2.09 times in Fiscal Year 2022 and total debt service coverage is projected to be 2.07 times.

As described, the projected operating results for Fiscal Year 2022 were originally developed in connection with the District's biennial budget for Fiscal Years 2022 and 2023, and were subsequently updated in connection with the District's semi-annual budget performance review to reflect actual results experienced through December 31, 2021 and expectations as of such date for the remainder of Fiscal Year 2022. Certain figures have been adjusted to account for the treatment of revenues and expenses under the Indenture which differs in certain respects from treatment for budgetary purposes. The actual results may differ from those projected.

### **Discussion of Budget Projections for Fiscal Years 2022 through 2026**

The Five-Year Financial Forecast for the period between Fiscal Years 2022 and 2026 is based on specified assumptions, reflected in the footnotes to Table 21 and outlined below. These assumptions do not incorporate drought-related costs or revenues, as discussed below. The first two years in the Five-Year Financial Forecast are based upon the District's two-year budget. The adopted biennial budget for Fiscal Years 2022 and 2023 was approved by the Board on June 8, 2021. In conjunction with the Board's approval of the District's biennial budget, the Board adopted rate increases for Fiscal Years 2022 and 2023, following a public hearing on the proposed rate increases held on June 8, 2021. See "– Rates and Charges" above.

Based upon the base budget assumptions outlined below, revenues are forecast to increase by an average annual rate of 4.8% annually over the period between Fiscal Years 2022 and 2026 as reflected in the budget forecasted amounts, while forecasted operating expenses are expected to grow by an average of approximately 4.0% per year and debt service increases by an average of 4.6% per year. Capital cash flow spending is projected at \$2.0 billion over the five-year period between Fiscal Years 2022 and 2026. Projected capital expenditures are directed at pipelines infrastructure renewal; water treatment plant upgrades; reservoir rehabilitation; pumping plant rehabilitation; raw water aqueduct improvements; meter, valve and hydrant replacements; new service installations; and other water system projects.

The average percentage of capital funded from debt is projected at 42% over that period, lower than the financial policy maximum of 65%. Revenue bond debt service coverage is projected to exceed the 1.60x policy target each year. In Fiscal Year 2022, revenue bond debt service coverage was projected in the Five-Year Financial Forecast to be 2.01x. In Fiscal Year 2023 revenue bond debt service coverage is projected to be 2.02x. Debt service coverage is projected to remain relative steady, at 2.03x, 2.02x, and 2.04x in Fiscal Years 2024, 2025 and 2026, respectively. Reserve balances, including the Rate Stabilization Fund reserve, are projected to meet or exceed the policy reserve levels throughout the five-year period. The District is projecting ending each year over the five-year period with total reserves of over \$450 million. Included in these reserves is the Rate Stabilization Fund reserve, which is projected to remain at \$150 million at the end of Fiscal Year 2022.

The Five-Year Financial Forecast for the period covering Fiscal Years 2022 and 2026 is based on certain assumptions, which the District believes to be reasonable, incorporating among other factors the decreased demand for water in recent years. The forecast includes conservative assumptions of customer water use, but it does not include the impact of the drought or any voluntary or mandatory water use restrictions in the base assumptions. Management of drought costs during the forecast period is addressed below. For the Five-Year Financial Forecast, water sales volume was budgeted at 144.3 MGD in Fiscal Year 2022 and at 145.8 MGD in Fiscal Year 2023, near the prior years' budget assumptions of 141.4 MGD and 142.9 MGD in Fiscal Years 2020 and 2021, respectively. Water sales volume is projected to increase only modestly to 147.3 MGD, 148.9 MGD and 150.3 MGD in Fiscal Years 2024, 2025, and 2026, respectively, and below the actual water sales in Fiscal Year 2021 of 152.7 MGD. The overall increases to base rates and charges for Fiscal Years 2022 and 2023 of 4.00% and 4.00%, consistent with the adopted budget and Proposition 218 notice, are reflected. The same overall rate increases of 4.00%, 4.00% and 4.00% per annum are assumed for Fiscal Years 2024, 2025 and 2026, respectively. Assumed rate increases for such years will be subject to Board approval. The base rates exclude any drought surcharges.

The District has developed a comprehensive approach to managing the financial impacts of drought, including implementing drought surcharges, with Board approval, to pay for increased costs to purchase, convey and treat supplemental water. The Five-Year Financial Forecast from Fiscal Year 2022 through 2026 is built on prudent water sales assumptions. Should ongoing drought conditions continue during the five-year period, the District's Board can implement increasing Drought Surcharges at each stage of drought, starting with up to eight percent drought surcharges at a Stage 2 drought declaration. See "–Drought Surcharges" above. The District would also consider using funds in its Rate Stabilization Fund in a year in which water consumption is below budgeted projections.

## **Employees' Retirement System**

**General.** The District has a contributory retirement system covering substantially all of its employees (including the Water System and Wastewater System). The East Bay Municipal Utility District Employees' Retirement System (the "Retirement System") was established in 1937 to administer a single-employer, contributory, defined benefit pension plan (the "Plan") to provide retirement, disability, survivorship and post-employment health insurance benefits ("HIB") for eligible directors, officers and employees of the District. The Plan is funded by contributions from its members and from the District, and from investment earnings on Plan assets. The payment of benefits earned by Plan members of the Retirement System is an obligation of the District. Employees of the District are also covered by Social Security.

The Retirement System is administered by a Retirement Board composed of three members appointed by the District Board, two members elected by and from the active membership and one (nonvoting) member elected by and from the retired membership of the Retirement System. Ordinance No. 40 of the District, effective October 1, 1937, as amended (the "Retirement System Ordinance"), assigns the authority to establish Plan benefit provisions to the District Board.

Contributions to the Retirement System are made by the members and the District. Each member's contribution is based upon a percentage of that member's covered compensation. The employee contribution rates for 1955/1980 Plan members (*i.e.*, employees first hired prior to January 1, 2013) are prescribed in the Retirement System Ordinance and may be adjusted by the District Board solely pursuant to the terms of a negotiated collective bargaining agreement or MOU with employee bargaining units. Pursuant to applicable provisions of the California Public Employees' Pension Reform Act of 2013 as codified ("PEPRA"), 2013 Tier members (*i.e.*, employees first hired on or after January 1, 2013) are required to contribute at least 50% of the "normal cost" rate. The District employees' contribution rate for 1955/1980 Plan members (which includes a 0.09% contribution to the HIB) is 8.75%, effective since April 18, 2016. The District employees' contribution rate for 2013 Tier members (which also includes a 0.09% contribution to the HIB) is established by the District Board, and such rates are based upon actuarial valuations. The current District employees' contribution rate for 2013 Tier members (including the 0.09% contribution to the HIB) is 9.50%, effective since July 1, 2021.

The District (employer) contributions are based upon percentages of the aggregate amount of members' covered compensation. Employer contribution percentages are established by the District Board. Such percentages are based upon actuarial valuations. The District's employer contribution percentage for 1955/1980 Plan members has been established at 47.16% for Fiscal Year 2022 (including a 4.79% contribution to the HIB) and has been established at 37.84% for 2013 Tier members (including a 4.52% contribution to the HIB). For Fiscal Year 2023, based upon the June 30, 2021 funding valuation reports prepared by the actuary, the recommended District employer contribution percentage for 1955/1980 Plan members is 44.81% (including a 4.78% contribution to the HIB) and is 35.81% for 2013 Tier members (including a 4.48% contribution to the HIB). The June 30, 2021 funding valuation reports, which provide the recommended contribution rates for Fiscal Year 2023, were presented by the actuary to the Retirement Board at their January 20, 2022 meeting. While the valuation reports were adopted by the Board at that

meeting, the Board elected to continue the same employer contribution rates from Fiscal Year 2022 for Fiscal Year 2023 (*i.e.*, 47.16% for 1955/1980 Plan members and 37.84% for 2013 Tier members) to help reduce year-to-year volatility in case future investment returns are lower than expected. In addition, at the time of the June 30, 2021 valuations, salary negotiations were still ongoing and the outcome of those negotiations may lead to future employer contribution rate increases. The Retirement System may also revisit its economic actuarial assumptions for the June 30, 2022 valuations which could lead to additional employer contribution rate increases. Lastly, maintaining the employer contribution rates helps pay down the System's unfunded actuarial accrued liability.

The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

As of June 30, 2021, collectively for the Water and Wastewater Systems, there were 1,896 active (non-retired) Plan members, 327 terminated Plan members entitled to but not yet receiving benefits and 1,977 retirees and beneficiaries receiving benefits.

Table 22 sets forth the number of active (non-retired) members, total Plan assets, District and Member contributions and retirement allowances paid in the five Fiscal Years 2017 through 2021.

**Table 22**  
**RETIREMENT SYSTEM**  
**Active (Non-Retired) Members, Total Plan Assets, District and Member Contributions and**  
**Allowances Paid**  
**Five Fiscal Years Ended June 30, 2021<sup>(1)</sup>**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Active (Non-Retired) Members<sup>(2)</sup></b></i>	<i><b>Total Plan Assets<sup>(3)</sup></b></i>	<i><b>District Contribution<sup>(4)</sup></b></i>	<i><b>Member Contributions</b></i>	<i><b>Allowances Paid From Retirement Plan<sup>(5)</sup></b></i>
2017	2,069	\$1,612,644,000	\$76,860,000	\$16,018,000	\$ 98,617,000
2018	2,112	1,753,240,000	81,096,000	17,079,000	106,377,000
2019	2,150	1,832,965,000	84,551,000	17,865,000	114,435,000
2020	2,215	1,857,609,000	88,734,000	18,885,000	122,351,000
2021	2,223	2,328,722,000	90,624,000	19,336,000	130,472,000

<sup>(1)</sup> Includes Health Insurance Benefit.

<sup>(2)</sup> Includes active plan members and terminated plan members entitled to but not yet receiving benefits.

<sup>(3)</sup> Market value as of June 30 of such Fiscal Year as shown in the audited financial statements of the Retirement System.

<sup>(4)</sup> The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

<sup>(5)</sup> Includes benefits paid and refunds of contributions.

*Source:* The District.

The Retirement System is an integral part of the District and, as noted above, the District appoints the majority of the governing body of the Retirement System and provides for its funding. Accordingly, the Retirement System's operations are reported as a Pension and Other Employee Benefit Trust Fund in the District's basic financial statements. The Retirement System also issues separately available financial statements on an annual basis. Such financial statements can be obtained from the District at 375 Eleventh Street, Oakland, California 94607.

The amounts set forth in this discussion of the District's Retirement System, including, for example, actuarial accrued liabilities and funded ratios, are based upon numerous demographic and economic assumptions, including investment return rates, inflation rates, salary increase rates, cost of living

adjustments, postemployment mortality, active member mortality, and rates of retirement. Prospective purchasers of the District's bonds are cautioned to review and carefully assess the reasonableness of the assumptions set forth in the documents that are cited as the sources for such information. In addition, prospective purchasers of the District's bonds are cautioned that such sources and the underlying assumptions are made as of their respective dates, and are subject to change. Prospective purchasers of the District's bonds should also be aware that some of the information presented in this discussion of the Retirement System contains forward-looking statements and the actual results of the Retirement System may differ materially from the information presented herein.

***Benefits.*** All regular full-time employees (as well as certain job share and intermittent employees) of the District are members of the Plan. In accordance with the Retirement System Ordinance, eligible employees become members of the Plan on the first day they are physically on the job. Retirement plan benefits are generally determined by a formula based on the employee's highest two years of compensation (highest 36 months for 2013 Tier members) and the length of employment with the District. Benefits adopted by the District vest in part with members after five years of continuous full-time employment. Vested members who terminate employment may elect a refund of their contributions or leave them in the Plan until eligible to receive benefits.

In addition to retirement benefits, the District provides post-employment health benefits assistance, administered by the Retirement System, for employees who retire from the District or their surviving spouses. As of June 30, 2021, there were 1,735 participants receiving these healthcare benefits. For participants entering the Retirement System prior to July 1, 1996, a monthly allowance of up to \$450 (up to \$550 for married retirees and retirees with domestic partners) is paid to retirees with at least five years of full-time service to reimburse the retiree-paid medical expenses (including any health, dental or long-term care insurance premiums paid by the retiree for his or her self, and current spouse or domestic partner, or any health, dental or long-term care insurance premiums paid by the eligible surviving spouse or domestic partner of a retiree). Effective July 1, 1996, a 20-year vesting schedule for full benefits was implemented for all new employees. Effective January 1, 1999, retired members who had separated from the District prior to their retirement and who had at least five years of service also become eligible for the post-employment healthcare benefits based on the same vesting schedule.

***Actuarial Assumptions and Funding Policy.*** Under the Retirement System Ordinance, the District is required to have an actuarial study performed at least every two years, but the District's current policy is to have an actuarial study performed each year. The most recent actuarial study of the Retirement System, including the pension and the HIB trusts, was performed by Segal, as of June 30, 2021.

The actuarial report provides a basis for the District Board's decision regarding the rate of contributions by the District to the Retirement System, including both the pension and the HIB trusts. The District makes its contribution using rates determined by its outside actuaries.

The Governmental Accounting Standards Board ("GASB") issued Statements 67 and 68 affecting the reporting of net pension liabilities for accounting purposes, and Statements 74 and 75 affecting the reporting of net other post-employment healthcare benefits ("OPEB") liabilities for accounting purposes. Statements 67 and 74 are for plan reporting, and Statements 68 and 75 are for employer reporting. The information needed to comply with Statements 67 and 74 was provided by the actuary in separate reports (*i.e.*, separate from the pension and health insurance benefits funding valuation reports) dated January 11, 2022, and the information needed to comply with Statements 68 and 75 is scheduled to be provided by the actuary in separate reports before the end of Fiscal Year 2022 (for employer reporting as of June 30, 2022). The GASB Statements require shorter periods for recognition of non-investment gains/losses and actuarial assumption changes, as well as for recognition of investment gains/losses. The GASB Statements provide for a complete separation between financial reporting and funding requirements for pension and health insurance benefit plans. Under the GASB statements, the District is required to report the Net Pension

Liability (*i.e.*, the difference between the Total Pension Liability and the Pension Plan's Fiduciary Net Position or market value of assets) and the Net OPEB Liabilities (*i.e.*, the difference between the Total OPEB Liability and the OPEB Plan's Fiduciary Net Position or market value of assets) in its financial statements. See Note 9 and the Required Supplementary Information in the audited financial statements of the District included in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020" for additional information regarding the Net Pension Liability and the Net OPEB Liability of the District for the Retirement System.

To calculate the required contribution for each Fiscal Year, assumptions are made about future events that affect the amount and timing of benefits to be paid and assets to be accumulated. Each year actual experience is measured against the assumptions. If overall experience is more favorable than anticipated (an actuarial gain), the contribution requirement will decrease from the previous year. On the other hand, the contribution requirement will increase if overall actuarial experience is less favorable than assumed (an actuarial loss). If assumptions are changed, the contribution requirement is adjusted to take into account a change in experience anticipated for all future years.

A summary of the funding method and assumptions utilized in the actuarial study as of June 30, 2021 are described below.

*Funding Method.* The Plan's funding policy provides for periodic District contributions at actuarially determined amounts sufficient to accumulate the necessary assets to pay benefits when due as specified by the ordinance governing the Retirement System. The Entry Age Cost Method is used for this purpose. Under the Entry Age Cost Method, there are two components to the total contributions: (i) the normal cost, which is the amount of contributions required to fund the benefit allocated to the current year of service (associated with active employees only), and (ii) an amortization payment on any unfunded actuarial accrued liability ("UAAL"). The normal cost is calculated on an individual basis where the entry age normal cost is calculated as the sum of the individual normal costs. The UAAL (past service liability) is amortized as a level percentage of payroll on a closed basis over the amortization periods described below. The actuarial accrued liability is calculated on an individual basis and is based on costs allocated as a level percentage of compensation.

*Amortization Periods.* The UAAL is currently being funded using a layered approach. Each layer of the UAAL established prior to July 1, 2011 is being funded over a separate decreasing 30-year period, starting from the date the layer was originally established. On or after July 1, 2011, changes in the UAAL attributable to plan amendments are amortized over separate decreasing 15-year periods; changes in the UAAL attributable to assumption or method changes are amortized over separate decreasing 25-year periods; and changes in the UAAL attributable to actuarial gains/losses (*i.e.*, the extent to which actual overall experience deviates from the assumptions) are amortized over separate decreasing 20-year periods. Under the layered approach, any new UAAL layer that emerges between the prior and the current actuarial valuation (due to deviations between actual and expected actuarial experience, changes in actuarial assumptions used to measure the liabilities or other factors) will be determined and factored into the District's contribution rates so that it will be paid off after its respective amortization period described above.

*Actuarial Value of Assets (Asset Smoothing Method).* Methods used to compute District contribution requirements include a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets (with further adjustments as may be required to keep the smoothed assets within 30% of market value). The impact of this will result in a "smoothed" valuation value of assets (or "Actuarial Value of Assets") that is higher or lower than the market value of the assets depending on whether the amount that is being smoothed is either a net deferred loss or a net deferred gain.

**Actuarial Assumptions.** A number of assumptions are used to calculate the costs of the Plan and to compute contribution requirements for the Plan. The principal assumptions used in preparing the pension plan and HIB funding valuation reports as of June 30, 2021 and the pension plan financial reporting (*i.e.*, GASB 67) valuation report as of June 30, 2021 include:

1. Investment rate of return: 7.00%.
2. Inflation rate: 2.75%.
3. Interest credited to member contributions: 7.00%.
4. Projected salary increases: Ranges from 9.50% to 4.00% based on time from hire (includes inflation at 2.75% plus across the board salary increase of 0.50% plus merit and promotion increases).
5. Cost of living adjustments for pension benefits: 2.75%.
6. Increase in HIB maximum monthly allowance: The Plan does not provide for an automatic increase in the HIB allowance and no such increase is assumed in the valuation.
7. Additional assumptions: Additional assumptions were used regarding rates of termination from active membership, post-retirement mortality, active member mortality, disability rates and rates of retirement.

**Adopted Changes in Actuarial Assumptions.** Under the ordinance governing the Retirement System, the District is required to have an actuarial experience study conducted no less frequently than every four years in order to review the mortality, service and compensation experience of the members, retired members and beneficiaries of the Retirement System, over the study period. The experience study provides the factual information upon which the outside actuary makes recommendations to the District regarding the economic and demographic assumptions that provide the basis for the actuarial valuation of the assets and liabilities of the Retirement System. In November 2020, Segal Consulting completed and presented to the Retirement Board its Analysis of Actuarial Experience During the Period July 1, 2016 through June 30, 2020, for the Retirement System (the “2020 Experience Study”). The 2020 Experience Study utilized demographic data of the Plan’s members and retirees from the last four actuarial valuations and provided recommendations regarding changes to the economic and demographic actuarial assumptions to be used in the June 30, 2020 and later actuarial valuations. Pursuant to the 2020 Experience Study, the actuary recommended changes in a number of the actuarial assumptions used to calculate the costs of the Plan and to compute the future contribution requirements for the Plan, including changes in the assumptions from those used in the actuarial study of the Plan as of June 30, 2019. At its November 19, 2020 meeting, the Retirement Board approved the changes in assumptions recommended by the actuary for the actuarial valuation to be performed as of June 30, 2020.

In the June 30, 2020 valuation, the actuary determined the increase in the actuarial accrued liability for the pension plan (not including the HIB) due to the assumption changes to be \$104.8 million.

**Contribution History.** The schedule of District contributions for each of the pension plan and the HIB plan for the last five Fiscal Years are shown in Table 23:

**Table 23**  
**RETIREMENT SYSTEM**  
**History of Contributions**  
**Five Fiscal Years Ended June 30, 2021**  
**(Dollar Amounts in Thousands)**

**Pension Plan:**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Contributions as a Percentage of Covered Payroll<sup>(1)</sup></b></i>	<i><b>Actuarially Determined Contribution</b></i>	<i><b>Actual Contribution</b></i>	<i><b>Percentage Contributed</b></i>
2017	36.86% <sup>(2)</sup>	\$67,096	\$67,096	100%
2018	36.77	71,221	71,221	100
2019	36.37 <sup>(3)</sup>	74,033	74,033	100
2020	36.10 <sup>(4)</sup>	77,645	77,645	100
2021	35.73 <sup>(5)</sup>	79,252	79,252	100

**Health Insurance Benefit:**

<i><b>Fiscal Year Ended June 30:</b></i>	<i><b>Contributions as a Percentage of Covered Payroll<sup>(1)</sup></b></i>	<i><b>Actuarially Determined Contribution</b></i>	<i><b>Actual Contribution</b></i>	<i><b>Percentage Contributed</b></i>
2017	5.36% <sup>(2)</sup>	\$ 9,764	\$ 9,764	100%
2018	5.10	9,875	9,875	100
2019	5.17 <sup>(3)</sup>	10,518	10,518	100
2020	5.16 <sup>(4)</sup>	11,089	11,089	100
2021	5.13 <sup>(5)</sup>	11,372	11,372	100

<sup>(1)</sup> This rate represents the aggregate rate for the 1955/1980 Plan and the 2013 Tier, based on the District's actual contributions expressed as a percentage of the actual pensionable payroll amounts reported by the Retirement System.

<sup>(2)</sup> Based on the higher contribution rates adopted by the Retirement Board carried over from the June 30, 2014 valuation, rather than the actuarially determined contribution rates from the June 30, 2015 valuation

<sup>(3)</sup> The Retirement Board decided to carry over unchanged for Fiscal Year 2019 the higher total employer contribution rates previously adopted by the Board for Fiscal Year 2018, as determined in the June 30, 2016 valuation. The Health Insurance Benefit contribution rate was the actuarially determined rate from the June 30, 2017 valuation; however, the Pension Plan contribution rate was the difference between the higher total employer rate carried over from the June 30, 2016 valuation and the actuarially determined Health Insurance Benefit rate from the June 30, 2017 valuation.

<sup>(4)</sup> Based on the higher contribution rates adopted by the Retirement Board carried over from the June 30, 2017 valuation, rather than the actuarially determined contribution rates from the June 30, 2018 valuation.

<sup>(5)</sup> Based on the higher contribution rates adopted by the Retirement Board carried over from the June 30, 2017 valuation, rather than the actuarially determined contribution rates from the June 30, 2019 valuation.

*Source:* Segal GAS 67 Actuarial Valuation for the Pension Plan as of June 30, 2021 and GAS 74 Actuarial Valuation for the Health Insurance Benefit Plan as of June 30, 2021.

As reflected in the funding actuarial study and shown (rounded to the nearest thousand dollars) in Table 24, the combined Actuarial Accrued Liability for pension and HIB benefits at June 30, 2021 was \$2,728,640,918 and the Actuarial Value of Assets was \$2,097,712,454, resulting in an Unfunded Actuarial Accrued Liability of \$630,928,464 and a funded ratio of the Plan under the Entry Age Cost Method of 76.9%. As described above, the Actuarial Value of Assets has been calculated using a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets. The valuation was performed in accordance with generally accepted actuarial principles and practices and the District's funding policy that was last reviewed with the Board in 2015. The assumptions and methods used for funding purposes meet the parameters set by Actuarial Standards of Practice (ASOPs).

Table 24 sets forth the Actuarial Accrued Liability, Actuarial Value and Market Value of Assets, the Unfunded Actuarial Accrued Liability, and Funded Ratios as of June 30 of each of the Fiscal Years 2017 through 2021.

**Table 24**  
**RETIREMENT SYSTEM**  
**(Pension Plan and HIB Combined)**  
**Actuarial Accrued Liability, Actuarial Value and Market Value of Assets,**  
**Unfunded Actuarial Accrued Liability and Funded Ratios**  
**Five Fiscal Years Ended June 30, 2021<sup>(1)</sup>**  
**(Dollar Amounts in Thousands)**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Actuarial Accrued Liability (AAL)</b></i>	<i><b>Actuarial Value of Assets</b></i>	<i><b>Market Value of Assets</b></i>	<i><b>Unfunded Actuarial Accrued Liability (UAAL)<sup>(2)</sup></b></i>	<i><b>Funded Ratio on Actuarial Value</b></i>	<i><b>Funded Ratio on Market Value</b></i>
2017	\$2,185,674	\$1,580,665	\$1,612,644	\$605,009	72.3%	73.8%
2018	2,342,014	1,714,364	1,753,240	627,650	73.2	74.9
2019	2,463,526	1,817,563	1,832,965	645,963	73.8	74.4
2020	2,661,452	1,914,278	1,857,609	747,174	71.9	69.8
2021	2,728,641 <sup>(3)</sup>	2,097,712	2,328,722	630,928	76.9	85.3

<sup>(1)</sup> Dollars rounded to nearest thousand.

<sup>(2)</sup> The District estimates that approximately 85% of the UAAL is attributable to the Water System and approximately 15% is attributable to the Wastewater System. The UAAL is determined based on the Actuarial Value of Assets.

<sup>(3)</sup> Of this amount, \$123,027 is attributable to the HIB liabilities.

Source: Segal.

As of June 30, 2021, the market value of the combined pension and HIB plan's assets was \$2,328,722,000 and the projected benefit obligation ("PBO") was \$2,675,737,000, resulting in a funded ratio of the plan under the PBO basis of 87.0%. Under the plan provisions, determination of the funded ratio on a PBO basis is required and certain cost of living adjustments for pension benefits are granted when the funded ratio of the plan is 85% or higher as calculated on the PBO basis.

**Schedule of Funding Progress.** The District reports the schedule of funding progress for each of the pension plan and the post-employment healthcare plan (HIB), based on the results of the funding valuations. The schedule of funding progress presents multi-year trend information that shows whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

The schedule of funding progress for the pension plan is set forth in Table 25.

**Table 25**  
**PENSION PLAN**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<i>Actuarial Valuation Date June 30</i>	<i>Actuarial Value of Assets</i>	<i>Actuarial Accrued Liability (AAL)</i>	<i>Unfunded AAL (UAAL)</i>	<i>Funded Ratio</i>	<i>Covered Payroll<sup>(1)</sup></i>	<i>UAAL as a Percentage of Covered Payroll</i>
2017	\$1,549,213	\$2,068,015	\$518,802	74.9%	\$184,859	280.6%
2018	1,678,417	2,220,977	542,560	75.6	202,995	267.3
2019	1,777,065	2,340,773	563,708	75.9	212,351	265.5
2020	1,868,917	2,535,238	666,321	73.7	224,412	296.9
2021	2,045,503	2,605,614	560,111	78.5	224,392	249.6

<sup>(1)</sup> Projected payroll based on valuation results.

Source: Segal Actuarial Valuation and Review of Pension Plan as of June 30, 2021.

The schedule of funding progress for the post-employment healthcare plan is set forth in Table 26.

The retiree health liabilities reported in the actuarial funding study as of June 30, 2021 (and shown in Table 26 below) will not match those required to be used for GASB reporting purposes as shown in Table 28. The retiree health liabilities as reflected in the funding study have not been adjusted to include the implicit retiree rate subsidy as required under GASB reporting requirements. (Note that when premiums for active employees are determined on a pooled basis with premiums for retirees under age 65, a significant accounting obligation may exist even though the retiree under age 65 contributes most or all of the blended premium cost of the plan. The average costs for retirees if determined on a stand-alone basis is likely to exceed the average cost for the whole group, leading to an implicit subsidy for these retirees. The GASB accounting standard requires the employer to identify and account for this implicit subsidy as well as any explicit subsidies the employer may provide.) In addition, the liabilities for GASB reporting purposes for the HIB portion of the obligations shown in Table 28 were determined based upon a lower discount rate (*i.e.*, 3.99% for June 30, 2021 and 4.40% for June 30, 2020) than the 7.00% investment rate of return used in Segal prefunding studies. The liabilities calculated for GASB reporting purposes shown in Table 28 are therefore higher than those reflected in the actuarial studies as of June 30, 2021 and June 30, 2020 and described above.

**Table 26**  
**POST-EMPLOYMENT HEALTH INSURANCE BENEFIT (HIB)**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<i>Actuarial Valuation Date June 30</i>	<i>Actuarial Value of Assets</i>	<i>Actuarial Accrued Liability (AAL)</i>	<i>Unfunded AAL (UAAL)</i>	<i>Funded Ratio</i>	<i>Covered Payroll<sup>(1)</sup></i>	<i>UAAL as a Percentage of Covered Payroll</i>
2017	\$31,452	\$117,659	\$86,207	26.7%	\$184,859	46.6%
2018	35,947	121,037	85,090	29.7	202,995	41.9
2019	40,498	122,753	82,256	33.0	212,351	38.7
2020	45,361	126,214	80,853	35.9	224,412	36.0
2021	52,209	123,027	70,818	42.4	224,392	31.6

<sup>(1)</sup> Projected payroll based on valuation results.

Source: Segal Actuarial Valuations and Review of Other Postemployment Benefits (OPEB) as of June 30, 2017 through 2021.

**Net Pension Liability.** Under GASB 67, the pension plan is required to disclose the Net Pension Liability for financial reporting purposes. When measuring pension liability, GASB uses the same actuarial cost method (Entry Age Cost Method) and the same type of discount rate (expected return on assets) as the District uses for funding. This means that the Total Pension Liability (“TPL”) measure for financial reporting is determined on the same basis as the District’s AAL measure for funding. The Net Pension Liability (“NPL”) is equal to the difference between the TPL and the Plan Fiduciary Net Position. The Plan Fiduciary Net Position is equal to the market value of assets and therefore, the NPL measure is the same as the UAAL calculated on a market value basis. The Net Pension Liability as of June 30, 2021 and June 30, 2020 is set forth in Table 27.

**Table 27**  
**PENSION PLAN**  
**Net Pension Liability**  
**(Dollar Amounts in Thousands)**

	<u>June 30, 2021</u>	<u>June 30, 2020</u>
Total Pension Liability	\$ 2,605,614	\$ 2,535,238
Plan Fiduciary Net Position	<u>(2,270,763)</u>	<u>(1,813,591)</u>
Net Pension Liability	\$ 334,851	\$ 721,647
Plan Fiduciary Net Position as a % of the Total Pension Liability	87.15%	71.54%

*Source:* Segal.

The NPL was measured as of June 30, 2021 and 2020. The Plan’s Fiduciary Net Position (plan assets) was valued as of the measurement date, while the Total Pension Liability was determined based upon the results of the funding actuarial valuations as of June 30, 2021 and 2020, respectively. It should be noted that for GASB 68 purposes, the NPL for the reporting date of June 30, 2021 is based upon results as of the June 30, 2020 measurement date and those results are not adjusted or rolled forward. Therefore, the information as of June 30, 2020 set forth above is the same as that reported in the District’s audited financial statements as of June 30, 2021.

The discount rate used to determine the Total Pension Liability was 7.00% as of June 30, 2021 and June 30, 2020, following the same assumptions used by the Retirement System in the pension funding valuations as of June 30, 2021 and June 30, 2020, respectively. It should be noted that, according to GASB, the discount rate used for financial reporting purposes should be based on the long-term expected rate of return on a retirement system’s investments, just as it is for funding. However, GASB requires that this assumption should be net of investment expenses but not net of administrative expenses (*i.e.*, without reduction for administrative expenses). Currently, the District’s investment return assumption used for the annual funding valuation is developed net of both investment and administrative expenses.

**Net OPEB Liability.** Under GASB 74, the OPEB plan is required to disclose the Net OPEB Liability for financial reporting purposes. When measuring OPEB liability, GASB uses the same actuarial cost method (Entry Age Cost Method) and the same expected return on plan assets as the District uses for funding. This means that the Total OPEB Liability (“TOL”) measure for financial reporting is determined on the same basis as the District’s AAL measure for funding, with the exception discussed above for the implicit subsidy. The Net OPEB Liability (“NOL”) is equal to the difference between the TOL and the OPEB Plan’s Fiduciary Net Position. The OPEB Plan’s Fiduciary Net Position is equal to the market value of assets. The NOL reflects all investment gains and losses as of the measurement date. The Net OPEB Liability as of June 30, 2021 and June 30, 2020 is set forth in Table 28.

**Table 28**  
**HEALTH INSURANCE BENEFIT PLAN**  
**Net OPEB Liability**  
**(Dollar Amounts in Thousands)**

	<u>June 30, 2021</u>	<u>June 30, 2020</u>
Total OPEB Liability	\$201,135	\$195,853
Plan Fiduciary Net Position	<u>(57,959)</u>	<u>(44,018)</u>
Net OPEB Liability	\$143,176	\$151,835
Plan Fiduciary Net Position as a % of the Total OPEB Liability	28.82%	22.48%

*Source:* Segal.

The NOL was measured as of June 30, 2021 and 2020. The Plan's Fiduciary Net Position (plan assets) was valued as of the measurement date, while the Total OPEB Liability was determined based upon the results of the actuarial valuations as of June 30, 2021 and 2020, respectively, with the exception on the discount rate noted below. In addition, the implicit subsidy benefit payments are valued based on the age-based costs. It should be noted that for GASB 75 purposes, the NOL for the reporting date of June 30, 2021 is based upon results as of the June 30, 2020 measurement date and those results are not adjusted or rolled forward. Therefore, the information as of June 30, 2020 set forth above is the same as that reported in the District's audited financial statements as of June 30, 2021.

The discount rate used to determine the TOL and NOL was 3.99% as of June 30, 2021 and 4.40% as of June 30, 2020. It should be noted that, according to GASB, the discount rate used for financial reporting purposes as of June 30, 2021 is a blend of the assumed investment return on plan assets (*i.e.*, 7.00% for the June 30, 2021 valuation) and the rate for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher (*i.e.*, 2.16% as of June 30, 2021). Projected benefit payments are discounted by the plan investment return assumption of 7.00% until June 30, 2045. Benefit payments after June 30, 2045 are then discounted by the municipal bond rate of 2.16%. The 3.99% discount rate used in this valuation is the blended discount rate reflecting benefits discounted by the plan investment return assumption rate and the bond rate.

Additional information concerning the Retirement System may be found in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020."

**APPENDIX B**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
AUDITED FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2021 AND 2020**

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Official Statement have the respective meanings set forth in the Indenture.*

*There are no senior Water Bonds outstanding, and the District has covenanted in the Indenture not to issue any senior Water Bonds in the future. Therefore, all references hereto to “Water Bonds” may be disregarded.*

#### **Certain Definitions**

**“Accreted Value”** means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified in the Indenture.

**“Act”** means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**“Annual Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Maximum Annual Debt Service; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Assumed Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered

to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

**“Bond Obligation”** means, as of any given date of calculation, (1) with respect to any Outstanding Bond or Water Bond which is Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Outstanding Bond or Water Bond which is Capital Appreciation Indebtedness, the Accreted Value thereof.

**“Bonds”** means the bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**“Business Day”** means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions related to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

**“Capital Appreciation Indebtedness”** means Water Bonds, Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

**“Code”** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, as amended from time to time.

**“Current Interest Indebtedness”** means the Water Bonds, Bonds and Parity Debt on which interest is paid at least annually.

**“Debt Service”** (I) prior to the Effective Date, means, the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, that for the purposes of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such Water Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest rate swap agreement are greater than the interest payable on the Water Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Water Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Water Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Water Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Water Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Water Bonds, Bonds or Parity Debt are in one of the two highest Rating Categories by Moody's and by Standard & Poor's or such Water Bonds, Bonds or Parity Debt are rated in the highest short-term, note or commercial paper Rating Categories by Moody's and by Standard & Poor's and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Water Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the "Assumed SIFMA-based Rate");

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Water Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Water Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest rate on such Water Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Water Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest on such Water Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Water Revenues on parity with the lien of the Water Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Water Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Water Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Water Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Water Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

**“Effective Date”** means the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2001 Bonds, Series 2002 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2007A Bonds, Series 2007B Bonds, Series 2008A Bonds, Series 2008B Bonds and Series 2009A Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Sixteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

**“Excluded Principal Payments”** means each payment of principal (or the principal component of lease or installment purchase payments) of Water Bonds, Bonds or Parity Debt which the District determines on a date not later than the date of issuance thereof that the District intends to pay with moneys which are not Water Revenues or Subordinated Water Revenues but from the proceeds of future debt obligations of the District and the Trustee may rely conclusively on such determination of the District.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official fiscal year period of the District, which designation shall be provided to the Trustee in a certificate of the District.

**“Indenture”** means the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the Trustee and the District, as originally executed or as it may from time

to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions thereof.

**“Investment Securities”** means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies and Federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or their obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) a guaranteed investment contract with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than five years' experience investing in such securities and obligations and with assets under management in excess of \$500,000,000; and

(xiv) any investment approved by the Board for which confirmation is received from each rating agency then rating any of the Bonds that such investment will not adversely affect such agency's rating on such Bonds.

**"Mandatory Sinking Account Payment"** means the amount required to be deposited by the District in a sinking account for the payment of term Bonds.

**"Maximum Annual Debt Service"** (I) prior to the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Maximum Annual Debt Service unless the sum of (i) interest payable on such Water Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest rate swap agreement are greater than the interest payable on the Water Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Water Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Water Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Water Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Water Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Water Bonds, Bonds or Parity Debt are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) or such Water Bonds, Bonds or Parity Debt are rated in the highest short-term note or commercial paper Rating Categories by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Opinion of Bond Counsel”** means a written opinion of a law firm of national standing in the field of public finance selected by the District and not objected to by the Trustee.

**“Outstanding,”** when used at any particular time with reference to Bonds, means (subject to the provisions relating to disqualified bonds) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged under the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**“Owner” or “Bondholder” or “Bondowner,”** whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**“Parity Debt”** means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Water Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**“Person”** means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means with respect to any Bond (or portion thereof) the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

**“Revenue Fund”** means the fund held in trust by the District to which the Subordinated Water Revenues are required to be deposited.

**“Series”** whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.

**“SIFMA Municipal Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

**“Standard & Poor’s”** means Standard & Poor’s Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a

securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Subordinated Water Revenues”** for any fiscal period means the sum of (a) the Water Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund created in the Water Bond Resolution for treatment as Water Revenues for such fiscal period, less the sum of (c) all Water Operation and Maintenance Costs for such fiscal period, (d) the amounts, if any, withdrawn by the District from Water Revenues for such fiscal period for deposit in such Rate Stabilization Fund, and (e) all amounts required to be paid under the Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Water Bonds as the same become due and payable.

**“Variable Rate Indebtedness”** means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

**“Water Bond Resolution”** means Resolution No. 30050 of the District, adopted on January 26, 1982, as amended and supplemented from time to time. All obligations of the District under the Water Bond Resolution have ceased and been discharged; provided, however, that the Rate Stabilization Fund created thereunder shall continue.

**“Water Bonds”** means all bonds and other obligations of the District issued pursuant to the Water Bond Resolution.

**“Water Operation and Maintenance Costs”** means the reasonable and necessary costs of maintaining and operating the Water System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

**“Water Revenues”** (I) prior to the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Water Bond Resolution or the Indenture; and

(II) from and after the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Water Bond Resolution or the Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program.

**“Water System”** means the entire water system of the District and all of the facilities thereof, including all facilities for the storage, transmission or distribution of water or the generation or transmission of hydroelectric power, together with all additions, betterments, extensions and improvements to said system or any part thereof. The term “Water System” does not include the sewage disposal system or facilities of Special District No. 1 of the District (including any power generation facilities constituting a part of said system).

## **Pledge of Revenues**

The Bonds are revenue obligations of the District and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Subordinated Water Revenues and other amounts held by the Trustee (except for amounts held in the Rebate Fund). The Subordinated Water Revenues are pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other. Said pledge constitutes a first lien on the Subordinated Water Revenues and such other amounts referred to in this paragraph.

## **Allocation of Subordinated Water Revenues**

The District is to transfer the moneys in the Revenue Fund, into the following respective funds, in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinated Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

(1) Interest Fund. The District shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds which are Current Interest Indebtedness (excluding any interest for which there are moneys on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) Principal Fund; Sinking Accounts. The District shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the Business Day prior to each principal or Sinking Account payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the Mandatory Sinking Account Payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in a bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) Bond Reserve Funds. Upon the occurrence of any deficiency in any Bond Reserve Fund established under the Indenture for any Series of Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such Bond Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund until there is on deposit in such Bond Reserve Fund an amount equal to the respective reserve requirement.

Any Subordinated Water Revenues remaining after the foregoing transfers shall be held free and clear of the Indenture by the District and it may use and apply such Subordinated Water Revenues for any lawful purpose of the District, including the redemption and purchase of Bonds.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein are insufficient to make such payments, the Trustee shall immediately notify the District of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District covenants and agrees to transfer to the Trustee from any Subordinated Water Revenues in its

possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

### **Investments**

All moneys in any of the funds and accounts held by the Trustee shall be invested, as directed by the District, solely in Investment Securities.

The District may and the Trustee shall, upon the Request of the District, enter into a financial futures or financial option contract with an entity the debt securities of which are rated in their respective highest short-term Rating Categories by Moody's and Standard & Poor's.

The District may and the Trustee shall, upon the Request of the District, and provided that the Trustee is supplied with an Opinion of Bond Counsel to the effect that such action is permitted under the laws of the State of California, enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such a swap agreement may be applied to the deposits required hereunder; in which case, the entity with which the District or the Trustee may contract for an interest rate swap is limited to entities the debt securities of which are rated in their respective highest short-term debt Rating Categories by Moody's and Standard & Poor's. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Water Revenues and other assets pledged hereunder to the Bonds on a parity basis therewith and, in such event, the District shall pay to the Trustee for deposit in the Interest Fund, at the times and in the manner provided in the Indenture, the amounts to be paid under such interest rate swap agreement, as if such amounts were additional interest due on the Bonds to which such interest rate swap agreement relates, and the Trustee shall pay to the other party to the interest rate swap agreement, to the extent required thereunder, amounts deposited in the Interest Fund for the payment of interest on the Bonds with respect to which such agreement was entered into.

### **Additional Bonds; Parity Debt**

The issuance of additional Water Bonds was not initially limited by the Indenture. *However, the District has covenanted pursuant to the Eighteenth Supplemental Indenture that it will not issue any senior Water Bonds in the future.*

The District may issue Bonds and Parity Debt payable from Subordinated Water Revenues and secured equally and ratably with Bonds previously issued, subject to the following specific conditions precedent to the issuance of any such additional Bonds or Parity Debt:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Bonds or Parity Debt shall not exceed any limitation imposed by law or by any Supplemental Indenture.
- (c) The District shall have placed on file with the Trustee a Certificate of the District certifying that the sum of: (1) the Subordinated Water Revenues plus all amounts required to be paid under the Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Water Bonds for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Water Revenues for such period of 12 months would have been increased had increases in rates,

fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Water Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Bonds due to improvements to the Water System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Bonds, shall (4) have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt then Outstanding and the additional Bonds or Parity Debt then proposed to be issued.

## **Refunding Bonds**

Refunding Bonds may be authorized and issued by the District without compliance with the provisions described above under “Additional Bonds; Parity Debt,” provided that Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding following the issuance of such refunding Bonds is less than or equal to Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding prior to the issuance of such refunding Bonds.

## **Covenants**

Among other covenants the District has agreed as follows:

The District will not create any pledge, lien or charge upon any of the Subordinated Water Revenues having priority over or having parity with the lien of the Bonds except only as described above. The District will not amend or change the Water Bond Resolution in any manner which would permit the issuance of additional Water Bonds in a greater principal amount than would have been permitted thereunder prior to such amendment or change or reduce the debt service percentage or coverage requirements contained therein. The District will not issue Water Bonds pursuant to the Water Bond Resolution in such amount as would cause the District to fail to be in compliance with the rate covenant described in the second succeeding paragraph hereof.

The District will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code, if applicable. The District will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District, or take or omit to take any action that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code, if applicable. To that end, the District will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds.

The District will, at all times while any of the Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year plus all amounts required to be paid under the Water Bond Resolution for such year for principal, interest, reserve fund and any other debt service requirements on the Water Bonds shall be at least equal to 1.1 times the amount of Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding for such Fiscal Year.

The District will maintain and preserve the Water System in good repair and working order at all times, and will operate the Water System in an efficient and economical manner. Subject in each case to the condition that insurance is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District, the District will procure and maintain at all times: (a) insurance on the Water System against such risks as and in such amounts as the District deems prudent

taking into account insurance coverage for similar utilities, and (b) public liability insurance in such amounts as the District deems prudent taking into account insurance coverage for similar utilities.

### **Events of Default; Remedies**

The following events are Events of Default under the Indenture:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in the Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the District has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(e) if any default shall exist under the Water Bond Resolution and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(f) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or Federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; and

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Subordinated Water Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

If an Event of Default shall occur and be continuing, the District is to immediately transfer to the Trustee all Subordinated Water Revenues held by it and received thereafter and the Trustee shall apply all Subordinated Water Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the District, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the District shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, by written notice to the District and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

The Trustee is appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) to represent the Owners in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon any default or other occasion, giving rise to a right in the Trustee to represent the Bondholders, the Trustee may take such action as may seem appropriate and, upon the request in writing

of Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Owners by such appropriate actions as it shall deem most effectual to protect and enforce any such right.

No remedy conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

## **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bonds then Outstanding. No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Subordinated Water Revenues and other assets pledged under the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Subordinated Water Revenues and other assets, without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture may also be modified or amended at any time with the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, rated not lower than the respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) or Standard & Poor's (if Standard & Poor's is then rating the Bonds).

The Indenture and the rights and obligations of the District, of the Trustee and the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the District or to surrender any right or power reserved to or conferred upon the District;
- (2) to make such provisions for the purpose of curing any omission or ambiguity, or of curing or correcting any defective provision contained in the Indenture, or in regard to questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (3) to modify the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal

statutes and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(4) to make modifications or adjustments necessary or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt, with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture;

(5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that such provisions shall not materially and adversely affect the interest of the Owners of the Bonds;

(6) if the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture; and

(8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

## **Defeasance**

Bonds may be paid by the District in any of the following ways:

(a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem such Outstanding Bonds; or

(c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payments.

The District may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or

securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities described in clauses (i), (ii) or (v) of the definition thereof, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as required by the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

## APPENDIX D

### PROPOSED FORM OF CO-BOND COUNSEL OPINIONS

*Upon the delivery of the Series 2022 Bonds, Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, propose to render their final approving opinions with respect to the Series 2022 Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

#### **EAST BAY MUNICIPAL UTILITY DISTRICT (Alameda and Contra Costa Counties, California)**

\$ \_\_\_\_\_  
**Water System Revenue Bonds,  
Series 2022A (Green Bonds)**

\$ \_\_\_\_\_  
**Water System Revenue  
Refunding Bonds, Series 2022B-1**

\$ \_\_\_\_\_  
**Water System Revenue  
Refunding Bonds, Series 2022B-2**

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance of its \$ \_\_\_\_\_ aggregate principal amount of Water System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”), \$ \_\_\_\_\_ aggregate principal amount of Water System Revenue Refunding Bonds, Series 2022B-1 (the “Series 2022B-1 Bonds”) and \$ \_\_\_\_\_ aggregate principal amount of Water System Revenue Refunding Bonds, Series 2022B-2 (the “Series 2022B-2 Bonds” and, collectively with the Series 2022A Bonds and Series 2022B-1 Bonds, the “Series 2022 Bonds”). The Series 2022 Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended) and the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, as amended, and with respect to the Series 2022B-1 Bonds and Series 2022B-2 Bonds, Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”), and a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and the Trustee, providing for the issuance of the Series 2022 Bonds (collectively, the “Indenture”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In our capacity as co-bond counsel, we have reviewed the Act, the Indenture, the Tax Certificate executed and delivered by the District in connection with the issuance and delivery of the Series 2022 Bonds (the “Tax Certificate”), certifications of the District, the Trustee, and others, opinions of counsel to the District and the Trustee, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. We have assumed the genuineness of all documents and signatures

presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements in the Indenture and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause the interest (and original issue discount) on the Series 2022 Bonds to be included in gross income for federal income tax purposes. With respect to the opinions expressed herein, we call attention to the fact that the rights and obligations under the Series 2022 Bonds and the Indenture are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. Furthermore, the imposition of certain fees and charges by the District relating to the Water System is subject to the provisions of Articles XIIC and XIID of the California Constitution.

By delivering this letter, we are not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the Series 2022 Bonds or the Indenture, nor are we expressing any opinion with respect to the state or quality of title to or interest in any assets described in or as subject to the lien of the Indenture or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on any assets thereunder.

Based upon the foregoing and subject to the limitations and qualifications herein specified, as of the date hereof, we are of the opinion, under existing law, that:

1. The Series 2022 Bonds constitute the valid and binding special limited obligations of the District.
2. The Indenture has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the District. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Series 2022 Bonds, of the Subordinated Water Revenues of the District, and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.
3. The Series 2022 Bonds are special limited obligations of the District and are payable exclusively from and are secured by a pledge of Subordinated Water Revenues of the District and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein. The general fund of the District is not liable, and neither the credit nor taxing power of the District is pledged, for the payment of the Series 2022 Bonds or the interest thereon.
4. Other bonds and parity debt of the District have been and may from time to time hereafter be issued under the Indenture which are payable from Subordinated Water Revenues on a parity basis with the Series 2022 Bonds.
5. Under existing statutes, regulations, rulings and judicial decisions, the interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax

purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals.

6. The interest (and original issue discount) on the Series 2022 Bonds is exempt from State of California personal income tax.

7. The difference between the issue price of a Series 2022 Bond (the first price at which a substantial amount of the Series 2022 Bonds of a maturity are to be sold to the public) and the stated redemption price at maturity with respect to such Series 2022 Bond constitutes original issue discount. Original issue discount accrues under a constant yield method, and original issue discount will accrue to a Series 2022 Bond owner before receipt of cash attributable to such excludable income. The amount of original issue discount deemed received by a Series 2022 Bond owner will increase the Series 2022 Bond owner's basis in the applicable Series 2022 Bond. Original issue discount that accrues for the Series 2022 Bond owner is excluded from the gross income of such Series 2022 Bond owner for federal income tax purposes, is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals (as described in paragraph 5 above) and is exempt from State of California personal income tax.

8. The amount by which a Series 2022 Bond owner's original basis for determining loss on sale or exchange in the applicable Series 2022 Bonds (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier call date) constitutes amortizable bond premium, which must be amortized under Section 171 of the Internal Revenue Code of 1986, as amended (the "Code"); such amortizable bond premium reduces the Series 2022 Bond owner's basis in the applicable Series 2022 Bonds (and the amount of tax-exempt interest received), and is not deductible for federal income tax purposes. The basis reduction as a result of the amortization of bond premium may result in a Series 2022 Bond owner realizing a taxable gain when a Series 2022 Bond is sold by the owner for an amount equal to or less (under certain circumstances) than the original cost of the Series 2022 Bond to the owner.

The opinions expressed herein as to the exclusion from gross income of interest (and original issue discount) on the Series 2022 Bonds are based upon certain representations of fact and certifications made by the District and others and are subject to the condition that the District complies with all requirements of the Code, that must be satisfied subsequent to the issuance of the Series 2022 Bonds to assure that such interest (and original issue discount) will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause the interest (and original issue discount) to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2022 Bonds. The District has covenanted to comply with all such requirements.

The opinions expressed herein may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate permit certain actions to be taken or to be omitted if a favorable opinion of bond counsel is provided with respect thereto. No opinion is expressed herein as to the effect on the exclusion from gross income of interest (or original issue discount) for federal income tax purposes with respect to any Series 2022 Bonds if any such action is taken or omitted based upon the opinion or advice of counsel other than ourselves. Other provisions of the Code may give rise to adverse federal income tax consequences to particular Series 2022 Bond owners. Other than expressly stated herein, we express no other opinion regarding tax consequences with respect to the Series 2022 Bonds.

The opinions expressed and the statements made herein are based on an analysis of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such

authorities. Such opinions and statements may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this letter in light of such actions or events or for any other reason.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the official statement relating to the Series 2022 Bonds or other offering material relating to the Series 2022 Bonds and we expressly disclaim any duty to advise the owners of the Series 2022 Bonds with respect to matters contained in such official statement or other offering material.

This opinion is limited to the laws of the State of California and the federal laws of the United States. We assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction.

Respectfully submitted,

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E concerning The Depository Trust Company, New York, New York (“DTC”), and DTC’s book-entry system has been obtained from DTC and the District and the Trustee take no responsibility for the completeness or accuracy thereof. The District and the Trustee cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Series 2022 Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Series 2022 Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series 2022 Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The District and the Trustee are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Series 2022 Bonds or an error or delay relating thereto. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC’s Direct and Indirect Participants are on file with DTC.

DTC will act as securities depository for the Series 2022 Bonds. The Series 2022 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of each Series of the Series 2022 Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a S&P Global Ratings’ rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of Series 2022 Bonds under the DTC book-entry system must be made by or through Direct Participants, which will receive a credit for the Series 2022 Bonds on DTC’s records. The

ownership interest of each actual purchaser of each Series 2022 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2022 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2022 Bonds, except in the event that use of the book-entry system for the Series 2022 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2022 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2022 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2022 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2022 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2022 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2022 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2022 Bond documents. For example, Beneficial Owners of the Series 2022 Bonds may wish to ascertain that the nominee holding the Series 2022 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2022 Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2022 Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series 2022 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Series 2022 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the District or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Series 2022 Bonds to Cede & Co. (or such other nominee as may be requested by an authorized

representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2022 Bonds at any time by giving notice to the Trustee and the District. Under certain circumstances, in the event that a successor depository is not obtained, Series 2022 Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers for the Series 2022 Bonds through DTC (or a successor securities depository). In that event, Series 2022 Bond certificates will be printed and delivered as provided in the Indenture. In addition, the following provisions would apply: the principal or redemption price of the Series 2022 Bonds will be payable upon presentation thereof, at the principal corporate trust office of the Trustee, in San Francisco, California; interest on the Series 2022 Bonds will be payable by check mailed on each interest payment date to the registered owners thereof as shown on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the calendar month immediately preceding the applicable interest payment date (the “record date”), except that in the case of an owner of \$1,000,000 or more in aggregate principal amount of Series 2022 Bonds, upon written request of such owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date; and the Series 2022 Bonds will be transferable and exchangeable on the terms and conditions provided in the Indenture.

The information in this Appendix E concerning DTC and DTC’s book-entry system has been obtained from sources the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.

**APPENDIX F**  
**FORM OF CONTINUING DISCLOSURE AGREEMENT**

## APPENDIX G

### THE DISTRICT'S GREEN BOND GUIDANCE AND EXPECTED SERIES 2022A GREEN BOND PROJECTS

The District anticipates funding or reimbursing CIP expenditures for the Water System projects identified in the table below using proceeds of the Series 2022A Bonds. These projects were selected using the District's Guidance for Issuing Green Bonds, which was last approved by the District's Board on March 22, 2022. A complete copy of the District's Green Bond Guidance as approved by the District Board on March 22, 2022 is attached hereto.

The District's criteria are presented below in a numbered list for easier reference in the table below.

1. Maintain water quality
2. Improve water use efficiency, including conservation through reduced water loss
3. Improve biodiversity and ecosystem quality
4. Protect against flooding
5. Reduce pollution
6. Improve resilience (adaptation) to climate change
7. Reduce the combustion of fossil fuels
8. Reduce greenhouse gas emissions
9. Implement "reduce, reuse, recycle" practices in preference to raw materials
10. Adhere to sustainable purchasing guidelines

#### East Bay Municipal Utility District Expected Series 2022A Green Bond Projects

Project Name	Short Description	EBMUD Green Bond Criteria	Amount Funded
Treatment Plant Upgrades	The project supports compliance with water quality regulations and improves the safety, reliability, and operation of the water treatment plants. Work included under this project includes design completion and the start of construction of the Orinda Water Treatment Plant ("WTP") filter air scour, Sobrante WTP control system modernization, and other improvements for chemical safety and reliability.	1, 2, 5, 6	\$40.9 million
Open Cut Reservoir Program	Open-cut reservoir rehabilitation, replacement, and demolition projects are necessary to remove hazardous materials, reduce maintenance costs, improve safety, and improve water quality by optimizing storage in the distribution system.	1, 2, 5	\$21.7 million

*(chart continued on next page)*

**East Bay Municipal Utility District  
Expected Series 2022A Green Bond Projects  
(continued)**

<b>Project Name</b>	<b>Short Description</b>	<b>EBMUD Green Bond Criteria</b>	<b>Amount Funded</b>
Reservoir Rehabilitation and Maintenance	This project is needed to rehabilitate, replace, and decommission reservoirs to maximize the utility of the distribution reservoirs and improve water quality. This project includes the rehabilitation and replacement of the 165 steel, concrete, and redwood reservoirs and pressure vessels to maintain the existing infrastructure, improve roof safety, improve water quality, and prioritize work through the Infrastructure Rehabilitation Plan.	1, 2	\$20.8 million
Raw Water Infrastructure	The project is needed to maintain the integrity of the raw water system, facilitate effective and rapid response following an emergency, and improve the function of the system.	1, 2	\$3.7 million
Water Loss Control	This project implements compliance measures associated with California Senate Bill 555, Water Loss Management. The project is composed of activities to reduce apparent and real water losses through meter replacement, leak detection, and pressure management. Accomplishments in Fiscal Year 2020-21 include doubling the size of the automated acoustic leak detection network, meeting the key performance indicator for the infrastructure leakage index, completion of a Metering Improvements Plan, and commencement of the first water loss control master plan.	1, 2	\$3.5 million
Pressure Zone Improvements	Identify, schedule, and coordinate improvements to Distribution System facilities and pipelines to meet level of service standards, improve system reliability, improve water quality, minimize maintenance, and replace or rehabilitate aging infrastructure.	1, 2	\$3.3 million
West of Hills Master Plan	The project is needed to improve water transmission and water treatment plant capacities to address deficiencies and meet future water demands in the West of Hills distribution system, decommission the San Pablo WTP, and relocate the Fontaine Pumping Plant in Oakland away from the Hayward Fault.	1, 2, 4, 6	\$2.4 million
Distribution System Cathodic Protection	Regular upgrades to cathodic protection systems are needed to reduce maintenance costs and extend the useful life of the water mains. This recurring project is to repair or replace cathodic protection units for mortar lined and coated steel or mortar lined and plastic coated steel distribution water mains.	2, 9	\$2.2 million
		<b>Total<sup>(1)</sup></b>	<b>\$142.1 million</b>

<sup>(1)</sup> Totals may exceed the expected project fund deposit and may not add due to rounding.

Source: The District.

The proceeds of the Series 2022A Bonds (exclusive of amounts applied to pay costs of issuance and other costs related to the issuance of the Series 2022 Bonds and refunding of the Refunded Bonds) are to be allocated to costs of the projects identified above. Because proceeds of the Series 2022A Bonds will be applied to reimburse the District for prior expenditures made in connection with the projects identified above, the District does not intend to undertake any further tracking of and reporting on the use of the proceeds of the Series 2022A Bonds. See also “PLAN OF FINANCE” and “ESTIMATED SOURCES AND USES OF FUNDS” in the front part of this Official Statement and “THE WATER SYSTEM – Capital Improvement Program” in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)” to this Official Statement.

The District’s Green Bond Guidance as most recently approved by the Board follows on the next page.

[Remainder of page intentionally left blank.]

[INSERT DISTRICT GREEN BOND GUIDANCE DOCUMENT]

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THIRTIETH SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
as Successor Trustee

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Dated as of June 1, 2022

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

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

\$ \_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Water System Revenue Bonds,  
Series 2022A (Green Bonds)  
and  
\$ \_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Water System Revenue Refunding Bonds,  
Series 2022B

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This Thirtieth Supplemental Indenture, dated as of June 1, 2022 (the “Thirtieth Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”);

W I T N E S S E T H :

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

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

WHEREAS, the District has previously authorized the issuance of up to \$653,000,000 of water system revenue bonds, pursuant to Resolution No. 34031-15 adopted by the Board on April 28, 2015, and as of the date hereof, \$50,590,000 of such Water System Bonds have been issued under and pursuant to the authority of Resolution No. 34031-15;

WHEREAS, in accordance with the Indenture there has been issued, among other Bonds, (i) \$322,525,000 aggregate principal amount of Water System Revenue Refunding Bonds, Series 2008A (the “Series 2008A Bonds”), comprised of subseries Series 2008A-1, Series 2008A-2, Series 2008A-3 and Series 2008A-4, pursuant to the Thirteenth Supplemental Indenture, dated as of March 1, 2008, as amended by the First Amendment to Thirteenth Supplemental Indenture, dated as of October 1, 2013, between the District and the Trustee, of which \$105,250,000 principal amount is Outstanding as of the date hereof; and (ii) \$191,750,000 aggregate principal amount of Water System Revenue Refunding Bonds, Series 2012A (the “Series 2012A Bonds”), pursuant to the Twentieth Supplemental Indenture, dated as of October 1, 2012, between the District and the Trustee, of which \$81,750,000 principal amount is Outstanding as of the date hereof;

WHEREAS, the District has determined to issue its Water System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”) in the aggregate principal amount of \$\_\_\_\_\_, pursuant to this Thirtieth Supplemental Indenture for the purpose of providing moneys to finance and/or reimburse the District for certain costs of various capital improvements to the Water System of the District and to pay the Costs of Issuance related to the Series 2022A Bonds, all of which is being issued under and pursuant to the authority of Resolution No. 34031-15;

WHEREAS, the District has determined to issue its Water System Revenue Refunding Bonds, Series 2022B (the “Series 2022B Bonds”) in the aggregate principal amount of \$\_\_\_\_\_, comprised of \$\_\_\_\_\_ aggregate principal amount of Water Revenue Refunding Bonds, Series 2022B-1 and \$\_\_\_\_\_ aggregate principal amount of Water Revenue Refunding Bonds, Series 2022B-2 pursuant to this Thirtieth Supplemental Indenture for the purpose of providing moneys to refund the Outstanding Series 2012A Bonds and the Outstanding Series 2008A Bonds, terminate interest rate swap agreements associated with the Series 2008A Bonds, and to pay the Costs of Issuance related to the Series 2022B Bonds;

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

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

## ARTICLE XLV

### SERIES 2022 BONDS

SECTION 45.01 Definitions. The terms defined in this Section shall, for all purposes of this Thirtieth Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2022 Bond (including any Person holding a Series 2022 Bond through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2022 Bond for federal income tax purposes.

“Book-Entry System” means the system maintained by the Securities Depository and described in Section 45.03 hereof.

“Closing Date” means the date of delivery of the Series 2022 Bonds to the Representative of the Underwriters, against payment therefor, such date being \_\_\_\_\_, 2022.

“Continuing Disclosure Agreement” means any continuing disclosure agreement entered into by the District and Digital Assurance Certification, LLC, as dissemination agent, in connection with the Series 2022 Bonds in order to comply with the continuing disclosure requirements promulgated under Securities Exchange Commission Rule 15c2-12.

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

“Representation Letter” means the Letter of Representations from the District to DTC relating to the Book-Entry System for the Series 2022 Bonds.

“Representative” means BofA Securities, Inc., as representative of the Underwriters of the Series 2022 Bonds.

“Securities Depository” means DTC or, if applicable, any successor securities depository appointed pursuant to Section 45.03 hereof.

“Securities Depository Participant” means any broker-dealer, bank or other financial institution for which a Securities Depository holds Series 2022 Bonds as Securities Depository from time to time.

“Series 2008A Bonds” means the District’s Water System Revenue Refunding Bonds, Series 2008A, currently outstanding in \$105,250,000 aggregate principal amount.

“Series 2008A Bonds Redemption Account” means the account by that name established pursuant to Section 45.15(A) hereof.

“Series 2012A Bonds” means the District’s Water System Revenue Refunding Bonds, Series 2012A, currently outstanding in \$81,750,000 aggregate principal amount.

“Series 2012A Bonds Redemption Account” means the account by that name established pursuant to Section 45.15(B) hereof.

“Series 2022 Bonds” means the Series 2022A Bonds and the Series 2022B Bonds, as described in Section 45.02.

“Series 2022A (Green Bonds) Water System Fund” means the fund by that name established pursuant to Section 45.13 hereof.

“Series 2022A Bonds” means the East Bay Municipal Utility District Water System Revenue Bonds, Series 2022A (Green Bonds).

“Series 2022AB Cost of Issuance Fund” means the fund by that name established pursuant to Section 45.14 hereof.

“Series 2022B Bonds” means the Series 2022B-1 Bonds and the Series 2022B-2 Bonds.

“Series 2022B-1 Bonds” means the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B-1.

“Series 2022B-2 Bonds” means the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B-2.

SECTION 45.02      Authorization.

(A)    Designation of Bonds. A thirty-sixth, thirty-seventh and thirty-eighth Series of Bonds to be issued under the Indenture is hereby created. These Series of Bonds shall be known as: (i) the “East Bay Municipal Utility District Water System Revenue Bonds, Series 2022A (Green Bonds)” (herein referred to as the “Series 2022A Bonds”); (ii) the “East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B-1” (herein referred to as the “Series 2022B-1 Bonds”) and (iii) the “East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B-2” (herein referred to as the “Series 2022B-2 Bonds”). The Series 2022A Bonds shall be issued in the aggregate principal amount of \$ \_\_\_\_\_. The Series 2022B-1 Bonds shall be issued in the aggregate principal amount of \$ \_\_\_\_\_. The Series 2022B-2 Bonds shall be issued in the aggregate principal amount of \$ \_\_\_\_\_.

The Series 2022 Bonds shall be issued in accordance with the Act and pursuant to Resolution No. \_\_\_\_\_ adopted by the Board on \_\_\_\_\_, 2022, and this Thirtieth Supplemental Indenture. The Series 2022A Bonds shall be issued for the purpose of (i) financing certain costs (including by reimbursement of such costs to the District) of various capital improvements to the Water System of the District, and (ii) paying Costs of Issuance in connection with the delivery of the Series 2022A Bonds. The Series 2022B Bonds shall be issued for the purpose of providing moneys, together with certain other funds to be made available upon the delivery thereof, to (i) refund all [or a portion] of the Outstanding Series 2012A Bonds and all of the Outstanding Series 2008A Bonds; (ii) fund the costs of terminating certain interest rate swap agreements of the District relating to the Series 2008A Bonds to be refunded; and (iii) pay Costs of Issuance in connection with the delivery of the Series 2022B Bonds.

The Series 2022 Bonds shall be Current Interest Indebtedness.

(B)    Registered Form. Each Series of the 2022 Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.,” as nominee of DTC in accordance with Section 45.03 hereof. The Series 2022 Bonds of each Series shall be evidenced by one bond maturing on each maturity date of the Series 2022 Bonds of such Series as set forth in Section 45.02(C) hereof. The Series 2022 Bond of each Series may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series 2022 Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 45.03 hereof.

(C)    Maturities; Interest Rates; Denominations.

(1)    Series 2022A Bonds. The Series 2022A Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum, and shall mature on June 1 in the following years in the following amounts:

Series 2022A Bonds

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

(2) Series 2022B-1 Bonds. The Series 2022B-1 Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rate per annum, and shall mature on June 1 in the following year in the following amounts:

Series 2022B-1 Bonds

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

(3) Series 2022B-2 Bonds. The Series 2022B-2 Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rate per annum, and shall mature on June 1 in the following year in the following amounts:

Series 2022B-2 Bonds

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

Interest on the Series 2022 Bonds of each Series shall be payable semiannually on June 1 and December 1 of each year, commencing on December 1, 2022, by check mailed by first-class mail on each interest payment date to the Owners thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of Series 2022 Bonds of a Series, upon written request of such Owner to the Trustee received at least ten (10) days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. Interest on the Series 2022 Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2022 Bonds are payable when due upon presentation thereof at the corporate trust office of the Trustee in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

So long as the Series 2022 Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer in accordance with mutually satisfactory arrangements between the Trustee and the Securities Depository.

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

SECTION 45.03      Book Entry System. The Series 2022 Bonds shall be initially issued registered in the name of “Cede & Co.,” as nominee for DTC and registered Owner thereof, and held in the custody of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for the maturity of the Series 2022 Bonds of each Series, and the Beneficial Owners will not receive physical delivery of bond certificates for the Series 2022 Bonds except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series 2022 Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series 2022 Bonds will receive, hold or deliver any Series 2022 Bond certificate.

At the written direction of the District, with notice to the Trustee, but without the consent of the Owners of the Series 2022 Bonds or the Trustee, the District, may appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book-Entry System for the Series 2022 Bonds not inconsistent with the provisions of the Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The District and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Securities Depository Participants in the Book-Entry System with respect to the Series 2022 Bonds and (ii) a certificate of any such Securities Depository Participant as to the identity of, and the respective principal amount of the Series 2022 Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series 2022 Bonds, the beneficial ownership thereof is determined by a book-entry at the Securities Depository, the requirements in the Indenture of holding, delivering or transferring the Series 2022 Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Series 2022 Bonds shall, while the Series 2022 Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in the Indenture and the Series 2022 Bonds with respect to the rights of Securities Depository Participants and Beneficial Owners, when a Book-Entry System is in effect, the District and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series 2022 Bonds registered in its name for the purposes of payment of the principal of and interest on the Series 2022 Bonds or portion thereof to be redeemed or purchased, and of giving any notice permitted or required to be given to the Owners of Series 2022 Bonds under the Indenture, and neither the District nor the Trustee shall be affected by any notice to the contrary. Neither the District nor the Trustee will have any responsibility or obligation to the Securities Depository, any Securities Depository Participant, any Beneficial Owner or any other Person which is not shown on the registration books required to be maintained by the Trustee, with respect to: (i) the accuracy of any records maintained by the Securities Depository or any Securities Depository Participant; (ii) the payment by the Securities Depository or by any Securities Depository Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or purchase price (if applicable) of, or interest on, any Series 2022 Bonds; (iii) the delivery of any notice by the Securities Depository or any Securities Depository Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series 2022 Bonds; or (v) any other action taken by the Securities Depository or any Securities Depository Participant. The Trustee shall pay all principal of and interest on the Series 2022 Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository, and all such payments shall be valid and effective to fully satisfy and discharge the District’s obligations with respect to the principal of and interest on such Series 2022 Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the District, at the direction and expense of the District, and the District and the Trustee will cause the delivery of

Series 2022 Bond certificates to such Beneficial Owners of the Series 2022 Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(i) The Securities Depository determines to discontinue providing its service with respect to the Series 2022 Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving thirty (30) days' notice to the District and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

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

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

So long as any Series 2022 Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Series 2022 Bond and all notices with respect to such Series 2022 Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

In the event of a redemption or any other transaction necessitating a reduction in aggregate principal amount of any Series 2022 Bond Outstanding, DTC in its discretion: (a) may request the District and the Trustee to issue and authenticate a new Series 2022 Bond certificate; or (b) shall make an appropriate notation on the Series 2022 Bond certificate indicating the date and amounts of such reduction in principal, except in the case of final maturity, in which case the certificate must be presented to the Trustee prior to payment.

Prior to any transfer of the Bonds outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

#### SECTION 45.04      Redemption of Series 2022 Bonds.

##### (A)      Series 2022A Bonds.

(1)      Optional Redemption. The Series 2022A Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2022A Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(2) Mandatory Sinking Account Redemption. The Series 2022A Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section 45.09(A), commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

(B) Series 2022B-1 Bonds.

(1) Optional Redemption. The Series 2022B-1 Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2022B-1 Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022B-1 Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(2) Mandatory Sinking Account Redemption. The Series 2022B-1 Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section 45.09(B), commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

(C) Series 2022B-2 Bonds.

(1) No Optional Redemption. The Series 2022B-2 Bonds are not subject to optional redemption prior to maturity.

(2) Mandatory Sinking Account Redemption. The Series 2022B-2 Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section 45.09(C), commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

SECTION 45.05 Selection of Series 2022 Bonds for Redemption. Whenever provision is made in this Thirtieth Supplemental Indenture for the redemption of less than all of the Series 2022 Bonds of a Series, the maturities of the Series 2022 Bonds of such Series to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series 2022 Bonds of a Series of any maturity, the Trustee shall select the Series 2022 Bonds of such Series of such maturity to be redeemed, from all Series 2022 Bonds of the respective Series not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion shall deem appropriate and fair. The Trustee shall promptly notify the District in writing of the Series 2022 Bonds so selected for redemption.

SECTION 45.06 Notice of Redemption of Series 2022 Bonds. The District shall notify the Trustee at least twenty-five (25) days prior to the redemption date for any Series 2022 Bonds pursuant to Section 45.04(A) and Section 45.04(B) (or such shorter time as may be agreed to by the Trustee). Notice of redemption shall be given by the Trustee, not less than twenty (20)

nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series 2022 Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, (ii) to the Securities Depository by electronic means of communication or by first-class mail, and (iii) to the Electronic Municipal Market Access System (referred to as “EMMA”), a facility of the Municipal Securities Rulemaking Board, at [www.emma.msrb.org](http://www.emma.msrb.org), by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Notice of redemption shall be given in the form and otherwise in accordance with the terms of the Indenture and this Thirtieth Supplemental Indenture.

In the event of an optional redemption of Series 2022A Bonds or Series 2022B-1 Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of such Series of Series 2022 Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

SECTION 45.07      Partial Redemption of Series 2022 Bonds. Upon surrender of any Series 2022 Bond redeemed in part only, the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Series 2022 Bond of authorized denominations, and of the same Series, maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2022 Bond surrendered.

SECTION 45.08      Effect of Redemption of Series 2022 Bonds. If notice of redemption has been duly given pursuant to Section 45.06, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2022 Bonds (or portions thereof) so called for redemption is held by the Trustee, on the redemption date designated in such notice, the Series 2022 Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the date fixed for redemption, interest on the Series 2022 Bonds so called for redemption shall cease to accrue, the Series 2022 Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of the Series 2022 Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price and accrued interest.

All Series 2022 Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION 45.09      Series 2022 Sinking Accounts.

(A)      Series 2022A Sinking Account. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series 2022A Sinking Account.” On each Business Day prior to the following payment dates, from amounts transferred by the District to the Trustee for deposit in the Principal Fund, the Trustee shall set aside in the Series 2022A Sinking Account therein an amount equal to the Mandatory Sinking Account Payment due on such date as set forth below:

**Series 2022A Term Bonds Due June 1, 20\_\_**

Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments
_____	_____
_____	_____
_____	_____
_____†	_____
_____	_____
_____	
† Final Maturity.	

Upon an optional redemption of a portion of any Series 2022A Term Bonds pursuant to Section 45.04(A)(1), the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such Series 2022A Term Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

Moneys in the Series 2022A Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

(B) Series 2022B-1 Sinking Account. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series 2022B-1 Sinking Account.” On each Business Day prior to the following payment dates, from amounts transferred by the District to the Trustee for deposit in the Principal Fund, the Trustee shall set aside in the Series 2022B-1 Sinking Account therein an amount equal to the Mandatory Sinking Account Payment due on such date as set forth below:

**Series 2022B-1 Term Bonds Due June 1, 20\_\_**

Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments
_____	_____
_____	_____
_____	_____
_____†	_____
_____	_____
_____	
† Final Maturity.	

Upon an optional redemption of a portion of any Series 2022B-1 Term Bonds pursuant to Section 45.04(B)(2), the District shall provide the Trustee with a revised schedule of the foregoing

Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such Series 2022B-1 Term Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

Moneys in the Series 2022B-1 Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

(C) Series 2022B-2 Sinking Account. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series 2022B-2 Sinking Account.” On each Business Day prior to the following payment dates, from amounts transferred by the District to the Trustee for deposit in the Principal Fund, the Trustee shall set aside in the Series 2022B-2 Sinking Account therein an amount equal to the Mandatory Sinking Account Payment due on such date as set forth below:

**Series 2022B-2 Term Bonds Due June 1, 20\_\_**

Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments
_____	_____
_____	_____
_____	_____
_____†	_____
_____	_____
_____	

† Final Maturity.

Moneys in the Series 2022B-2 Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

SECTION 45.10 Form of Series 2022 Bonds. The Series 2022 Bonds of each Series and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series 2022A Bond letters and numbers, maturity dates, principal amounts and interest rates shall be inserted therein in conformity with Section 45.02.

SECTION 45.11 Issuance of Series 2022 Bonds. Upon the execution and delivery of this Thirtieth Supplemental Indenture, the District shall execute and the Trustee shall authenticate and deliver the Series 2022A Bonds in the aggregate principal amount of \$\_\_\_\_\_ and \$\_\_\_\_\_ aggregate principal amount of Series 2022B Bonds, comprised of \$\_\_\_\_\_ aggregate principal amount of Series 2022B-1 Bonds and \$\_\_\_\_\_ aggregate principal amount of Series 2022B-2 Bonds, on the Closing Date therefor upon an Order of the District.

SECTION 45.12 Application of Proceeds of Series 2022 Bonds. The net proceeds of the Series 2022 Bonds in the aggregate amount of \$\_\_\_\_\_ shall be received by the Trustee on behalf of the District and deposited in the Series 2022 Bond Proceeds Account (which the Trustee shall establish and hold in trust for such purpose). The Trustee shall deposit or transfer such net

proceeds received with respect to the Series 2022A Bonds and Series 2022B Bonds as set forth below in this Section 45.12.

(A) Series 2022A Bonds. The net proceeds of the sale of the Series 2022A Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series 2022A Bonds plus \$\_\_\_\_\_ original issue premium, less \$\_\_\_\_\_ of Underwriters' discount), shall be applied by the Trustee as follows:

(i) \$\_\_\_\_\_ of net proceeds from the sale of the Series 2022A Bonds shall be transferred to the District for deposit in the Series 2022A (Green Bonds) Water System Fund to be used in accordance with Section 45.13(A); and

(ii) The remaining proceeds in the amount of \$\_\_\_\_\_ shall be deposited in the Series 2022AB Costs of Issuance Fund to be applied to pay Cost of Issuance of the Series 2022A Bonds in accordance with Section 45.14.

(B) Series 2022B-1 Bonds. The net proceeds of the sale of the Series 2022B-1 Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series 2022B-1 Bonds plus \$\_\_\_\_\_ [net] original issue premium, less \$\_\_\_\_\_ of Underwriters' discount), together with \$\_\_\_\_\_ contributed by the District, or a total of \$\_\_\_\_\_, shall be applied by the Trustee as follows:

(i) \$\_\_\_\_\_ of the net proceeds from the sale of the Series 2022B-1 Bonds, [together with \$\_\_\_\_\_ contributed by the District,] for a total of \$\_\_\_\_\_, shall be deposited by the Trustee into the Series 2012A Bonds Redemption Account to be applied in accordance with Section 45.15(A); and

(ii) The remaining proceeds in the amount of \$\_\_\_\_\_ shall be deposited in the Series 2022AB Costs of Issuance Fund to be applied to pay Costs of Issuance of the 2022 Series B-1 Bonds in accordance with Section 45.14.

(C) Series 2022B-2 Bonds. The net proceeds of the sale of the Series 2022B-2 Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series 2022B-2 Bonds, less [net] original issue discount of \$\_\_\_\_\_, less \$\_\_\_\_\_ of Underwriters' discount), shall be applied by the Trustee as follows:

(i) \$\_\_\_\_\_ of the net proceeds from the sale of the Series 2022B-2 Bonds, together with the \$\_\_\_\_\_ on deposit in the Series 2008A Bond Reserve Account of the Series 2008 Bond Reserve Fund for the Series 2008A Bonds to be redeemed [and \$\_\_\_\_\_ contributed by the District,] or a total of \$\_\_\_\_\_, shall be deposited by the Trustee in the Series 2008A Bonds Redemption Account to be applied in accordance with Section 45.15(B); and

(ii) \$\_\_\_\_\_ of the proceeds from the sale of the Series 2022B-2 Bonds [, together with \$\_\_\_\_\_ contributed by the District,] shall be transferred by the Trustee in accordance with a written Request of the District to fund costs of terminating certain outstanding interest rate swap agreements of the District relating to the Series 2008A Bonds being refunded; and

(iii) The remaining proceeds in the amount of \$\_\_\_\_\_ shall be deposited in the Series 2022 AB Costs of Issuance Fund to be applied to pay Costs of Issuance of the Series 2022B-2 Bonds in accordance with Section 45.14.

**SECTION 45.13      Establishment and Application of Series 2022A (Green Bonds) Water System Fund.**

(A) The District shall establish, maintain and hold in trust a separate fund designated as the “Series 2022A (Green Bonds) Water System Fund.”. The moneys on deposit in the Series 2022A (Green Bonds) Water System Fund shall be used and withdrawn by the District to pay (or to reimburse the District for the payment of) costs of construction, reconstruction, replacement, acquisition or improvement of any facility or facilities necessary or convenient for the storage, transmission or distribution of water; or incidental to, or in connection with, the operation of the Water System which the District has determined to be a project appropriate for “green bond” funding, or to pay or reimburse the District for interest on the Series 2022A Bonds during the respective construction periods for the improvements to the Water System funded by the Series 2022A Bonds.

(B) Moneys on deposit in the Series 2022A (Green Bonds) Water System Fund may be invested in (i) Investment Securities, (ii) investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt of the guarantor of which, or, in the case of a monoline financial guaranty insurance company, the claims paying ability of which, is rated on the date of execution of such investment agreement not lower than “Aa2” by Moody’s (if Moody’s is then rating any of the District’s Outstanding Bonds) and “AA” by Standard & Poor’s (if Standard & Poor’s is then rating any of the District’s Outstanding Bonds), or (iii) the Local Agency Investment Fund (as that term is defined in Section 16429.1 of the California Government Code, as such section may be amended or recodified from time to time), and with a term so as to provide moneys when needed for payments to be made therefrom. Interest, profit or other income derived from the investment of moneys held in the Series 2022A (Green Bonds) Water System Fund shall be credited to such Fund. Interest, profit or other income derived from the investment of moneys held in the Series 2022A (Green Bonds) Water System Fund may also be transferred to the Trustee for deposit in the Rebate Fund in an amount determined by the District to be required.

**SECTION 45.14      Establish and Application of the Series 2022AB Costs of Issuance Fund.** The Trustee shall establish and maintain in trust a separate fund designated as the “Series 2022AB Costs of Issuance Fund.” Moneys deposited in said fund as provided in Section 45.12 hereof shall be used to pay costs of issuance of the Series 2022 Bonds and the expenses and obligations payable by the District in connection therewith, upon receipt by the Trustee of a Requisition of the District in substantially the form set forth as Exhibit B heretostating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. At the end of one hundred and eighty (180) days from the date of initial delivery of the Series 2022 Bonds (i.e. \_\_\_\_\_, 2022), or upon earlier direction of the District stating that amounts in said fund are no longer required for the payment of such costs, expenses and obligations, said fund shall be terminated and any amounts then remaining in said fund shall be transferred by the Trustee to the Interest Fund to be applied to pay interest on the Series 2022 Bonds.

SECTION 45.15      Establishment and Application of the Redemption Accounts.

(A)      An Account is hereby established within the Redemption Fund created by Section 5.05 of the Indenture to be held in trust by the Trustee and designated the “Series 2012A Bonds Redemption Account.” The moneys deposited in the Series 2012A Bonds Redemption Account shall be applied by the Trustee on the Closing Date to pay the Redemption Price (*i.e.*, 100% of the principal amount thereof, without premium) of the Outstanding Series 2012A Bonds to be redeemed on such date, and accrued interest thereon to such date of redemption.

(B)      An Account is hereby established within the Redemption Fund created by Section 5.05 of the Indenture to be held in trust by the Trustee and designated the “Series 2008A Bonds Redemption Account.” The moneys deposited in the Series 2008A Bonds Redemption Account shall be applied by the Trustee on the Closing Date to pay the Redemption Price (*i.e.*, 100% of the principal amount thereof, without premium) of the Outstanding Series 2008A Bonds to be redeemed on such date, and accrued interest thereon to such date of redemption.

SECTION 45.16      Continuing Disclosure. The District hereby covenants and agrees that it will comply with and carry out all of its respective obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the District to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Series 2022 Bondholder or Beneficial Owner or the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% of the aggregate principal amount of Outstanding Series 2022 Bonds and upon provision of indemnification satisfactory to the Trustee, shall) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District, as the case may be, to comply with its obligations under this Section 45.15.

SECTION 45.17      Terms of Series 2022 Bonds Subject to the Indenture. Except as in this Thirtieth Supplemental Indenture expressly provided, every term and condition contained in the Indenture shall apply to this Thirtieth Supplemental Indenture and to the Series 2022 Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Thirtieth Supplemental Indenture.

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

SECTION 45.18      Effective Date of Thirtieth Supplemental Indenture. This Thirtieth Supplemental Indenture shall take effect upon its execution and delivery.

SECTION 45.19      Execution in Counterparts. This Thirtieth Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Sophia D. Skoda  
Director of Finance

ATTEST:

By: \_\_\_\_\_  
Rischa S. Cole  
Secretary of the District

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Vice President

EXHIBIT A

(FORM OF SERIES 2022 BOND)

No. \_\_\_\_\_

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

EAST BAY MUNICIPAL UTILITY DISTRICT  
(ALAMEDA AND CONTRA COSTA COUNTIES, CALIFORNIA)  
WATER SYSTEM REVENUE [REFUNDING] BOND,  
SERIES 2022[A (GREEN BONDS)][B-1][B-2]

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

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
June 1, 20__	_____, 2022	____%	271014__

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Subordinated Water Revenues and funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal amount specified above together with interest thereon from its Dated Date until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on December 1, 2022, and semiannually thereafter on June 1 and December 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first-class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of the hereinafter described Series 2022[A][B-1][B-2] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall

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

This Bond is one of a duly authorized issue (of the series and designation indicated on the face hereof) of Water System Revenue Bonds of the District issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, between the Trustee and the District, providing for the issuance of said bonds (the “Bonds”). Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Water System Subordinated Revenue Bond Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Water System Subordinated Revenue Bond Indenture provided, all issued and to be issued pursuant to the provisions of the Act (as defined in the Water System Subordinated Revenue Bond Indenture). This Bond is issued pursuant to the Water System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022, between the Trustee and the District, authorizing the issuance of the series of bonds designated “Water System Revenue [Refunding] Bonds, Series 2022[A (Green Bonds)][B-1][B-2]”, of which this Bond is one, such series being herein referred to as the “Series 2022[A][B-1][B-2] Bonds” (the Water System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by the Thirtieth Supplemental Indenture, being herein collectively referred to as the “Indenture”). Reference is hereby made to the Indenture and to the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Subordinated Water Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

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

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

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

The Series 2022[A][B-1][B-2] Bonds are being issued by means of a Book-Entry System with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to each date on which the Series 2022[A][B-1][B-2] Bonds are stated to mature, registered in the name of the Cede & Co, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The Book-Entry System will evidence positions held in the Series 2022[A][B-1][B-2] Bonds by the Securities Depository Participants, beneficial ownership of the Series 2022[A][B-1][B-2] Bonds in authorized denominations being evidenced in the records of such Securities Depository Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Securities Depository Participants pursuant to rules and procedures established by the Securities Depository and its Securities Depository Participants. The District and the Trustee will recognize Cede & Co., while the registered owner of this Series 2022[A][B-1][B-2] Bond, as the owner of this Series 2022[A][B-1][B-2] Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on this Series 2022[A][B-1][B-2] Bond and (ii) notices. Transfer of principal, interest and any redemption premium payments to Securities Depository Participants, and transfer of principal, interest and any redemption premium payments to Beneficial Owners of the Series 2022[A][B-1][B-2] Bonds by Securities Depository Participants will be the responsibility of such Securities Depository Participants and other nominees of such Beneficial Owners. The District will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, Cede & Co., its Securities Depository Participants or persons acting through such Securities Depository Participants. While Cede & Co. is the registered owner of this Series 2022[A][B-1][B-2] Bond, notwithstanding any other provision hereof, payments of principal of, redemption premium, if any, and interest on this Series 2022[A][B-1][B-2] Bond shall be made in accordance with existing arrangements between the Trustee or its successors under the Indenture and the Securities Depository.

*{To be included in Series 2022A Bonds}* [The Series 2022A Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series 2022A Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

*{To be included in Series 2022B-1 Bonds}* [The Series 2022B-1 Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022B-1 Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.]

The Series 2022B-1 Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

*{To be included in Series 2022B-2 Bonds}* [The Series 2022B-2 Bonds are not subject to redemption prior to their stated maturities.]

The Series 2022B-2 Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate trust office of the Trustee in San Francisco, California, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange hereof.

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

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

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

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

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

IN WITNESS WHEREOF, EAST BAY MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the President of the Board of Directors and attested by its Secretary, and this Bond to be dated as of the \_\_th day of \_\_\_\_\_, 2022.

EAST BAY MUNICIPAL UTILITY DISTRICT

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

Attested:

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

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

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

Dated: \_\_\_\_\_, 2022

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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

[FORM OF ASSIGNMENT]

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

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

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

Signature Guaranteed by:

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

EXHIBIT B  
(FORM OF REQUISITION)

**REQUISITION NO. \_\_\_\_**

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)

\$ \_\_\_\_\_  
**Water System Revenue Bonds,  
Series 2022A (Green Bonds)**

\$ \_\_\_\_\_  
**Water System Revenue  
Refunding Bonds, Series 2022B-1**

\$ \_\_\_\_\_  
**Water System Revenue  
Refunding Bonds, Series 2022B-2**

**Series 2022AB Costs of Issuance Fund**

Dated: \_\_\_\_\_, 2022

TO: U.S. Bank Trust Company, National Association, as Trustee

The undersigned hereby certifies as follows:

1. I am the [Director of Finance][Treasury Manager] of the East Bay Municipal Utility District, a municipal utility district duly organized and existing under and by virtue of the laws of the State of California (the “District”).
2. I am a duly authorized representative of the District under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, including as amended and supplemented by the Thirtieth Supplemental Indenture, dated as of June 1, 2022 (the “Thirtieth Supplemental Indenture” and as so amended and supplemented, the “Indenture”), by and between the District and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”), and I am delivering this Requisition on behalf of the District.
3. The undersigned hereby authorizes payment of the amounts specified in Attachment 1 hereto to the persons identified in Attachment 1, such amounts to be paid from the Series 2022AB Costs of Issuance Fund pursuant to Section 45.14 of the Thirtieth Supplemental Indenture.
4. The undersigned hereby certifies that: (i) obligations in the amounts stated in Attachment 1 have been incurred by the District and are presently due and payable; (ii) each item is a proper charge against the Series 2022AB Costs of Issuance Fund for the general classification indicated in Attachment 1 therefor; and (iii) each item has not been previously paid from the Series 2022AB Costs of Issuance Fund.

Dated as of the date first written above.

EAST BAY MUNICIPAL UTILITY DISTRICT

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

[Signature Page to Requisition No. \_\_, Series 2022AB Costs of Issuance Fund]

**ATTACHMENT 1**

**Series 2022AB Costs of Issuance Fund**

**Payee**

**Amount**

**Purpose**

**CONTINUING DISCLOSURE AGREEMENT**

This Continuing Disclosure Agreement (this “Disclosure Agreement”), dated \_\_\_\_\_, 2022, is executed and delivered by the East Bay Municipal Utility District (the “District”) and Digital Assurance Certification, LLC (the “Dissemination Agent”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Water System Revenue Bonds, Series 2022A (Green Bonds) \$\_\_\_\_\_ aggregate principal amount of Water System Revenue Refunding Bonds, Series 2022B-1 and \$\_\_\_\_\_ aggregate principal amount of Water System Revenue Refunding Bonds, Series 2022B-2 (collectively, the “Bonds”). The Bonds are being issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and U.S. Bank Trust Company, National Association as successor trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the Thirtieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Bonds (collectively, the “Indenture”). In connection therewith, the District and the Trustee covenant and agree as follows:

Section 1. Purpose of this Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the District and the Dissemination Agent for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter (as defined herein) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Director of Finance or the Treasury Manager of the District or a designee of the Director of Finance, or such other officer or employee as the District shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean Digital Assurance Certification, LLC, or any successor dissemination agent designated in writing by the District and which has filed a written acceptance of such designation.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Holder” shall mean either the registered owners of the Bonds or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the Official Statement for the Bonds dated \_\_\_\_\_, 2022, as it may be updated prior to the delivery of the Bonds.

“Participating Underwriter” shall mean any of the underwriters of the Bonds listed on the cover page of the Official Statement required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

### Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than December 31 of each year in which the Bonds are outstanding, commencing with the Annual Report for the 2021-22 Fiscal Year (which is due not later than December 31, 2022), provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that if the audited financial statements of the District are not available by the date required above for the filing of the Annual Report, the District shall submit the audited financial statements as soon thereafter as available. If the District’s Fiscal Year changes, the District shall give notice of such change in the same manner as for a Listed Event under Section 5(c) and the Annual Reports shall be provided to the MSRB no later than six months after the end of such Fiscal Year.

(b) If the District is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the District shall send to the MSRB, in a timely manner, on or before such date a notice in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

- (i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and
- (ii) file a report with the District and (if the Dissemination Agent is not the Trustee, the Trustee) certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement, and stating the date it was provided.

Section 4. Content of Annual Reports. The District’s Annual Report shall contain or include by reference the following categories or similar categories of information updated to incorporate

information for the most recent fiscal or calendar year, as applicable (the tables referred to below are those appearing in the Official Statement relating to the Bonds):

(a) The audited financial statements of the District for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles, as promulgated, to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;

(b) A table showing the Water Production (including annual production and average production per day) for the preceding Fiscal Year;

(c) A table showing Water Sales Revenues, Consumption and Number of Connections by Customer Type for the preceding Fiscal Year;

(d) A table showing Water System Sources of Funds by Source;

(e) A table showing Water System Rates and Charges for the preceding Fiscal Year (as well as information regarding average rate increases);

(f) A table showing Outstanding Water System Debt as of the preceding Fiscal Year;

(g) A table showing Water System revenues, operating and maintenance expenses, debt service on Water System revenue bonds and debt service coverage for the Water System revenue bonds for the most recent Fiscal Year; and

(h) Any material changes in the sources of water supply.

Financial and operating information relating to the District referenced in items 3(b)-(h) above may be updated from time to time, and such updates may involve displaying data in a different format or table or eliminating data that is no longer material.

Any or all of the items listed above may also be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the MSRB or the SEC. If any document included by reference is a final official statement, it must be available from the MSRB. The District shall clearly identify each such other document so included by reference.

#### Section 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this section, upon the occurrence of any of the following events (in each case to the extent applicable) with respect to the Bonds, the District shall give, or cause to be given by so notifying the Dissemination Agent in writing and instructing the Dissemination Agent to give, notice of the occurrence of such event, in each case, pursuant to Section 5(c) hereof:

1. principal or interest payment delinquencies;
2. non-payment related defaults, if material;
3. modifications to the rights of the Bondholders, if material;

4. optional, contingent or unscheduled calls, if material, and tender offers;
5. defeasances;
6. rating changes;
7. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
8. unscheduled draws on the debt service reserves reflecting financial difficulties;
9. unscheduled draws on the credit enhancements reflecting financial difficulties;
10. substitution of the credit or liquidity providers or their failure to perform;
11. release, substitution or sale of property securing repayment of the Bonds, if material;
12. bankruptcy, insolvency, receivership or similar proceedings of the District, which shall occur as described below;
13. appointment of a successor or additional trustee or the change of name of a trustee, if material;
14. the consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the Water System of the District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
15. incurrence of a Financial Obligation of the District with respect to the Water System, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the District with respect to the Water System, any of which affects Holders of the Bonds, if material; or
16. default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the District with respect to the Water System, any of which reflect financial difficulties.

For these purposes, (i) any event described in item 12 of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District; and (ii) the District intends to comply with the provisions hereof for the Listed Events described in subparagraphs (15) and (16) of this Section 5(a), and the definition of the “Financial Obligation” in Section 2, with reference to the Rule, any other applicable federal securities laws and guidance provided by the SEC in its Release No. 34-83885 dated August 20, 2018 (the “2018 Release”),

any further amendments or written guidance provided by the SEC or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) Upon receipt of notice from the District and instruction by the District to report the occurrence of any Listed Event, the Dissemination Agent shall provide notice thereof to the MSRB in accordance with Section 5(c) hereof. In the event the Dissemination Agent shall obtain actual knowledge of the occurrence of any of the Listed Events, the Dissemination Agent shall, immediately after obtaining such knowledge, contact the Disclosure Representative, inform such person of the event, and request that the District promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to Section 5(c). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Event shall mean actual knowledge by the Dissemination Agent. The Dissemination Agent shall have no responsibility to determine the materiality, if applicable, of any of the Listed Events.

(c) The District, or the Dissemination Agent, if the Dissemination Agent has been instructed by the District to report the occurrence of a Listed Event, shall file a notice of such occurrence with the MSRB in a timely manner not more than ten (10) business days after the occurrence of the event.

Section 6. Termination of Reporting Obligation. The District’s obligations under this Disclosure Agreement shall terminate with respect to all Bonds upon the maturity, defeasance, prior redemption, acceleration or payment in full of all of the Bonds and with respect to any Bonds upon the maturity, defeasance, prior redemption or payment in full of such Bonds.

Section 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee, upon notice from the District, shall be the Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this Disclosure Agreement. The Dissemination Agent shall receive compensation for the services provided pursuant to this Disclosure Agreement.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the District and the Dissemination Agent may amend this Disclosure Agreement (and, to the extent that any such amendment does not materially change or increase its obligations hereunder, the Dissemination Agent shall agree to any amendment so requested by the District), and any provision of this Disclosure Agreement may be waived; *provided*, that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Section 3(a), Section 4 or Section 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Filings with the MSRB. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds and upon provision of indemnification satisfactory to the Trustee, shall), or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the District or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance hereunder.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the District agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding any loss, expense and liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 13. Notices. Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the District:

East Bay Municipal Utility District  
375 Eleventh Street, MS 801  
Oakland, California 94607-4240  
Attention: Treasury Manager  
Phone: 510-287-0248  
Fax: 510-287-0555

To the Dissemination Agent:

Digital Assurance Certification, LLC  
315 E. Robinson Street, Suite 300  
Orlando, Florida 32801  
Attention: Shelley Rodgers, Client Service  
Manager  
Phone: 404-515-1082

Section 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the District, the Dissemination Agent, the Participating Underwriter and the Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Disclosure Agreement has been executed on behalf of the District and the Dissemination Agent by their duly authorized representatives.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Sophia D. Skoda  
Director of Finance

DIGITAL ASSURANCE CERTIFICATION, LLC, as  
Dissemination Agent

By: \_\_\_\_\_  
Diana O'Brien, Senior Vice President

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: EAST BAY MUNICIPAL UTILITY DISTRICT

Name of Bond Issue: \$ \_\_\_\_\_  
Water System Revenue Bonds, Series 2022A (Green Bonds)  
\$ \_\_\_\_\_  
Water System Revenue Refunding Bonds, Series 2022B-1  
\$ \_\_\_\_\_  
Water System Revenue Refunding Bonds, Series 2022B-2

Date of Issuance: \_\_\_\_\_, 2022

NOTICE IS HEREBY GIVEN that the East Bay Municipal Utility District (the “District”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 3(a) of the Continuing Disclosure Agreement, dated \_\_\_\_\_, 2022, by and between the District and Digital Assurance Certification, LLC, and in accordance with Section 45.16 of the Thirtieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”), supplementing the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented and amended, by and between the District and the Trustee, providing for the issuance of the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

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

DIGITAL ASSURANCE CERTIFICATION, LLC, as  
Dissemination Agent on behalf of the District

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

cc: East Bay Municipal Utility District

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B-1 and SERIES 2022B-2

PURCHASE CONTRACT

May \_\_, 2022

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

Ladies and Gentlemen:

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

The District acknowledges and agrees that: (i) the Underwriters are not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended, (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction between the District and the Underwriters and the Underwriters have financial and other interests that differ from those of the District; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to the District and have not assumed any advisory or fiduciary responsibility to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the District on other matters); (iv) the only obligations the Underwriters have to the District with respect to the transaction contemplated hereby expressly are set forth in this Purchase Contract;

and (v) the District has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

1. Purchase, Sale and Delivery of the Series 2022AB Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters, jointly and severally, hereby agree to purchase and the District agrees to sell and deliver to the Underwriters all (but not less than all) of the East Bay Municipal Utility District Water System Revenue Bonds, Series 2022A (Green Bonds), in the aggregate principal amount of \$ \_\_\_\_\_ (the “Series 2022A Bonds”), the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B-1, in the aggregate principal amount of \$ \_\_\_\_\_ (the “Series 2022B-1 Bonds”), and the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B-2, in the aggregate principal amount of \$ \_\_\_\_\_ (the “Series 2022B-2 Bonds” and, together with the Series 2022B-1 Bonds, the “Series 2022B Bonds”, and together with the Series 2022A Bonds and the Series B-1 Bonds, the “Series 2022AB Bonds”).

(b) The Series 2022AB Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), and the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and with respect to the Series 2022B Bonds, Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), and the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Series 2022AB Bonds (collectively, the “Indenture”). The Series 2022AB Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series 2022AB Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series 2022AB Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Water Revenues of the District. The Series 2022AB Bonds shall be dated the Closing Date (as hereinafter defined), shall bear interest payable June 1 and December 1 of each year, commencing on December 1, 2022, and shall mature on June 1 in each of the years, subject to earlier redemption, as set forth in Schedule I.

The Series 2022A Bonds are being issued for the purposes of (i) providing moneys to finance and/or reimburse the District for certain costs of improvements to the Water System of the District and (ii) paying costs of issuance of the Series 2022A Bonds.

The Series 2022B-1 Bonds are being issued for the purposes of (i) refunding \$ \_\_\_\_\_ aggregate principal amount of the District’s Water System Revenue Refunding Bonds, Series 2012A (the “Series 2012A Bonds”), and (ii) paying costs of issuance of the Series 2022B-1 Bonds.

The Series 2022B-2 Bonds are being issued for the purposes of (i) refunding \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2008A (the "Series 2008A Bonds"), (ii) funding the costs of terminating (in whole or in part) interest rate swap agreements relating to the 2008A Bonds to be refunded (the "Series 2008A Swaps"), and (iii) paying costs of issuance of the Series 2022B-2 Bonds.

(c) The aggregate purchase price for the Series 2022AB Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series 2022AB Bonds in the amount of \$\_\_\_\_\_, plus [net] original issue premium of \$\_\_\_\_\_, less \$\_\_\_\_\_ of Underwriters' discount).

(d) In the event that the Underwriters fail (other than for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the Series 2022AB Bonds on the Closing Date as herein provided, the Underwriters shall pay to the District \$\_\_\_\_\_, which shall constitute full liquidated damages for such failure and for any and all defaults hereunder on the part of the Underwriters, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriters with respect to such failure.

(e) At 8:00 a.m., California time, on June \_\_, 2022, or at such other time or on such other date as the District and the Representative mutually agree upon (the "Closing Date"), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriters, the Series 2022AB Bonds, in fully registered book-entry eligible form, by Fast Authority Securities Transfer (FAST) through the facilities of The Depository Trust Company ("DTC") in New York, New York, duly executed, and such place or by electronic means as shall have been mutually agreed upon by the District and the Representative, the other documents mentioned herein. The Underwriters will accept such delivery and pay the purchase price of the Series 2022AB Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the "Closing") to the order of the Trustee in an amount equal to the purchase price.

## 2. Use and Preparation of Official Statement; Continuing Disclosure Agreement.

(a) The District hereby ratifies, confirms and approves of the distribution and use by the Underwriters prior to the date hereof of the preliminary official statement dated May \_\_, 2022, relating to the Series 2022AB Bonds (the "Preliminary Official Statement") and the making available of the Preliminary Official Statement to investors prior to the date hereof electronically over the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriters, within seven (7) business days of the date hereof and, in any case, one business day prior to the Closing Date in order to permit the Underwriters to comply with Rule 15c2-12 and the applicable rules of the Municipal Securities Rulemaking Board (the "MSRB"), with respect to the distribution of the Official Statement (as hereinafter defined), copies of the final Official Statement relating to the Series 2022AB Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the District and the Representative (including the appendices thereto and any

subsequent amendments or supplements as have been approved by the District and the Underwriters, the “Official Statement”), in such quantity as the Underwriters shall reasonably request. The District hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series 2022AB Bonds electronically over the internet or in printed paper form. The Representative hereby agrees to deliver a copy of the Official Statement to the MSRB through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.

(b) In order to assist the Underwriters in complying with Rule 15c2-12, the District will undertake, pursuant to the Continuing Disclosure Agreement, dated as of June \_\_, 2022 (the “Disclosure Agreement”), by and between the District and Digital Assurance Certification, LLC, as dissemination agent for the District, to provide annual financial information and notices of the occurrence of specified events. A description of the Disclosure Agreement is set forth in, and a form of such agreement is attached as an appendix to the Preliminary Official Statement and the Official Statement.

### 3. Establishment of Issue Price.

(a) The Underwriters intend to make an initial bona fide public offering of the Series 2022AB Bonds at the prices set forth in Schedule I, which prices may be changed from time to time by the Underwriters after such initial public offering.

(b) The Representative, on behalf of the Underwriters, agrees to assist the District in establishing the issue price of the Series 2022AB Bonds and shall execute and deliver to the District at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Representative, the District and Co-Bond Counsel (as hereinafter defined), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2022AB Bonds. If such certificate is insufficient to assist the District in establishing the issue price of the Series 2022AB Bonds, one or more of the Underwriters shall, at the request of the District, execute and deliver to the District at Closing a certificate substantially in the form of Attachment C to Exhibit A to the extent necessary to assist the District in establishing the issue price of the Series 2022AB Bonds.

(c) With respect to Series 2022AB Bonds of those maturities as to which at least 10% of the Series 2022AB Bonds of the maturity has been sold to the public (defined in subsection (g) below) at a single price (the “10% test”), based on reporting by the Representative to the District on the date hereof and prior to the execution of this Purchase Contract, which maturities are indicated in Schedule I attached hereto, the District will treat the first price at which 10% of each such maturity of the Series 2022AB Bonds was sold to the public as the issue price of that maturity. With respect to Series 2022AB Bonds of those maturities as to which the 10% test has not been satisfied, if any, based on reporting by the Representative to the District on the date hereof and prior to the execution of this Purchase Contract, which maturities are indicated in Schedule I attached hereto, the Representative and the District agree that the rules in subsection (d) below shall apply. For purposes of this Section, for Series 2022AB Bonds maturing on the

same date but having different interest rates, each separate CUSIP number for such Series 2022AB Bonds is subject to the 10% test or subsection (d) below, as the case may be, as if such separate CUSIP number were a separate maturity.

(d) The Representative confirms that the Underwriters have offered the Series 2022AB Bonds to the public on or before the date of this Purchase Contract at the respective offering price or prices (the “initial offering price”), or at the corresponding respective yield or yields, set forth in Schedule I attached hereto. Schedule I also sets forth, as of the date of this Purchase Contract, the maturities, if any, of the Series 2022AB Bonds for which the 10% test has not been satisfied at the time this Purchase Contract is executed and for which the District and the Representative, on behalf of the Underwriters, agree that the restrictions set forth in the next sentence shall apply, which will allow the District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2022AB Bonds, the Underwriters will neither offer nor sell unsold Series 2022AB Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5th) business day after the sale date; or
- (2) the date on which the Underwriters have sold at least 10% of that maturity of the Series 2022AB Bonds to the public at a price that is no higher than the initial offering price to the public.

The Representative will advise the District promptly after the close of the fifth (5th) business day after the sale date whether it has sold 10% of that maturity of the Series 2022AB Bonds to the public at a price that is no higher than the initial offering price to the public.

(e) The Representative confirms that:

(1) any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the Representative is a party) relating to the initial sale of the Series 2022AB Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A) (i) to report the prices at which it sells to the public the unsold Series 2022AB Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2022AB Bonds of that maturity allocated to it have been sold or it is notified by the Representative that the 10% test has been satisfied as to the Series 2022AB Bonds of that maturity, and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Representative and as set forth in the related pricing wires, and

(B) to promptly notify the Representative of any sales of Series 2022AB Bonds that, to its knowledge, are made to a purchaser who is a related

party to an underwriter participating in the initial sale of the Series 2022AB Bonds to the public (each such term being used as defined below),

(C) to acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public.

(2) any agreement among underwriters or selling group agreement relating to the initial sale of the Series 2022AB Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter or dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Series 2022AB Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2022AB Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2022AB Bonds of that maturity allocated to it have been sold or it is notified by the Representative or such Underwriter or dealer that the 10% test has been satisfied as to the Series 2022AB Bonds of that maturity, and (B) comply with the hold-the-offering-price rule, if applicable to a particular maturity of the Series 2022AB Bonds, if and for so long as directed by the Representative or the Underwriter or the dealer and as set forth in the related pricing wires.

(f) The District acknowledges that, in making the representations set forth in this section, the Representative will rely on (i) the agreement of each Underwriter to comply with the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Series 2022AB Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter or dealer who is a member of the selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Series 2022AB Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The District further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement regarding the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds.

(g) The Underwriters acknowledge that sales of any Series 2022AB Bonds to any person that is a related party to an underwriter participating in the initial sale of the Series 2022AB Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2022AB Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2022AB Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2022AB Bonds to the public),

(3) a purchaser of any of the Series 2022AB Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Purchase Contract by all parties.

#### 4. Representations, Warranties and Agreements of the District.

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

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State of California with full legal right, power and authority to issue the Series 2022AB Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract and the Disclosure Agreement (together with the Indenture and this Purchase Contract, the “District Documents”);

(b) By all necessary official action of the District prior to or concurrently with the acceptance hereof, the District has duly authorized the issuance and sale of the Series 2022AB Bonds and has duly approved the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, and has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents and the consummation by it of all other transactions contemplated by the Official Statement and the District Documents and the District is on the date hereof and will be on the Closing Date in compliance in all material respects with the provisions

of the District Documents; the District Documents are or as of the Closing Date will be in full force and effect in substantially the form heretofore submitted to the Underwriters with only such changes as shall have been agreed to in writing by the Underwriters; and the District Documents constitute valid and legally binding agreements of the District enforceable against the District in accordance with their terms; provided, however, that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights and to the limitations on legal remedies against public agencies in the State of California;

(c) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not in Material Breach or Default (as hereinafter defined) under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series 2022AB Bonds, the execution and delivery of the District Documents and compliance with the provisions on the District's part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term "Material Breach or Default" means any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Water System);

(d) Except as disclosed in the Preliminary Official Statement and the Official Statement or otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation (with service of process having been accomplished), at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series 2022AB Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series 2022AB Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series 2022AB Bonds; or (vi) contesting the status of the interest on the Series 2022AB Bonds as excludable from federal gross income as described in the Preliminary Official Statement or in the Official

Statement; or (vii) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) wherein an unfavorable ruling or finding would result in any material adverse change in the business operations or financial condition of the District or the Water System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the approval or adoption, as applicable, of the District Documents, the issuance of the Series 2022AB Bonds or the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series 2022AB Bonds;

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

(g) The Series 2022AB Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriters as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series 2022AB Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Water Revenues (as defined in the Indenture) and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series 2022AB Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement and the proceeds of the sale of the Series 2022AB Bonds will be applied generally as described in the Preliminary Official Statement and the Official Statement;

(i) The financial statements of the District contained in the Preliminary Official Statements and the Official Statement fairly present the financial position and results of operations of the District as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Preliminary Official Statement and the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Water System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in

order (i) to qualify the Series 2022AB Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Series 2022AB Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series 2022AB Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject, and will use its best efforts to advise the Representative promptly of receipt by the District of any written notification with respect to the suspension of the qualification of the Series 2022AB Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(k) The Preliminary Official Statement (except for information relating to offering prices, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the securities depending on such matters, and the identity of the underwriters and such other information as may be omitted therefrom pursuant to Rule 15c2-12) did not as of the date thereof and, as supplemented or amended through the date hereof, does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect (except for information relating to DTC and its book-entry only system, as to which no opinion or view is expressed);

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as hereinafter defined) for the Series 2022AB Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series 2022AB Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the District will notify the Underwriters, and, if in the opinion of the District, the Underwriters or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriters (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and their counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series 2022AB Bonds, the District will furnish such information with respect to itself as the Underwriters may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series 2022AB Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series 2022AB Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Representative on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series 2022AB Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series 2022AB Bonds the date specified as such in a notice from the Representative stating the date which is the End of the Underwriting Period;

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

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, payable from the revenues of the Water System other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District is duly authorized to apply and will apply, or cause the application of, the proceeds of the Series 2022AB Bonds in accordance with the Indenture, including for payment of District expenses incurred in connection with the authorization, execution, delivery and sale of the Series 2022AB Bonds to the extent contemplated by Section 6;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriters in connection with the execution and delivery of the Series 2022AB Bonds, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(t) Except as disclosed in the Preliminary Official Statement and the Official Statement, the District has not failed within the last five years to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of enumerated events.

5. Conditions to the Obligations of the Underwriters.

The Underwriters hereby enter into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters' obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Series 2022AB Bonds shall be subject, at the option of the Underwriters, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

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

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

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

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Series 2022AB Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriters (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and make any payment for the Series 2022AB Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series 2022AB Bonds which, in the reasonable judgment of the Underwriters, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series 2022AB Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series 2022AB Bonds, or the Series 2022AB Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

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

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

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series 2022AB Bonds or obligations of the general character of the Series 2022AB Bonds or securities generally, the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital

requirements of, the Underwriters, the establishment of minimum or maximum prices on any national securities exchange, or a material disruption in securities settlement, payment or clearance services shall have occurred;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series 2022AB Bonds, or the issuance, offering or sale of the Series 2022AB Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series 2022AB Bonds or the underlying rating of any of the District's Water System Revenue Bonds by a national rating agency then rating the Series 2022AB Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriters, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriters, to materially adversely affect the market for the Series 2022AB Bonds or the sale of the Series 2022AB Bonds, at the contemplated offering prices (or yields).

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

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

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

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

(4) Opinions of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, ("Co-Disclosure Counsel"), each dated the closing date and addressed to the Representative, in substantially the form attached hereto as Exhibit C.

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

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

(7) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Representative, to the effect that (a) the Series 2022AB Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriters, nothing has come to their attention which would cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through G thereto, and information regarding DTC and its book-entry only system;

(8) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriters, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official's knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 2021, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Water System, in any such case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series 2022AB Bonds; and (d) the projected operating results and debt service coverage contained in Table [21] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

(9) A certificate, dated the Closing Date, signed by a duly authorized official of the Trustee, satisfactory in form and substance to the Underwriters, to the effect that: (a) the

Trustee is a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having the full power and being qualified to enter into and perform its duties under the Indenture; (b) the execution and delivery of the Indenture and compliance with the provisions on the Trustee's part contained therein, will not in any material respect conflict with or constitute a breach of or default under any material agreement or material instrument to which the Trustee is as party or by which it is bound or any law, administrative regulation, judgment or decree (except that no representation, warranty or agreement is made with respect to any federal or state securities or blue sky laws or regulations); and (c) to the officer's knowledge, the Trustee has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action threatened against the Trustee, as such but not in its individual capacity, affecting the existence of the Trustee, or the titles of its officers to their respective offices, or contesting or affecting the validity or enforceability of the Indenture, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Indenture;

(10) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Indenture;

(11) A copy of the Preliminary Official Statement;

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

(13) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series 2022AB Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

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

(15) A copy of the Blue Sky Memorandum with respect to the Series 2022AB Bonds, prepared by Underwriters' Counsel;

(16) A Tax Certificate signed by the District relating to the Series 2022AB Bonds, in form and substance satisfactory to Co-Bond Counsel;

(17) A copy of the Blanket Letter of Representations to DTC relating to the Series 2022AB Bonds signed by the District;

(18) A Verification Report of Robert Thomas CPA, addressed to the Representative and dated the Closing Date, in form and substance acceptable to Co-Bond Counsel and Underwriters' Counsel; and

(19) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters, Underwriters' Counsel or Co-Bond Counsel may

reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the District herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the District Documents and the Official Statement.

If the District shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Purchase Contract or if the Underwriters' obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District and neither the Underwriters nor the District shall have any further obligations hereunder, except the District's obligation for the payment and reimbursement of expenses, as provided in Section 6 hereof, shall continue in full force and effect.

6. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series 2022AB Bonds to the Underwriters, including the costs of printing of the Series 2022AB Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series 2022AB Bonds and the fees and expenses of Co-Bond Counsel shall be paid either from the proceeds of the Series 2022AB Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriters' discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract, including, but not limited to, meals, transportation and lodging, of those employees. In the event that the Series 2022AB Bonds for any reason are not executed and delivered, or to the extent proceeds of the Series 2022AB Bonds are insufficient or unavailable therefor, any such fees, costs and expenses owed by the District, which otherwise would have been paid from the proceeds of the Series 2022AB Bonds, shall be paid by the District. The District shall pay the reasonable out-of-pocket expenses of the Underwriters (included in the expense component of the Underwriters' discount), including the fees and expenses of Underwriters' Counsel, travel and other expenses and the California Debt and Investment Advisory Commission fee. In the event that the Underwriters incur or advance the cost of any expense for which the District is responsible hereunder, the District shall reimburse the Underwriters at or prior to Closing; if at Closing, reimbursement may be included in the expense component of the Underwriter's discount. To the extent that the Underwriters have incurred expenses on behalf of the District which are to be reimbursed to the Underwriters or included as a component of the Underwriters' discount, the Underwriters agree to provide the District, with a detailed itemization of any such expenses prior to the Closing Date.

7. Notices.

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

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

Representative: BofA Securities, Inc.  
555 California Street, Suite 1160  
San Francisco, California 94104  
Attention: Bradford Walker

8. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Series 2022AB Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series 2022AB Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

9. Effectiveness and Counterpart Signatures.

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

10. Parties in Interest.

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

11. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriters with respect to the purchase of the Series 2022AB Bonds and supersedes all oral statements, prior writings and representations with respect thereto.

12. Headings.

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

13. Governing Law.

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

(Remainder of Page Intentionally Left Blank)

Very truly yours,

BofA SECURITIES, INC., as Representative of the  
Underwriters

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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

SCHEDULE I

[To come]

EXHIBIT A

\$ \_\_\_\_\_  
**EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B- and SERIES 2022B-2**

**ISSUE PRICE CERTIFICATE**

The undersigned, on behalf of BofA Securities, Inc. (“BofA Securities”), the “Representative”), on behalf of itself and \_\_\_\_\_ (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

[Select appropriate provisions below]

1. ***[Alternative 1 – All Maturities Use General Rule: Sale of the Bonds.*** As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.][***Alternative 2 – Select Maturities Use General Rule: Sale of the General Rule Maturities.*** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.]

2. ***Initial Offering Price of the [Bonds] [Hold-the-Offering-Price Maturities].***

(a) [1 – All Maturities Use Hold-the-Offering-Price Rule: The Underwriting Group offered the Bonds to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.][***Alternative 2 – Select Maturities Use Hold-the-Offering-Price Rule: The Underwriting Group offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.***]

(b) [Alternative 1 – All Maturities use Hold-the-Offering-Price Rule: As set forth in the Purchase Contract, [the members of the Underwriting Group] have agreed in writing that, (i) for each Maturity of the Bonds, they would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-

offering-price rule. No member of the Underwriting Group has offered or sold any Maturity of the unsold Bonds at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.] [Alternative 2 - Select Maturities Use Hold-the-Offering-Price Rule: As set forth in the Purchase Contract Agreement, [the members of the Underwriting Group] have agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, they would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. No member of the Underwriting Group has offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.]

### 3. ***Defined Terms.***

(a) [General Rule Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”]

(b) [Hold-the-Offering-Price Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

(c) [Holding Period means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) Issuer means the East Bay Municipal Utility District

(e) Maturity means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) Sale Date means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

(h) Underwriter means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group

or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Representative's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., co-bond counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds. The representations set forth herein are not necessarily based on personal knowledge and, in certain cases, the undersigned is relying on representations made by the other members of the Underwriting Group.

BofA SECURITIES, INC., as Representative

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Dated: [ISSUE DATE]

**SCHEDULE A**

**SALE PRICES OF THE GENERAL RULE MATURITIES AND  
INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES  
(ATTACHED)**

**SCHEDULE B**  
**PRICING WIRE OR EQUIVALENT COMMUNICATION**  
**(ATTACHED)**

ATTACHMENT C TO  
ISSUE PRICE CERTIFICATE

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE BONDS,  
SERIES 2022 (GREEN BONDS)

and

WATER SYSTEM REVENUE REFUNDING SERIES 2022B-2 and SERIES 2022B-2

FORM OF UNDERWRITER CERTIFICATE

The undersigned, on behalf of [UNDERWRITER (“UW”) FULL NAME] (“[UW DEFINED NAME]”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. *Initial Offering Price of the Hold-the-Offering-Price Maturities.*

(a) [UW DEFINED NAME] and any broker-dealer that is participating in the initial sale of the Bonds as a party to a retail or other third-party distribution agreement with [UW DEFINED NAME] (if any) offered certain Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) to the Issue Price Certificate of BofA Securities, Inc., as Representative of the Underwriters of the Bonds, to which this certificate is attached as Attachment C on or before the Sale Date. Those Hold-the-Offering Price Maturities that have been offered to the Public by [UW DEFINED NAME] and any broker-dealer that is participating in the initial sale of the Bonds as a party to a retail or other third-party distribution agreement with [UW DEFINED NAME] (if any) are set forth in Schedule A-1 hereto.

(b) Neither [UW DEFINED NAME] nor any broker-dealer that is participating in the initial sale of the Bonds as a party to a retail or other third-party distribution agreement with [UW DEFINED NAME] (if any) has offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities allocated to [UW DEFINED NAME] identified in Schedule A-1 attached hereto at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period. [UW DEFINED NAME] has not entered into a retail or other third-party distribution agreement, directly or indirectly, to participate in the initial sale of any of the Bonds to the Public [other than] [NAME OF ANY FIRM WITH WHICH [UW DEFINED NAME] HAS A RETAIL OR OTHER THIRD-PARTY DISTRIBUTION AGREEMENT].

2. *Defined Terms.*

(a) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds where issue price was established under Section § 1.148-1(f)(2)(ii) of the Treasury Regulations, as which Maturities are set forth in Schedule A-1 hereto.

(b) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(c) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates or CUSIP identification numbers, are treated as separate maturities.

(d) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(e) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, 2022.

(f) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Authority (or with the Representative or lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail or other third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the [UW DEFINED NAME]’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by East Bay Municipal Utility District (the “Issuer”) with respect to certain of the representations set forth in the Tax Certificate with respect to the Bonds and with respect to compliance with the federal income tax rules affecting the Bonds, and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., co-bond counsel with respect to the Bonds, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

[UW FULL NAME], as Underwriter

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 2022

SCHEDULE A-1

HOLD-THE-OFFERING-PRICE MATURITIES  
ALLOCABLE TO [UW DEFINED NAME]

[Insert any HTOP Maturities for which this UW has an allocation]

EXHIBIT B

FORM OF SUPPLEMENTAL OPINION OF CO-BOND COUNSEL

[CLOSING DATE]

BofA Securities, Inc.,  
as Representative of the Underwriters  
San Francisco, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE BONDS, SERIES 2022A (GREEN BONDS)  
and  
WATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B-1 AND SERIES 2022B-2

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance, sale and delivery of the District’s Water System Revenue Bonds, Series 2022A (Green Bonds), in the aggregate principal amount of \$\_\_\_\_\_, Water System Revenue Refunding Bonds, Series 2022B-1, in the aggregate principal amount of \$\_\_\_\_\_, and Water System Revenue Refunding Bonds, Series 2022B-2, in the aggregate principal amount of \$\_\_\_\_\_ (collectively, the “Bonds”), issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee, as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Bonds (collectively, the “Indenture”).

The Bonds are being sold on the date hereof by the District to BofA Securities, Inc., as Representative of itself, Morgan Stanley & Co. LLC and Blaylock Van, LLC, as Underwriters, pursuant to a Purchase Contract, dated May \_\_, 2022 (the “Purchase Contract”).

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated May \_\_, 2022, relating to the Bonds (the “Official Statement”).

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

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

1. The statements contained in the Preliminary Official Statement, dated May \_\_, 2022, relating to the Bonds (the “Preliminary Official Statement”) and in the Official Statement on the cover and under the captions “INTRODUCTION,” “THE SERIES 2022 BONDS,” “SECURITY FOR THE SERIES 2022 BONDS,” “AMENDMENTS TO THE INDENTURE,” and “TAX MATTERS,” and in “APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE,” and “APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT” (excluding the statements under each such caption relating to The Depository Trust Company (“DTC”), Cede & Co. and the book-entry system, as to all of which we express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Water Interest Rate Swap Agreements and the District’s Commercial Paper Notes (Water Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

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

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

4. The issuance of the Bonds, the execution and delivery of the Thirtieth Supplemental Indenture, the Escrow Agreements, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or under the issuing and paying agent agreement, dated as of December 1, 2015, relating to the District’s Commercial Paper Notes (Water Series) or, to the best of our knowledge, any loan agreement with any State governmental agency to which the District is a party or to which the District or any of its property or assets are otherwise subject.

The opinions expressed herein are based on an analysis of existing laws, regulations,

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

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

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF CO-DISCLOSURE COUNSEL

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

BofA Securities, Inc.  
as representative of the Underwriters  
Los Angeles, California

Re: East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
\$ \_\_\_\_\_ Water System Revenue Bonds, Series 2022A (Green Bonds)  
\$ \_\_\_\_\_ Water System Revenue Refunding Bonds, Series 2022B-1  
\$ \_\_\_\_\_ Water System Revenue Refunding Bonds, Series 2022B-2

Ladies and Gentlemen:

We have acted as co-disclosure counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance, sale and delivery of the District’s Water System Revenue Bonds, Series 2022A (Green Bonds), in the aggregate principal amount of \$\_\_\_\_\_, Water System Revenue Refunding Bonds, Series 2022B-1, in the aggregate principal amount of \$\_\_\_\_\_, and Water System Revenue Refunding Bonds, Series 2022B-2, in the aggregate principal amount of \$\_\_\_\_\_ (collectively, the “Bonds”). The Bonds are being issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee, as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Bonds (collectively, the “Indenture”). The Bonds were sold by the District to BofA Securities, Inc., as representative of itself, Morgan Stanley & Co. LLC and Blaylock Van, LLC, as underwriters (the “Underwriters”), pursuant to a Purchase Contract, dated May \_\_, 2022 (the “Purchase Contract”), between the District and the Underwriters.

We have reviewed the Preliminary Official Statement of the District dated May \_\_, 2022 with respect to the Bonds (the “Preliminary Official Statement”) and the Official Statement of the District dated May \_\_, 2022 with respect to the Bonds (the “Official Statement”), the letters, certificates and opinions delivered pursuant to Section 5(e) of the Purchase Contract and

otherwise in connection with the Bonds on the date hereof, and such other records, opinions and documents, and we have made such investigations of law and fact, as we have deemed appropriate as a basis for the conclusions hereinafter expressed. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Preliminary Official Statement and the Official Statement.

We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine, and that all documents submitted to us are authentic and were duly and properly executed by the parties thereto. We have also assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof.

The conclusions that are expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such conclusions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform you or any other person, whether any such actions are taken or omitted or whether such events do occur or any other matters come to our attention after the date hereof.

In our capacity as co-disclosure counsel, we have rendered certain legal advice and assistance to the District in connection with the preparation of the Preliminary Official Statement and the Official Statement. Rendering such legal advice and assistance involved, among other things, discussions and inquiries concerning various legal matters, review of certain records, documents and proceedings, and participation in conferences with, among others, representatives of the District, the District's General Counsel, Montague DeRose and Associates, LLC, as municipal advisor to the District, the Underwriters, Orrick, Herrington & Sutcliffe LLP, as counsel to the Underwriters, and others, during which conferences the contents of the Preliminary Official Statement and the Official Statement and related matters were discussed. On the basis of the information made available to us in the course of the foregoing (but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement), as of the date hereof no facts have come to the attention of the personnel in our firm directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement and the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of the Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements,

underwriters' discount, ratings and CUSIP numbers, or (b) the Official Statement as of its date or as of the date hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view). We advise you that, other than reviewing the various certificates and opinions required by Section 5(e) of the Purchase Contract regarding the Preliminary Official Statement and the Official Statement, we have not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Preliminary Official Statement or the Official Statement as of the date hereof.

By acceptance of this letter you acknowledge that: (i) the preceding paragraph is neither a legal opinion nor a guarantee regarding the contents of the Preliminary Official Statement or the Official Statement but rather merely a statement of negative assurance regarding the absence of factual information that came to the attention of the attorneys in our firm during the limited activities we performed as co-disclosure counsel to the District on this matter; (ii) the scope of the activities performed by such attorneys in our role as co-disclosure counsel was inherently limited and does not purport to encompass all activities that the District may be responsible to undertake in preparing the Preliminary Official Statement and Official Statement; (iii) the activities performed by us relied substantially in part on representations, warranties, certifications and opinions made by the District and others, and are otherwise subject to the matters set forth in this letter; and (iv) while statements of negative assurance are customarily given to underwriters of municipal bonds to assist them in discharging their responsibilities under federal securities laws, the responsibilities of the District under those laws may differ from those of underwriters in material respects, and the preceding paragraph may not serve the same purpose or provide the same utility to them as it would to the underwriters.

The conclusions expressed in this letter are limited to matters governed by the federal securities law of the United States, and we assume no responsibility with respect to the applicability or effect of the laws of any other jurisdiction.

We are furnishing this letter as co-disclosure counsel to the District, and not as counsel to the Underwriters. No attorney-client relationship has existed or exists between our firm and the Underwriters in connection with the Bonds or by virtue of this letter. We note that the Underwriters are represented by separate counsel retained by them in connection with the sale of the Bonds. This letter is delivered in connection with such transaction, and may not be used, circulated, quoted or otherwise referred to or relied upon by, any other person, firm, corporation or other entity, or filed with any governmental or other administrative agency for any purpose, without our prior written consent. Our engagement with respect to this matter terminates upon the delivery of this letter to you on the date hereof, and we have no obligation to update this letter.

Respectfully submitted,

EXHIBIT D

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

BofA Securities, Inc.,  
as Representative of the Underwriters  
San Francisco, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE BONDS, SERIES 2022A (GREEN BONDS)  
and  
WATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B-1 AND SERIES 2022B-2

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the “District”), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 5(e)(5) of the Purchase Contract (the “Purchase Contract”) dated June \_\_, 2022 between the District and BofA Securities, Inc., as representative of the underwriters (the “Underwriters”) listed therein, and relating to the sale of \$ \_\_\_\_\_ aggregate principal amount of District’s Water System Revenue Bonds, Series 2022A (Green Bonds), \$ \_\_\_\_\_ aggregate principal amount of the District’s Water System Revenue Refunding Bonds, Series 2022B-1, and \$ \_\_\_\_\_ aggregate principal amount of the District’s Water System Revenue Refunding Bonds, Series 2022B-2 (collectively, the “Series 2022AB Bonds”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract or if not defined therein, in the Official Statement dated May \_\_, 2022, relating to the Series 2022AB Bonds (the “Official Statement”).

In rendering this opinion, I have examined the following documents: (i) the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the Thirtieth Supplemental Indenture dated as of June 1, 2022 by and between the District and the Trustee (collectively, the “Indenture”); (ii) the Continuing Disclosure Agreement, dated June \_\_, 2022, by and between the District and Digital Assurance Certification, LLC; (iii) the Preliminary Official Statement, dated May \_\_, 2022, relating to the Series 2022AB Bonds (the “Preliminary Official Statement”) and the Official Statement; (iv) the Series 2022AB Bonds; and (v) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed

necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement and the Purchase Contract are collectively referred to herein as the “District Documents.” In addition, I call attention to the fact that the rights and obligations under the District Documents, the Series 2022AB Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.

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

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

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series 2022AB Bonds, the District Documents and the Official Statement (the “Resolutions”) were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Preliminary Official Statement and the Official Statement or otherwise disclosed in writing by the District to the Underwriters on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my actual knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series 2022AB Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series 2022AB Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series 2022AB Bonds or the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series 2022AB Bonds; or (vi) contesting the status of the interest on the Series 2022AB Bonds as excludable from federal gross income as described in the Preliminary Official Statement and in the Official Statement; or (vii) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) wherein an unfavorable ruling or finding would result in any material adverse change in the business operations or financial condition of the District or the Water System.

(4) The issuance of the Series 2022AB Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate,

to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Preliminary Official Statement and the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to me during the preparation of the Preliminary Official Statement and the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that (i) the information contained in the Preliminary Official Statement under the captions “THE DISTRICT,” “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES” and “LITIGATION” and in Appendix A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)” (excluding therefrom forecasts, projections, estimates, assumptions and the financial and statistical data included in the Preliminary Official Statement, as to which no opinion is expressed), as of the date of the Purchase Contract, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (ii) the information contained in the Official Statement under the captions “THE DISTRICT,” “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES” and “LITIGATION” and in Appendix A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)” (excluding therefrom forecasts, projections, estimates, assumptions and the financial and statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by

the Water System and is not presently subject to the regulatory jurisdiction of any state, regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series 2022AB Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

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

Very truly yours,

Derek T. McDonald  
General Counsel

EXHIBIT E

FORM OF TRUSTEE COUNSEL’S OPINION

[CLOSING DATE]

BofA Securities, Inc.,  
as Representative of the Underwriters  
San Francisco, California

East Bay Municipal Utility District  
Water System Revenue Bonds,  
Series 2022A (Green Bonds)  
and  
Water System Revenue Refunding Bonds  
Series 2022B-1 and Series 2022B-2

Ladies and Gentlemen:

I have acted as special counsel to U.S. Bank Trust Company, National Association, as successor trustee (“USB”), in connection with the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the “District”) and USB, as amended and supplemented, including as amended and supplemented by a Thirtieth Supplemental Indenture, dated as of June 1, 2022 (the “Thirtieth Supplemental Indenture” and collectively, the “Indenture”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of the District’s Water System Revenue Bonds, Series 2022A (Green Bonds), \$\_\_\_\_\_ aggregate principal amount of the District’s Water System Revenue Refunding Bonds, Series 2022B-1, and \$\_\_\_\_\_ aggregate principal amount of the District’s Water System Revenue Refunding Bonds, Series 2022B-2 (collectively, the “Series 2022AB Bonds”). This opinion is rendered pursuant to Section 5(e)(6) of the Purchase Contract, dated May \_\_, 2022 (the “Purchase Contract”), between the District and BofA Securities, Inc., as Representative of the Underwriters listed therein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In my capacity as counsel to USB, I have examined originals or copies identified to my satisfaction of: (i) the Articles of Association and By-Laws of USB, (ii) the Indenture, (iii) such other records, certificates and documents as I have considered necessary or appropriate for the purpose of the opinion hereinafter rendered.

In rendering this opinion, I have relied upon the facts and information obtained from the records of USB, officers of USB, and other sources believed by me to be reliable, and have not undertaken to independently verify the accuracy of the factual matters represented, warranted, or certified in such documents. I have assumed the genuineness of all signatures other than USB’s, the authenticity of documents, certificates and records submitted to me as originals, the conformity to the originals of all documents, certificates and records submitted to me as copies, the legal capacity of all natural persons executing documents other than USB’s, and the

completeness and accuracy as of the date of this opinion letter of the information contained in such documents, certificates and records, which assumptions I have not independently verified. The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions.

Based upon and subject to the foregoing and subject to the qualifications set forth below, I am of the opinion that:

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

2. USB has taken all corporate action necessary to assume the duties and obligations of trustee under the Indenture, and to authorize in such capacity the execution and delivery of the Thirtieth Supplemental Indenture and the acceptance of the duties of USB under each of the foregoing does not and will not contravene any law of governmental regulation or order presently binding on USB or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which USB is a party or by which USB is or may be bound.

3. USB has duly executed and delivered the Thirtieth Supplemental Indenture, and the Indenture, assuming due authorization, execution and delivery by the District, constitutes the legal, valid and binding obligations of USB, enforceable in accordance with its terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, and other similar laws affecting the rights and remedies of creditors generally, and by the effect of general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, whether considered in a proceeding at law or in equity.

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

I express no opinion as to any matter other than as expressly set forth above, and, in conjunction therewith, I specifically express no opinion as to the status of the Bonds or the interest thereon under any federal securities laws, including but not limited to the Securities Act of 1933, as amended, and the Trust Indenture Act of 1939, as amended, or any state securities or "Blue Sky" law, or any federal, state or local tax law.

This opinion is as of the date hereof, and I have undertaken no, and hereby disclaim any, obligation to advise you of any change in any matter set forth herein even though the changes may affect a legal analysis or conclusion in this opinion letter. Further, this opinion neither implies, nor should it be viewed to imply, an approval or recommendation of any investment in any Bond.

I express no opinion as to the effect of any law other than the law of California and the federal laws of the United States of America on the matters referred to herein, in each case as they exist on the date hereof. I express no opinion with respect to the laws, regulations, or ordinances of any county, municipal or other local governmental agency.

This opinion is furnished by me solely for your benefit. This opinion letter may be relied upon by you only in connection with the transaction described in the initial paragraph of this opinion letter and may not be used or relied upon by you for any other purpose or by any other person for any purpose whatsoever without, in each instance, my prior written consent.

Respectfully submitted,

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

AUTHORIZE AND APPROVE THE ISSUANCE OF NOT TO EXCEED \$400 MILLION AGGREGATE PRINCIPAL AMOUNT OF EAST BAY MUNICIPAL UTILITY DISTRICT WATER SYSTEM REVENUE BONDS, SERIES 2022A AND WATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2022B; APPROVE THE FORM, AND AUTHORIZE THE EXECUTION, OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND APPROVE CERTAIN ACTIONS RELATING THERETO

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the “District”) is authorized by Section 12850 *et seq.* of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California (the “Act”), to issue revenue bonds; and

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

WHEREAS, pursuant to authority granted under the Act, the District has entered into a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990 (the “Bond Indenture”), by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented; and

WHEREAS, the Bond Indenture provides that the District may issue water system revenue bonds as well as refunding bonds thereunder (any such bonds referred to herein as “Bonds”) from time to time as authorized by a supplemental indenture; and

WHEREAS, the District has heretofore authorized and issued multiple series of Bonds under and pursuant to the Act (and when applicable, the Refunding Act) and the Bond Indenture, as supplemented by applicable supplemental indentures, including (i) its fixed rate Water System Revenue Refunding Bonds, Series 2012A, currently outstanding in the aggregate principal amount of \$81,750,000 (the “Series 2012A Bonds”) and (ii) its variable rate Water System Revenue Refunding Bonds, Series 2008A, currently outstanding in the aggregate principal amount of \$105,250,000 (the “Series 2008A Bonds”); and

WHEREAS, the District has heretofore entered into certain interest rate swap agreements with various counterparties for the purpose of hedging interest rate changes with respect to its variable rate Series 2008A Bonds (the “Water Bonds Interest Rate Swap Agreements”); and

WHEREAS, pursuant to Resolution No. 34031-15 adopted by the Board on April 28, 2015, the Board declared its intention to authorize the issuance of up to \$653,000,000 principal amount of water system revenue bonds; and, as of the date hereof, \$50,590,000 principal amount of such water system revenue bonds have been issued under the authority of Resolution No. 34031-15; and

WHEREAS, pursuant to the Act and the Bond Indenture, and under the authority of Resolution No. 34031-15, the Board has determined to authorize the issuance of one or more series of revenue Bonds to be designated “East Bay Municipal Utility District Water System Revenue Bonds, Series 2022A,” with such further or other designation, as may be determined appropriate at the time of the sale of such Bonds, if any, to further identify such Bonds, including, if so determined, to provide for the designation and sale of such Bonds as “green bonds” (herein called the “Series 2022A Bonds”); and

WHEREAS, pursuant to the Act, the Refunding Act and the Bond Indenture, the Board has further determined to authorize the issuance of one or more series of revenue refunding Bonds to be designated “East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2022B,” with such further or other designation as may be determined appropriate at the time of sale of such Bonds, if any, to further identify such Bonds, including, if so determined, to provide for the designation and sale of such Bonds in additional series or subseries (herein called the “Series 2022B Bonds”); and

WHEREAS, the Series 2022 Bonds will be issued in a combined aggregate principal amount not to exceed \$400,000,000, for the purpose of providing moneys to (i) finance and/or reimburse the District for certain costs of improvements to the water storage, transmission and distribution system of the District, (ii) refund all or a portion of the District’s outstanding Series 2012A Bonds, outstanding Series 2008A Bonds and/or any other series of outstanding Bonds eligible for refunding, subject to the parameters of this Resolution, as determined by the officers of the District in accordance with Section 8 of this Resolution (such Bonds to be refunded the “Refunded Bonds”), (iii) fund the costs of terminating all or a portion of the District’s obligations under the Water Bonds Interest Rate Swap Agreements in connection with a refunding of the variable rate Series 2008A Bonds, and (iv) pay costs of issuance related to the Series 2022 Bonds; and

WHEREAS, in order to provide for the issuance of the Series 2022 Bonds under the Bond Indenture and the terms thereof, the District intends to enter into a Thirtieth Supplemental Indenture (as hereinafter defined) to the Bond Indenture, by and between the District and the Trustee; and

WHEREAS, in order to provide for the termination (in whole or in part) of the Water Bonds Interest Rate Swap Agreements in connection with any refunding of the District’s Series 2008A Bonds, the District intends to enter into one or more amendments to, or novations, confirmations, assignments or terminations of, or termination agreements or other similar documents with respect to, the Water Bonds Interest Rate Swap Agreements (“Swap Termination Documents”); and

WHEREAS, pursuant to one or more purchase contracts, by and between the District and the Underwriters (as hereinafter defined), the Underwriters will purchase the Series 2022 Bonds and the District will deliver the Series 2022 Bonds to the Underwriters, upon certain conditions as provided therein; and

WHEREAS, in order to provide a continuing disclosure undertaking pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in

connection with the Series 2022 Bonds, the District intends to enter into one or more continuing disclosure agreements, by and between the District and Digital Assurance Certification, LLC, as dissemination agent thereunder; and

WHEREAS, the Underwriters will distribute a preliminary and final official statement (including any supplements or amendments thereto) relating to the Series 2022 Bonds to prospective and actual purchasers of the Series 2022 Bonds; and

WHEREAS, California Government Code Section 5852.1 requires that the Board obtain from an underwriter, financial advisor or private lender and disclose, prior to authorization of the issuance of bonds with a term of greater than 13 months, good faith estimates of the following information in a meeting open to the public: (a) the true interest cost of the bonds, (b) the sum of all fees and charges paid to third parties with respect to the bonds, (c) the amount of proceeds of the bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the bonds, and (d) the sum total of all debt service payments on the bonds calculated to the final maturity of the bonds plus the fees and charges paid to third parties not paid with the proceeds of the bonds; and

WHEREAS, in compliance with Government Code Section 5852.1, the Board has obtained from Montague DeRose and Associates, LLC, the District's Municipal Advisor in connection with the Series 2022 Bonds, the required good faith estimates and such estimates are disclosed and set forth on Exhibit A attached hereto; and

WHEREAS, it is desirable that the Board provide for the issuance, securing and sale of the Series 2022 Bonds at this time; and

WHEREAS, there has been presented to this Board meeting proposed forms of certain financing documents relating to the Series 2022 Bonds and the issuance, sale and delivery thereof;

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

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

Section 2. Authorization of Series 2022 Bonds. The issuance of the Series 2022 Bonds in one or more series or subseries (with such additional or other identifying designations, including the applicable alphabetical letter or numbering sequence designation for a series or subseries) as may be determined by the General Manager, the Director of Finance or the Treasury Manager, on the terms and conditions set forth in, and subject to the limitations specified in, the Thirtieth Supplemental Indenture is hereby authorized and approved. The Series 2022 Bonds will be dated, will bear interest at the rates, will mature on the dates, will be issued in the form, will be subject to redemption (if applicable), and will be as otherwise provided in the Thirtieth Supplemental Indenture as the same is completed as provided in this Resolution. The proposed form of the Series 2022 Bonds, as set forth in the Thirtieth Supplemental Indenture, is hereby approved and the President of the Board of Directors of the District is hereby authorized and directed to execute (by manual or facsimile signature) for and on behalf of the District the Series 2022 Bonds in substantially such form and the Secretary of the District is authorized and directed

to attest (by manual or facsimile signature) thereto, and the Trustee is hereby authorized and directed to authenticate and deliver the Series 2022 Bonds to the Underwriters in accordance with the Purchase Contract (as hereinafter defined) and the Thirtieth Supplemental Indenture; provided, however, that (i) the combined aggregate principal amount of Series 2022 Bonds shall not exceed \$400,000,000, (ii) the final maturity of any of the Series 2022 Bonds shall not be later than June 1, 2052, and (iii) the true interest cost to the District of the Series 2022 Bonds shall not exceed 4.75% per annum. Further, the issuance and delivery of the Series 2022B Bonds shall be subject to the following additional conditions: (a) the net present value of the savings to the District from the delivery of any Series 2022B Bonds issued for the purpose of refunding fixed rate Refunded Bonds shall be not less than three percent (3.0%) of the aggregate par amount of the fixed rate Refunded Bonds refunded thereby; and (b) the net present value cost to the District of refunding all or a portion of the variable rate Series 2008A Bonds and terminating (in whole or in part) the related Water Bonds Interest Rate Swap Agreements, as determined by the District's Municipal Advisor in connection with the Series 2022 Bonds, based on reasonable assumptions and methodologies consistent with standard industry practice, shall not exceed the greater of (1) 0.75% of the par amount of the outstanding variable rate Series 2008A Bonds to be refunded by the Series 2022 Bonds or (2) \$250,000.

Subject to the foregoing limitations, the issuance of the Series 2022A Bonds and Series 2022B Bonds for the purposes as authorized by this Resolution may be effected in one or more transactions as warranted by market conditions. In the event the Series 2022 Bonds are issued in multiple transactions, the authority granted by this Resolution shall include such additional bond series and one or more of each of the documents the forms of which have been approved by this Resolution with such additional or other series or numerical designations and other changes as necessary or convenient to effect such transactions. Further, the Series 2022 Bonds of any series may be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended, as determined by the Director of Finance of the District, upon the advice of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., the District's Co-Bond Counsel.

Section 3. Approval of Thirtieth Supplemental Indenture. The General Manager, the Director of Finance or the Treasury Manager of the District or the designee of any of such officers (hereinafter, each a "Designated Officer") is hereby authorized and directed to execute for and on behalf of the District, and the Secretary of the District shall attest thereto, one or more supplemental indentures to the Bond Indenture in connection with the issuance of the Series 2022 Bonds (the herein-referenced Thirtieth Supplemental Indenture), in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the Series 2022 Bonds) as the Designated Officer approving the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof). The supplemental indenture, as executed and delivered, is herein referred to as the "Thirtieth Supplemental Indenture" and such Thirtieth Supplemental Indenture is hereby approved.

Section 4. Selection of Underwriters; Approval of Purchase Contract. The Board hereby approves the engagement of BofA Securities, Inc., as senior managing underwriter, and of Morgan Stanley & Co. LLC and Blaylock Van, LLC, as co-managing underwriters (and/or such

other co-senior managing underwriters and/or co-managing underwriters as the Director of Finance shall determine) (collectively, the “Underwriters”) in connection with the negotiated sale of the Series 2022 Bonds. Each Designated Officer, acting singly, is hereby authorized and directed to execute for and on behalf of the District one or more purchase contracts for the Series 2022 Bonds, in substantially the form of the purchase contract submitted to this meeting, with such changes, insertions and omissions (and additions thereto to reflect the terms of the sale of the Series 2022 Bonds) as the Designated Officer executing the same shall approve after consultation with the District’s General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof); provided, however, that the Underwriters’ discount with respect to the Series 2022 Bonds may not exceed 0.30% of the aggregate principal amount of the Series 2022 Bonds purchased thereunder. The purchase contract, as executed and delivered, is hereinafter referred to as the “Purchase Contract” and such Purchase Contract is hereby approved.

Section 5. Approval of Continuing Disclosure Agreement. Each Designated Officer, acting singly, is hereby authorized and directed to execute for and on behalf of the District one or more continuing disclosure agreements for the Series 2022 Bonds, in substantially the form of the continuing disclosure agreement submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District’s General Counsel and Co-Bond Counsel, such approval to be evidenced by the execution and delivery thereof. The continuing disclosure agreement, as executed and delivered, is hereinafter referred to as the “Continuing Disclosure Agreement” and such Continuing Disclosure Agreement is hereby approved.

Section 6. Approval of Swap Termination Documents; Additional Finding. Each Designated Officer, acting singly, is hereby authorized and directed to execute for and on behalf of the District such Swap Termination Documents as may be necessary or advisable in connection with the termination (or novation, assignment or amendment) in whole or in part of any of the Water Bonds Interest Rate Swap Agreements relating to the Series 2008A Bonds to be refunded by the Series 2022 Bonds, as authorized by this Resolution.

Each Swap Termination Document executed in connection with the issuance of the Series 2022 Bonds may provide for the reinstatement of the related Water Bonds Interest Rate Swap Agreement upon such terms as the Designated Officer executing the same shall approve, with the advice of the District’s Municipal Advisor, as swap advisor to the District, which may include provision for an adjustment in the fixed rate payable by the District under the related Water Bonds Interest Rate Swap Agreement or the payment of a fixed payment equivalent thereto, to reflect intervening market movements between the trade date of the termination of such Water Bonds Interest Rate Swap Agreement and the scheduled date of delivery of the Series 2022 Bonds in the unlikely event that, following the date of execution of the Purchase Contract for the Series 2022 Bonds and the execution of Swap Termination Documents, such Series 2022 Bonds are not issued on the scheduled delivery date therefor.

Pursuant to Section 5922(a) of the Government Code of the State of California, the Board finds and determines that the Water Bonds Interest Rate Swap Agreements as modified by the Swap Termination Documents and the related financing arrangements in connection with the issuance of the Series 2022 Bonds and the refunding of the District’s Series 2008A Bonds are

designed to reduce the amount and duration of interest rate risk in connection with the District's Bonds.

Section 7. Approval of Preliminary and Final Official Statement. The Board hereby approves the form of preliminary official statement of the District relating to the Series 2022 Bonds, in substantially the form as submitted to this meeting, with such additions thereto and changes therein (including such changes and additions to reflect the terms of the Series 2022 Bonds) as are approved by a Designated Officer after consultation with the District's General Counsel and Co-Bond Counsel. The Director of Finance, the Treasury Manager or a designee of either of such officers designated to act on behalf of such officer for such purpose, is hereby authorized to authorize the Underwriters to distribute or cause to be distributed (via printed format and/or through electronic means) in connection with the sale of the Series 2022 Bonds a preliminary official statement to prospective purchasers of the Series 2022 Bonds. The Director of Finance or the Treasury Manager or a designee of either of such officers designated to act on behalf of such officer for such purpose, is hereby authorized to certify that the preliminary official statement is as of its date "deemed final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

The General Manager or the Director of Finance or any designee of the General Manager designated by the General Manager in writing to act on behalf of such officer for such purpose is hereby authorized to cause to be prepared and to execute for and on behalf of the District a final official statement in substantially the form of the preliminary official statement with such changes therein and additions or supplements thereto to reflect the terms of the sale of the Series 2022 Bonds and to comply with applicable federal securities laws as a Designated Officer shall approve after consultation with the District's General Counsel and Co-Bond Counsel, such approval to be evidenced by the execution and delivery by the District of the official statement. The Director of Finance, the Treasury Manager or a designee of either of such officers designated to act on behalf of such officer for such purpose, is hereby authorized to authorize the Underwriters to distribute (via printed format and/or through electronic means) the final official statement (and any supplement thereto) in connection with the sale and delivery of the Series 2022 Bonds.

Section 8. Authorization to Make Certain Determinations in Connection with Refunding. Notwithstanding anything in this Resolution to the contrary but subject to the parameters set forth herein, the Director of Finance is hereby authorized to determine the outstanding Bonds of the District to be refunded in connection with the issuance of the Series 2022 Bonds, which may include all or a portion of the District's other outstanding Bonds in addition to the Series 2012A Bonds and the Series 2008A Bonds, which determination shall be made taking into account the advice of the District's Municipal Advisor, and on the basis of what bond structure in light of the existing market conditions is in the best interest of the District, which determinations shall be conclusively evidenced by the issuance and delivery of the Series 2022 Bonds.

Section 9. Additional Actions. The Designated Officers and all such other proper officers of the District be and they hereby are authorized, individually and collectively, to take all actions and execute any and all documents necessary: to engage U.S. Bank Trust Company, National Association as trustee and paying agent under the Thirtieth Supplemental Indenture; to effect the sale and delivery of the Series 2022 Bonds pursuant to the Purchase Contract and the Bond

Indenture as supplemented; and to do any and all things and to execute and deliver such other agreements, documents and certificates, including (without limitation) executing and delivering one or more tax certificates relating to the Series 2022 Bonds, any investment agreements relating to the investment of the Series 2022 Bond proceeds, any escrow agreement relating to the refunding of Refunded Bonds, and taking any and all actions to provide for the giving of written directions and notices, and the securing of any necessary third party approvals or consents in connection with the issuance of the Series 2022 Bonds, the refunding of the Refunded Bonds and the termination of Water Bonds Interest Rate Agreements, as may be necessary, convenient, or advisable in order to consummate the sale, execution and delivery of the Series 2022 Bonds, the refunding of the Refunded Bonds and the termination of Water Bonds Interest Rate Agreements, and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Series 2022 Bonds, the Bond Indenture, the Thirtieth Supplemental Indenture, the Swap Termination Documents, the Purchase Contract, the Continuing Disclosure Agreement, the preliminary official statement(s) and the final official statement(s) and the transactions herein authorized. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

ADOPTED this 26<sup>th</sup> day of April, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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President

ATTEST:

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Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

{00072309;1}

## EXHIBIT A

### GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the East Bay Municipal Utility District Water System Revenue Bonds, Series 2022 (the “Series 2022 Bonds”) in compliance with Section 5852.1 of the California Government Code. Such good faith estimates have been provided to the East Bay Municipal Utility District (the “District”) by Montague DeRose and Associates, LLC, as municipal advisor to the District (the “Municipal Advisor”).

*Principal Amount.* The Municipal Advisor has informed the District that, based on the District’s financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Series 2022 Bonds to be sold is \$324,615,000 (the “Estimated Principal Amount”).

*True Interest Cost of the Series 2022 Bonds.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Series 2022 Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2022 Bonds, is 3.17%.

*Finance Charge of the Series 2022 Bonds.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Series 2022 Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Series 2022 Bonds), is \$916,410.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the District for sale of the Series 2022 Bonds, less the finance charge of the Series 2022 Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Series 2022 Bonds, is \$383,412,799.

*Total Payment Amount.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the District will make to pay debt service on the Series 2022 Bonds, plus the finance charge for the Series 2022 Bonds, as described above, not paid with the proceeds of the Series 2022 Bonds, calculated to the final maturity of the Series 2022 Bonds, is \$543,709,900.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Series 2022 Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series 2022 Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series 2022 Bonds sold being different from the Estimated Principal Amount, (c) the actual amortization of the Series 2022 Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series 2022 Bonds being different than

those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the District's financing plan, or a combination of such factors. The actual date of sale of the Series 2022 Bonds and the actual principal amount of Series 2022 Bonds sold will be determined by the District based on the need for project funds and other factors. The actual interest rates borne by the Series 2022 Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series 2022 Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the District. The Board has approved the issuance of the Series 2022 Bonds with a maximum true interest cost of 4.75%.

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AGENDA NO. 9.2  
MEETING DATE April 26, 2022

**TITLE** EBMUD SERIES 2022A AND 2022B WASTEWATER SYSTEM REVENUE BONDS

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

**RECOMMENDED ACTION**

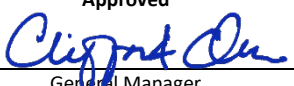
Authorize and approve the issuance of Wastewater System Revenue Bonds, Series 2022A and 2022B in an aggregate principal amount not to exceed \$45 million, and approve the form and authorize the execution of certain documents, including a Supplemental Indenture, in connection with the issuance, securing and sale of such bonds.

**SUMMARY**

The Series 2022A Wastewater System Revenue Bonds are being issued to provide funding for the District's Capital Improvement Program. Bond proceeds will also be used to pay the costs of issuance of the bonds. The District is planning to issue these bonds as "Green Bonds" based on the Guidance for Issuing Green Bonds, approved under Board Motion No. 063-22 on March 22, 2022. The projects selected for financing, and summarized in the offering documents, meet criteria as established in the guidance. The Series 2022B Wastewater System Revenue Bonds are planned to be issued for the primary purpose of refunding all or a portion of the Wastewater System's outstanding fixed-rate Series 2012A Bonds as well as paying the costs of issuance of the bonds. This item was presented with the April 26, 2022 Finance/Administration Committee meeting.

**DISCUSSION**

The Series 2022A Bonds are proposed to provide funding for the District's Wastewater System Capital Improvement Program with a particular focus on projects that maintain water quality and reduce pollution. This bond issue is consistent with the financing plan in the District's Biennial Budget for Fiscal Years 2022 and 2023. The Series 2022B Bonds are proposed to refund all or a portion of the Wastewater System's outstanding fixed-rate Series 2012A Bonds. The Series 2012A Bonds have a final maturity of June 1, 2037 and the full \$20 million in principal outstanding is callable on or after June 1, 2022. The District will only refund fixed-rate bonds that provide net present value savings of at least 3 percent of the refunded par. Based on current market conditions, the full amount of the Series 2012A Bonds meets that savings threshold. The projected savings for the Series 2012A Bonds refunding equals 20.5 percent savings as a percentage of the par amount refunded.

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department  Finance	Department Director or Manager  Sophia D. Skoda	Approved  General Manager
Attachment(s): Resolution; Preliminary Official Statement (including Appendices); Twentieth Supplemental Indenture; Continuing Disclosure Agreement; Purchase Contract		

The bond resolution authorizes the issuance of the bonds in one or more series (and with such further or other series designation as applicable). It approves the Preliminary Official Statement and Official Statement that will be used to market the bonds to investors. The resolution further authorizes other documents supporting the bond issuance, including a Supplemental Indenture, a continuing disclosure agreement, and a bond purchase contract, and authorizes their execution. It also delegates authority to the General Manager, the Director of Finance or the Treasury Manager or the designee of any of such officers to engage U.S. Bank Trust Company, National Association, the District's bond trustee, as trustee for the bonds. The bond resolution further authorizes the General Manager, the Director of Finance, the Treasury Manager, and the other proper officers of the District to take the necessary actions and execute other agreements, documents and certificates in order to provide for the sale and delivery of the bonds. The bonds are currently scheduled to be sold via a negotiated sale in May 2022 using underwriters from the District's underwriter pool. The timing of the bond sale may be adjusted for market conditions and other factors. This item supports the District's Long-Term Financial Stability Strategic Plan goal.

Summaries of the key bond documents are provided below:

- Authorizing Resolution relating to the Series 2022A and 2022B Wastewater System Revenue Bonds authorizes the issuance of the bonds in one or more series or subseries (with such further or other series designation as applicable) in an amount not to exceed \$45 million, with a final maturity not later than June 1, 2052 and at a true interest cost to the District of not in excess of 5.00 percent per annum.
- Preliminary Official Statement (including Appendices) is the disclosure document prepared by the District that provides information about the District and the Wastewater System (primarily in Appendix A) and the terms of the bond sale to potential investors. A final Official Statement will be prepared after the sale of the bonds for distribution to actual purchasers of the Series 2022A and 2022B Wastewater System Revenue Bonds. Under federal securities laws, these disclosure documents are required to contain all information that would be material to investors in making their decision whether to purchase the District's bonds and must not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such information therein not misleading, in light of the circumstances under which it was presented.
- Twentieth Supplemental Indenture relating to the Series 2022A and 2022B Wastewater System Revenue Bonds supplements the Wastewater System Bond Indenture between the District and its bond trustee and provides the terms of each of the Series 2022A and 2022B Wastewater System Revenue Bonds, including the principal and interest payment dates and the interest rates on the new Series 2022A and 2022B Wastewater System Revenue Bonds. Under the Wastewater System Bond Indenture, the District is obligated to set rates to provide net revenues sufficient to cover 1.1 times the annual debt service on all of the outstanding Wastewater System Revenue Bonds, which will include the Series 2022A and 2022B Wastewater System Revenue Bonds.
- Continuing Disclosure Agreement obligates the District to provide certain annual reports regarding the District and the Wastewater System and notices of certain events in connection with the Series 2022A and 2022B Wastewater System Revenue Bonds. Under the securities laws, the underwriters are required to obtain this commitment from the District to provide ongoing disclosure in connection with the District's bonds. Under the Continuing Disclosure Agreement,

the Digital Assurance Certification, LLC, as the District's dissemination agent, is entitled to receive compensation for its services and receives certain indemnification from the District in connection with its services.

- Purchase Contract is the agreement between the District and the underwriter of the Series 2022A and 2022B Wastewater System Revenue Bonds in connection with a negotiated sale of the bonds. The Purchase Contract provides the terms and conditions under which the underwriter agrees to purchase the Series 2022A and 2022B Wastewater System Revenue Bonds from the District for reoffering to the public and specifies the circumstances under which the underwriters' obligation may be terminated prior to delivery of the Bonds. The Authorizing Resolution provides that the discount to be paid to the underwriter in connection with its purchase of the bonds shall not exceed 0.4 percent of the aggregate principal amount of the Bonds to be purchased.

## **SUSTAINABILITY**

### **Economic**

At current market rates, the District's debt service costs are expected to be below estimates in the adopted FY22 and FY23 budgets.

### **Environmental**

By issuing the 2022A series of bonds as Green Bonds, the District helps further develop the market for Green Bonds for issuers and investors. The District continues to demonstrate leadership in this area by providing substantial information in connection with its self-labeling of the bonds as Green Bonds and providing detail on the projects funded by the bonds.

## **ALTERNATIVE**

**Do not issue the proposed bonds.** This alternative is not recommended because without the bond issue the District would need to fund capital improvement projects from cash on hand, thereby decreasing the District's liquidity. This could weaken the District's credit profile and increase interest costs for current variable-rate debt and for future fixed-rate bond issues. Additionally, declining to refund the bonds proposed for refunding would not exercise existing options to refund debt for savings.

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**PRELIMINARY OFFICIAL STATEMENT DATED MAY \_\_, 2022****NEW ISSUE – BOOK ENTRY ONLY**

Ratings: S&amp;P: “\_\_\_”

Moody's: “\_\_\_”

See “RATINGS” herein.

*In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described in this Official Statement, interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals. In the further opinion of Co-Bond Counsel, interest (and original issue discount) on the Series 2022 Bonds is exempt from State of California personal income tax. See “TAX MATTERS.”*

**[DISTRICT LOGO]**

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**

\$ \_\_\_\_\_  
**Wastewater System Revenue Bonds,**  
**Series 2022A (Green Bonds)**

\$ \_\_\_\_\_  
**Wastewater System Revenue**  
**Refunding Bonds, Series 2022B**

**Dated: Date of Delivery****Due: June 1, as shown on inside cover pages**

*This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.*

The East Bay Municipal Utility District (the “District”) is issuing its Wastewater System Revenue Bonds, Series 2022A (Green Bonds) and its Wastewater System Revenue Refunding Bonds, Series 2022B (collectively, the “Series 2022 Bonds”) pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a Twentieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and the Trustee, providing for the issuance of the Series 2022 Bonds (collectively, the “Indenture”). The Series 2022 Bonds will be issued in fully-registered form, without coupons, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series 2022 Bonds. Beneficial ownership interests in the Series 2022 Bonds of each Series may be purchased in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Interest on the Series 2022 Bonds is payable semiannually on June 1 and December 1 of each year, commencing December 1, 2022. Principal is payable on June 1 of the years set forth on the inside front cover. The principal or redemption price of, and interest on, the Series 2022 Bonds are payable by the Trustee to DTC, which is obligated in turn to remit such principal or redemption price and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Series 2022 Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

*The Series 2022 Bonds are subject to redemption prior to maturity as more fully described herein. See “THE SERIES 2022 BONDS – Redemption.”*

The Series 2022 Bonds are being issued for the purpose of providing moneys to (i) finance and/or reimburse the District for certain costs of improvements to the Wastewater System of the District, (ii) refund all of the District’s outstanding Wastewater System Revenue Refunding Bonds, Series 2012A, and (iii) pay costs of issuance of the Series 2022 Bonds, as described herein. See “PLAN OF FINANCE.”

The Series 2022 Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Wastewater Revenues as more fully described herein. Subordinated Wastewater Revenues generally consist of the District’s Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of all Wastewater Operation and Maintenance Costs. The Series 2022 Bonds have been issued on parity with the District’s Wastewater System Revenue Bonds and Parity Debt heretofore or hereafter issued, as more fully described herein. There are no Senior Wastewater Bonds remaining outstanding and the District has covenanted that it will not issue any Senior Wastewater Bonds in the future. The District also operates a Water System. The Series 2022 Bonds are not payable from or secured by the revenues of the Water System of the District. **Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series 2022 Bonds or the interest thereon.**

*The Series 2022 Bonds are offered when, as and if issued, subject to the approval of validity by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., as Co-Disclosure Counsel, and for the Underwriter by Orrick, Herrington & Sutcliffe LLP. Montague DeRose and Associates, LLC is serving as municipal advisor to the District in connection with the Series 2022 Bonds. It is anticipated that the Series 2022 Bonds will be available for delivery through the facilities of DTC in New York, New York by Fast Automated Securities Transfer (FAST) on or about June \_\_, 2022.*

**Siebert Williams Shank & Co., LLC**

Dated: \_\_\_\_\_, 2022

\* Preliminary, subject to change.

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**

**MATURITY SCHEDULES\***

\$ \_\_\_\_\_<sup>\*</sup>  
**Wastewater System Revenue Bonds,**  
**Series 2022A (Green Bonds)**

\$ \_\_\_\_\_ **Serial Series 2022A Bonds**

<i><b>Maturity Date</b></i> <i><b>(June 1)</b></i>	<i><b>Principal</b></i> <i><b>Amount</b></i>	<i><b>Interest</b></i> <i><b>Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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\$ \_\_\_\_\_ % **Term Series 2022A Bonds due June 1, 20**\_\_\_\_, **Yield** \_\_\_\_\_%; **CUSIP<sup>†</sup>: 271012**\_\_\_\_\_

<sup>\*</sup> Preliminary, subject to change.

<sup>†</sup> CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of the American Bankers Association. CUSIP numbers have been assigned by an independent company not affiliated with the District or the Underwriter and are included solely for the convenience of the holders of the Series 2022A Bonds. Neither the District nor the Underwriter is responsible for the selection or use of these CUSIP numbers and no representation is made as to their correctness on the Series 2022A Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2022A Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2022A Bonds.

\$ \_\_\_\_\_ \*

**Wastewater System Revenue Refunding Bonds,  
Series 2022B**

\$ \_\_\_\_\_ Serial Series 2022B Bonds

<i><b>Maturity Date (June 1)</b></i>	<i><b>Principal Amount</b></i>	<i><b>Interest Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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\$ \_\_\_\_\_ % Term Series 2022B Bonds due June 1, 20 \_\_, Yield \_\_%; CUSIP<sup>†</sup>: 271012\_\_

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\* Preliminary, subject to change.

† CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of the American Bankers Association. CUSIP numbers have been assigned by an independent company not affiliated with the District or the Underwriter and are included solely for the convenience of the holders of the Series 2022B Bonds. Neither the District nor the Underwriter is responsible for the selection or use of these CUSIP numbers and no representation is made as to their correctness on the Series 2022B Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2022B Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2022B Bonds.

No dealer, broker, salesperson or other person has been authorized by the District to give any information or to make any representation other than as set forth herein and, if given or made, such other information or representation must not be relied upon as having been authorized by the District. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Series 2022 Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale. This Official Statement is not to be construed as a contract with the purchasers of the Series 2022 Bonds.

The information set forth in this Official Statement has been furnished by the District and obtained from official sources and other sources which are believed to be reliable. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District since the date hereof.

The Underwriter has provided the following sentence for inclusion in this Official Statement:

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access (EMMA) website. The District also maintains a website and certain social media accounts. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Series 2022 Bonds.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2022 BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

#### **FORWARD-LOOKING STATEMENTS**

**CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND “FORWARD-LOOKING STATEMENTS.” NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS “ESTIMATE,” “PROJECT,” “ANTICIPATE,” “EXPECT,” “INTEND,” “BELIEVE” AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.**

References to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Securities and Exchange Commission Rule 15c2-12.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

Alameda and Contra Costa Counties, California  
375 Eleventh Street  
Oakland, California 94607  
(866) 403-2683

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**Board of Directors**

Doug A. Linney, *President*  
John A. Coleman, *Vice President*  
Andy Katz  
Lesla R. McIntosh  
Frank G. Mellon  
William B. Patterson  
Marguerite Young

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Clifford C. Chan, *General Manager*  
Derek T. McDonald, *General Counsel*  
Sophia D. Skoda, *Director of Finance*  
Eileen M. White, *Director of Wastewater*  
Olujimi Yoloye, *Director of Engineering and Construction*  
Michael T. Tognolini, *Director of Water and Natural Resources*  
David Briggs, *Director of Operations and Maintenance*  
Rischa S. Cole, *Secretary of the District*  
Andrea M. Miller, *Controller*  
Robert L. Hannay, *Treasury Manager*  
Samuel A. Feldman, *Debt Administrator*

**Co-Bond and Co-Disclosure Counsel**

Stradling Yocca Carlson & Rauth,  
a Professional Corporation  
Newport Beach, California

Curls Bartling P.C.  
Oakland, California

**Municipal Advisor**

Montague DeRose and Associates, LLC  
Walnut Creek, California

**Trustee**

U.S. Bank Trust Company, National Association  
San Francisco, California

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## OFFICIAL STATEMENT

### EAST BAY MUNICIPAL UTILITY DISTRICT (Alameda and Contra Costa Counties, California)

\$ \_\_\_\_\_\*  
Wastewater System Revenue Bonds,  
Series 2022A (Green Bonds)

\$ \_\_\_\_\_\*  
Wastewater System Revenue  
Refunding Bonds, Series 2022B

## INTRODUCTION

*This Introduction is not a summary of this Official Statement, and is qualified by more complete and detailed information contained in the entire Official Statement. A full review should be made of the entire Official Statement, including the cover page and attached appendices. The offering of Series 2022 Bonds to potential investors is made only by means of the entire Official Statement. Certain definitions of capitalized terms used and not defined herein are set forth in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”*

### Purpose

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning the East Bay Municipal Utility District (the “District”), the wastewater interception, treatment and disposal system owned by the District (the “Wastewater System” or the “System”), and System finances, in connection with the sale of the District’s \$ \_\_\_\_\_\* Wastewater System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”) and its \$ \_\_\_\_\_\* Wastewater System Revenue Refunding Bonds, Series 2022B (the “Series 2022B Bonds”) and, together with the Series 2022A Bonds, the “Series 2022 Bonds”). The Series 2022 Bonds are being issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the Twentieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and the Trustee, relating to the Series 2022 Bonds (as so amended and supplemented, the “Indenture”).

The Series 2022 Bonds are being issued for the purpose of providing moneys to (i) finance and/or reimburse the District for certain costs of improvements to the Wastewater System of the District, (ii) refund all of the District’s outstanding Wastewater System Revenue Refunding Bonds, Series 2012A, and (iii) pay costs of issuance in connection with the Series 2022 Bonds. See “ESTIMATED SOURCES AND USES OF FUNDS” and “PLAN OF FINANCE.” See also APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM – Capital Improvement Program.”

### The District

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California (the “State”). The District is formed under the authority of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of

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\* Preliminary, subject to change.

the State, commencing with Section 11501 (the “Municipal Utility District Act”). Pursuant to the Municipal Utility District Act, the District is empowered to own and operate the Wastewater System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM).” The District also operates a water system (the “Water System”).

The Series 2022 Bonds are not payable from or secured by the revenues of the Water System of the District.

### **Security for the Series 2022 Bonds**

The Series 2022 Bonds are special obligations of the District, payable solely from and secured by a pledge of the Subordinated Wastewater Revenues of the District, as defined in the Indenture. Subordinated Wastewater Revenues generally consist of the District’s Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of (a) all Wastewater Operation and Maintenance Costs and (b) all amounts required to be paid under the District’s Senior Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Wastewater Bonds. **There are no Senior Wastewater Bonds currently outstanding and the District has covenanted pursuant to the Twelfth Supplemental Indenture, dated as of September 15, 2010 (the “Twelfth Supplemental Indenture”) that it will not issue any Senior Wastewater Bonds in the future.** Prior to the date of execution and delivery of the Twelfth Supplemental Indenture, all Wastewater System revenue bonds of the District issued under the Indenture were designated “Wastewater System Subordinated Revenue Bonds.” Pursuant to the Twelfth Supplemental Indenture, any Wastewater System revenue bonds of the District issued (or remarketed or otherwise reoffered) under the Indenture following the execution and delivery of the Twelfth Supplemental Indenture are designated “Wastewater System Revenue Bonds” in order to reflect that the lien of the Senior Wastewater Bonds has been closed. All Outstanding Wastewater System revenue bonds issued under the Indenture (howsoever designated), together with any additional Wastewater System revenue bonds hereafter issued under the Indenture are secured on parity by Subordinated Wastewater Revenues and are collectively referred to herein as the “Wastewater System Revenue Bonds.” See “SECURITY FOR THE SERIES 2022 BONDS – Pledge of Subordinated Wastewater Revenues.”

The Series 2022 Bonds are secured on parity with the District’s other Wastewater System Revenue Bonds to be Outstanding upon the delivery thereof, together with any additional Wastewater System Revenue Bonds hereafter issued and with any other Parity Debt (which may include payment obligations under interest rate swap agreements) heretofore or hereafter incurred in accordance with the Indenture. See “SECURITY FOR THE SERIES 2022 BONDS – Outstanding Wastewater System Revenue Obligations,” and “– Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations.” As of April 30, 2022, the District had Outstanding \$347,890,000 aggregate principal amount of Wastewater System Revenue Bonds. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt.” See also “PLAN OF FINANCE – Refunding of the Refunded Bonds.”

**NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE DISTRICT IS PLEDGED TO THE PAYMENT OF THE SERIES 2022 BONDS OR THE INTEREST THEREON.**

### **Rate Covenant**

The District covenants under the Indenture that it will at all times, while any of the Wastewater System Revenue Bonds (including the Series 2022 Bonds) remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System

so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the Subordinated Wastewater Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Covenants.” See also “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”

### **Continuing Disclosure**

Pursuant to a Continuing Disclosure Agreement, dated the date of delivery of the Series 2022 Bonds, by and between the District and Digital Assurance Certification, LLC, as dissemination agent (the “Dissemination Agent”), the District will covenant and agree for the benefit of the holders and beneficial owners of the Series 2022 Bonds to provide certain financial information and operating data relating to the District and the Wastewater System by not later than December 31 of each year in which the Series 2022 Bonds are outstanding (or if the District’s fiscal year changes, by no later than six months after the end of such Fiscal Year) (the “Annual Report”), commencing with the Annual Report for Fiscal Year 2021-22, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Dissemination Agent on behalf of the District with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access system (“EMMA”). See “CONTINUING DISCLOSURE.” These covenants have been made in order to assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). See also APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years. Filings through EMMA are linked to a particular issue of obligations by CUSIP number (which is subject to change after the issuance of obligations as a result of various subsequent actions). The District uses its best efforts to confirm that each report filed through EMMA is linked to all the correct 9-digit CUSIP numbers. However, as a technical matter, it has come to the District’s attention that certain filings during the past five years, when made, were not appropriately linked to all applicable CUSIP numbers. The District has since caused the applicable filings to be linked to the additional CUSIPs.

### **Professionals Involved in the Issue**

U.S. Bank Trust Company, National Association serves as Trustee under the Indenture. Certain legal matters incident to the authorization, issuance and sale of the Series 2022 Bonds are subject to the approval of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., as Co-Disclosure Counsel, and for the Underwriter by Orrick, Herrington & Sutcliffe LLP, San Francisco, California, Underwriter’s Counsel. Montague DeRose and Associates, LLC, Walnut Creek, California, is serving as municipal advisor to the District in connection with the issuance of the Series 2022 Bonds.

### **Summaries Not Definitive**

The summaries and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary or reference is qualified in its entirety by reference to each such document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in the Indenture and, as used herein, has the meaning given to it in the Indenture. Unless otherwise indicated, all financial and statistical information herein has been provided by the District.

All references to and summaries of the Indenture and all documents, statutes, reports and other instruments referred to herein are qualified in their entirety by reference to the full Indenture and each such document, statute, report or instrument, respectively, copies of which are available for inspection at the offices of the District in Oakland, California, and will be available from the Trustee upon request and payment of duplication costs. Forward-looking statements in this Official Statement are subject to risks and uncertainties. Actual results may vary from forecasts or projections contained herein if events and circumstances do not occur as projected, and such variances may be material.

### **Additional Information**

The District regularly prepares a variety of publicly available reports, including audits, budgets and related documents. Any Series 2022 Bondholder may obtain a copy of any such report, as available, from the Trustee or the District. Additional information regarding this Official Statement may be obtained by contacting the Trustee or Sophia D. Skoda, Director of Finance, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607, (510) 287-0231.

### **THE DISTRICT**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California. The District is formed under the authority of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and, within an area known as Special District No. 1, sewerage and wastewater interception, treatment and disposal, and power generation through its Wastewater System. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

For information on the District, the Wastewater System and its finances and operations, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” and APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.”

### **PLAN OF FINANCE**

#### **Purposes of the Series 2022 Bonds**

The proceeds of Series 2022 Bonds will be applied to (i) finance and/or reimburse the District for certain costs of improvements to the Wastewater System of the District, (ii) refund all of the District’s Wastewater System Revenue Refunding Bonds, Series 2012A (such bonds to be refunded, the “Refunded Series 2012A Bonds”), and (iii) pay costs incidental to the issuance of the Series 2022 Bonds. See “ESTIMATED SOURCES AND USES OF FUNDS.”

#### **Series 2022A Bonds Designation as Green Bonds**

The Series 2022A Bonds are being issued for the primary purpose of providing additional moneys to finance (by reimbursement to the District of) a portion of the costs of various improvements to the

District's Wastewater System. The District has designated the Series 2022A Bonds as "Green Bonds" to allow investors to invest directly in bonds that finance environmentally beneficial projects. Such designation has been made by the District in accordance with the District's Board-approved Guidance for Issuing Green Bonds (the "District's Green Bond Guidance"), which was most recently approved by the District Board on March 22, 2022. The District's Green Bond Guidance identifies the criteria (described below) that the District expects to take into consideration in identifying the types of "green" projects the costs of which may be funded (or reimbursed to the District) from the proceeds of Green Bonds. The District's Green Bonds Guidance further provides that in identifying potential projects for Green Bond financing, the District's aim should be towards including projects that best meet one or more of the identified criteria and excluding those projects that appear marginal or that have unresolved sustainability issues.

The District has promoted principles of sustainability for a number of years. The District initially adopted a Sustainability Policy, District Policy 7.05, in 1994. The District's current Sustainability Policy provides that it is the policy of the District to provide reliable, high-quality drinking water and wastewater service through sustainable and resilient planning, design, and construction, operations, maintenance, rehabilitation, and disposal activities that manage long-term economic, environmental, and human resource benefits. The District's current Sustainability Policy further provides for District staff to annually report to the Board summarizing the status of the District's sustainability efforts.

In identifying projects eligible for Green Bond financing, the District considers projects that are designed to meet one or more of the following criteria to be "green" projects: (i) maintain water quality; (ii) improve water use efficiency, including conservation through reduced water loss; (iii) improve biodiversity and ecosystem quality; (iv) protect against flooding; (v) reduce pollution; (vi) improve resilience (adaptation) to climate change; (vii) reduce the combustion of fossil fuels; (viii) reduce greenhouse gas emissions; (ix) implement "reduce, reuse, recycle" practices in preference to raw materials; or (x) adhere to sustainable purchasing guidelines. Where relevant, the District's Green Bond Guidance maps these criteria for alignment with the categories, principles, or goals under the standards or frameworks established by the International Capital Market Association's Green Bond Principles, the United Nations' Sustainable Development Goals and the Climate Bonds Initiative's Climate Bonds Taxonomy. It should be noted that such mapping is provided for comparison purposes only and no representation is made by the District that the projects satisfying the District's criteria will necessarily fit the mapped criteria from the other frameworks.

The District's Green Bond Guidance as approved by the Board on March 22, 2022 is set forth in APPENDIX G – "THE DISTRICT'S GREEN BOND GUIDANCE AND EXPECTED SERIES 2022A BONDS GREEN BOND PROJECTS." Also set forth in Appendix G is a list of the particular projects that are considered by the District to be "green" projects, the costs of which the District expects to be funded (through reimbursement to the District) from proceeds of the Series 2022A Bonds. Proceeds of the Series 2022A Bonds will primarily be used to reimburse the District for some or all of the costs of the projects identified in Exhibit G. The proceeds of the Series 2022A Bonds will be deposited into a separately labeled account by the District and allocated to prior expenditures for capital improvement projects identified by the District as satisfying its criteria for green projects. Because proceeds of the Series 2022A Bonds will be applied to reimburse the District for prior expenditures made in connection with the projects identified in Exhibit G, the District does not intend to undertake any further tracking of and reporting on the use of the proceeds of the Series 2022A Bonds.

There can be no assurance that the green projects funded with the proceeds of the Series 2022A Bonds will meet an investor's expectations regarding sustainability performance. It is possible that adverse environmental or social impacts may occur during the design, construction and operation of the green projects. For additional information regarding the District's capital improvement program, and a description of the major programs and projects included therein, see APPENDIX A – "THE EAST BAY

MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM – Capital Improvement Program.”

The terms “Green Bonds” and “green project” are neither defined in nor related to provisions in the Indenture or otherwise defined under State or federal laws. No independent certification is being obtained with respect to the treatment of the Series 2022A Bonds as Green Bonds. The use of such terms herein is for identification purposes only and is not intended to provide or imply that an owner of the Series 2022A Bonds is entitled to any additional security other than as provided in the Indenture. The repayment obligations of the District with respect to the Series 2022A Bonds are not conditioned on the completion of any particular project or the satisfaction of any certification relating to the status of the Series 2022A Bonds as Green Bonds. The District assumes no obligation to ensure that these projects comply with any legal or other principles of green projects as such principles may evolve over time. The District’s Green Bond Guidance as applied in connection with the Series 2022A Bonds may be updated or changed in the future at the Board’s discretion.

The Series 2022A Bonds will not constitute “exempt facility bonds” issued to finance “qualified green building and sustainable design projects” within the meaning of Section 142(1) of the Code.

### Refunding of the Refunded Bonds

The Series 2022B Bonds are being issued for the primary purpose of refunding all of the District’s Outstanding Series 2012A Bonds. The refunding of the Refunded Series 2012A Bonds is being undertaken in order to achieve net present value and debt service savings.

The following table details the maturity dates and principal amounts of the Series 2012A Bonds that are to be refunded. The specific bonds to be refunded will be determined by the District at the time that the District and the Underwriter execute the bond purchase contract for the Series 2022 Bonds. **All Refunded Series 2012A Bonds, dates and amounts are subject to change by the District in its sole discretion.**

Refunded Series 2012A Bonds*					
Maturity Date	Issue Date	CUSIP (Base No. 271012)	Interest Rate	Outstanding Principal Amount	Principal Amount to be Redeemed
06/01/2033	10/10/2012	DT0	5.00%	\$10,000,000	\$10,000,000
06/01/2037	10/10/2012	DU7	5.00	10,000,000	10,000,000
TOTAL					\$20,000000

The refunding of the Refunded Series 2012A Bonds will be effected by depositing a portion of the proceeds of the Series 2022B Bonds, [together with other available moneys,] into the Redemption Fund held by the Trustee under the Indenture. The amounts so deposited will be applied on \_\_\_\_\_, 2022, the date of delivery of the Series 2022 Bonds, to redeem the Refunded Series 2012A Bonds at a redemption price of 100% of the principal amount thereof, without premium, together with accrued interest thereon to the redemption date. Pursuant to the Indenture, upon such deposit and notice of the redemption of the Refunded Series 2012A Bonds having been given, all liability of the District with respect to the Refunded Series 2012A Bonds will cease, terminate and be completely discharged and satisfied and the owners of the Refunded Series 2012A Bonds will be entitled to payment thereof solely from the amounts deposited in the Redemption Fund for such purpose.

\* Preliminary, subject to change.

## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Series 2022 Bonds, rounded to the nearest dollar, are as follows:

	<i>Series 2022A Bonds</i>	<i>Series 2022B Bonds</i>	<i>Total</i>
<b>Sources</b>			
Principal Amount	\$	\$	\$
Original Issue Premium/Discount [District Contribution]			
Total	<u>\$</u>	<u>\$</u>	<u>\$</u>
<b>Uses</b>			
Series 2022A (Green Bonds)			
Wastewater System Fund <sup>(1)</sup>	\$	\$	\$
Deposit to Redemption Fund			
Underwriter's Discount			
Costs of Issuance <sup>(2)</sup>			
Total	<u>\$</u>	<u>\$</u>	<u>\$</u>

<sup>(1)</sup> Includes amounts to be reimbursed to the District for prior expenditures.

<sup>(2)</sup> Includes legal, financing and consulting fees, rating agency fees, printing costs and other miscellaneous expenses.

## THE SERIES 2022 BONDS

### General Description

The Series 2022 Bonds of each Series will be issued in the aggregate principal amount, will bear interest at the respective rates and will mature in the respective years and amounts, all as set forth on the inside cover pages of this Official Statement. The Series 2022 Bonds will be issued in denominations of \$5,000 principal amount or any integral multiple thereof. The Series 2022 Bonds of each Series will be dated, and shall bear interest from, their date of delivery. Interest on the Series 2022 Bonds of each Series is payable on each June 1 and December 1, commencing on December 1, 2022, and will be computed on the basis of a 360-day year of twelve 30-day months. The Series 2022 Bonds will be issued as fully registered bonds in book-entry form only and when delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Series 2022 Bonds. So long as DTC, or its nominee, Cede & Co., is the registered owner of the Series 2022 Bonds, all payments of principal or redemption price of, and interest on, the Series 2022 Bonds will be made directly to DTC, which is obligated in turn to remit such principal or redemption price and interest to its DTC participants for subsequent disbursement to the beneficial owners of the Series 2022 Bonds. See APPENDIX E – "DTC AND THE BOOK-ENTRY ONLY SYSTEM."

### Redemption

#### Series 2022A Bonds

**Optional Redemption.** The Series 2022A Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2022A Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District,

from any source of available funds, as a whole or in part (by such maturities as may be specified by the District and by lot within a maturity), on any date on or after June 1, 20\_\_\_\_, at a redemption price equal to the principal amount of Series 2022A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

***Mandatory Redemption.*** The Series 2022A Bonds maturing on June 1, 20\_\_\_\_ are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below, commencing on June 1, 20\_\_\_\_, at the principal amount of each Series 2022A Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

**Term Series 2022A Bonds due June 1, 20\_\_\_\_**

<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>
	\$

†

† Final Maturity.

Upon an optional redemption of a portion of any term Series 2022A Bond, the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such term Series 2022A Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

**Series 2022B Bonds**

***Optional Redemption.*** The Series 2022B Bonds maturing on or before June 1, 20\_\_\_\_ are not subject to optional redemption prior to maturity. The Series 2022B Bonds maturing on and after June 1, 20\_\_\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part (by such maturities as may be specified by the District and by lot within a maturity), on any date on or after June 1, 20\_\_\_\_, at a redemption price equal to the principal amount of Series 2022B Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

***Mandatory Redemption.*** The Series 2022B Bonds maturing on June 1, 20\_\_\_\_ are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below, commencing on June 1, 20\_\_\_\_, at the principal amount of each Series 2022B Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

**Term Series 2022B Bonds due June 1, 20\_\_\_\_**

<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>
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† Final Maturity.

Upon an optional redemption of a portion of any term Series 2022B Bond, the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such term Series 2022B Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

***Notice of Redemption.*** Notice of redemption of the Series 2022 Bonds shall be given by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to DTC by electronic means of communication or by first-class mail or, if the book-entry system as described in Appendix E has been discontinued, to the respective Owners of any Series 2022 Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, and to EMMA by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Such notice of redemption will state, among other things, the date of issue of the Series 2022 Bonds to which such notice relates, the redemption date, the redemption price and in the case of Series 2022 Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed, and shall be given in the form and otherwise in accordance with the terms of the Indenture. Failure by any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

In the event of an optional redemption of Series 2022 Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series 2022 Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

***Selection of Bonds for Redemption.*** Whenever provision is made in the Indenture for the redemption of less than all of a Series of the Series 2022 Bonds, the maturities of the Series 2022 Bonds of such Series to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series 2022 Bonds of any maturity, the Trustee will select the Series 2022 Bonds of such maturity to be redeemed from all Series 2022 Bonds of the respective Series and maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion deems appropriate and fair.

***Effect of Redemption.*** If notice of redemption is given as provided in the Indenture, and moneys for payment of the redemption price of, together with interest accrued to the redemption date on, the Series 2022 Bonds (or portions thereof) so called for redemption is held by the Trustee, then on the redemption date designated in such notice, the Series 2022 Bonds (or portions thereof) so called for redemption will become due and payable at the redemption price specified in the notice of redemption, together with interest accrued thereon to the date fixed for redemption, interest on such Series 2022

Bonds so called for redemption will cease to accrue, the Series 2022 Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture and the owners of the Series 2022 Bonds (or portions thereof) will have no rights in respect thereof except to receive payment of the redemption price plus accrued interest.

## SECURITY FOR THE SERIES 2022 BONDS

### General

**Authority for Issuance.** The Series 2022 Bonds are authorized for issuance pursuant to the Municipal Utility District Act and laws of the State amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and with respect to the Series 2022B Bonds issued to refund outstanding bonds of the District, Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), resolutions adopted by the District and the Indenture.

### Pledge of Subordinated Wastewater Revenues

Pursuant to the Indenture, the District has irrevocably pledged to the payment of the principal or redemption price of and interest on the Wastewater System Revenue Bonds, including the Series 2022 Bonds and any Parity Debt, all Subordinated Wastewater Revenues (as hereinafter defined) and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

“Subordinated Wastewater Revenues” is generally defined in the Indenture to mean, for any fiscal period, the sum of (a) all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any moneys in any fund or account established under the Senior Wastewater Bond Resolution relating to the District’s Senior Wastewater Bonds or the Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code or any future similar program (collectively, “Wastewater Revenues”) for such fiscal period, plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund established under the Senior Wastewater Bond Resolution for treatment as Wastewater Revenues for such fiscal period, less the sum of (c) all Wastewater Operation and Maintenance Costs (as hereinafter defined) for such fiscal period, (d) the amounts, if any, withdrawn by the District from Wastewater Revenues for such fiscal period for deposit in the Rate Stabilization Fund, and (e) all amounts required to be paid under the Senior Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Wastewater Bonds as the same become due and payable. **There are no Senior Wastewater Bonds currently outstanding and the District has covenanted pursuant to the Twelfth Supplemental Indenture that it will not issue any Senior Wastewater Bonds in the future.** See “– Outstanding Wastewater System Revenue Obligations – No Senior Wastewater Bonds” below.

The District may deposit into, or withdraw amounts from time to time held in, the Rate Stabilization Fund within 120 days after the end of the applicable Fiscal Year. Amounts deposited into the Rate Stabilization Fund shall be deducted from Wastewater Revenues for such Fiscal Year. Amounts withdrawn from the Rate Stabilization Fund shall be included in Wastewater Revenues for such Fiscal Year and may be applied for any purposes for which Wastewater Revenues generally are available. All interest and earnings upon deposits in the Rate Stabilization Fund will not be held therein, but will be treated and accounted for as Wastewater Revenues. The amount on deposit in the Rate Stabilization Fund as of April 30, 2022 was \$32,000,000.

“Wastewater Operation and Maintenance Costs” is generally defined in the Indenture to mean the reasonable and necessary costs of maintaining and operating the Wastewater System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Wastewater Revenues and therefore payable on a parity with the Wastewater System Revenue Bonds (whether or not any Wastewater System Revenue Bonds are Outstanding).

The Series 2022 Bonds are not payable from or secured by the revenues of the Water System of the District.

**The Series 2022 Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Wastewater Revenues. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series 2022 Bonds or the interest thereon.**

#### **Allocation of Subordinated Wastewater Revenues Under the Indenture**

In accordance with the Indenture, all Subordinated Wastewater Revenues, when and as received by the District, shall be deposited into a fund to be established and maintained by the District designated as the “Revenue Fund.” So long as any Wastewater System Revenue Bonds are Outstanding, the District will transfer the moneys in the Revenue Fund into the following respective funds (established, maintained and held by the Trustee in trust for the benefit of the Owners of the Wastewater System Revenue Bonds) in the following order of priority; provided, that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which deposits shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Wastewater System Revenue Bonds and such Parity Debt):

***Interest Fund.*** The District will transfer to the Trustee to be set aside in the Interest Fund on or before the Business Day prior to each interest payment date an amount equal to the interest becoming due and payable on the Outstanding Wastewater System Revenue Bonds (excluding any interest for which there are moneys on deposit in the Interest Fund from the proceeds of any Series of Wastewater System Revenue Bonds or other source to pay such interest).

***Principal Fund; Sinking Accounts.*** The District shall transfer to the Trustee to be set aside in the Principal Fund on or before the Business Day prior to each principal or sinking account payment date an amount equal to the amount of Bond Obligation (as defined in the Indenture) plus the Mandatory Sinking Account Payments becoming due and payable on such date. All Mandatory Sinking Account Payments shall be made without priority of any payment into any one such sinking account over any other such payment.

***Bond Reserve Funds.*** Upon the occurrence of any deficiency in any bond reserve fund established pursuant to the Indenture for any Series of Wastewater System Revenue Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such bond reserve fund an amount equal to

the aggregate amount of each unreplenished prior withdrawal from such bond reserve fund until there is on deposit in such bond reserve fund an amount equal to the respective reserve requirement for such bond reserve fund. There is no bond reserve fund being established in connection with the Series 2022 Bonds. See “– No Bond Reserve Fund for Series 2022 Bonds” below.

The requirements of each such fund (including the making up of any deficiencies in any such fund resulting from a lack of Subordinated Wastewater Revenues sufficient to make any earlier required deposit) at the time of deposit is to be satisfied before any deposit is made to any other fund subsequent in priority. The Indenture provides that any Subordinated Wastewater Revenues remaining in the Revenue Fund after the foregoing transfers, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of the Indenture by the District. The District may use and apply such Subordinated Wastewater Revenues for any lawful purpose of the District, including the redemption of Wastewater System Revenue Bonds upon the terms and conditions set forth in a Supplemental Indenture relating to such Wastewater System Revenue Bonds and the purchase of Wastewater System Revenue Bonds as and when and at such prices as it may determine.

Under the Indenture the District may enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Wastewater System Revenue Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such an interest rate swap agreement may be applied to the deposits required under the Indenture. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Wastewater Revenues and other assets pledged under the Indenture to the Wastewater System Revenue Bonds on a parity basis therewith.

For further information regarding the allocation of Subordinated Wastewater Revenues with respect to the Wastewater System Revenue Bonds, see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Allocation of Subordinated Wastewater Revenues.”

### **No Bond Reserve Fund for Series 2022 Bonds**

There is no bond reserve fund being established in connection with the Series 2022 Bonds and amounts on deposit in any bond reserve fund for any other Series of Wastewater System Revenue Bonds are not available for the payment of, and do not in any manner secure, the Series 2022 Bonds.

### **Rate Covenant**

The District has covenanted under the Indenture that it will, at all times while any of the Wastewater System Revenue Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the Subordinated Wastewater Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions” for the definition of Debt Service under the Indenture.

### **Outstanding Wastewater System Revenue Obligations**

***No Senior Wastewater Bonds.*** Pursuant to Resolution No. 30051 adopted by the Board of Directors of the District on January 26, 1982 (as amended and supplemented, the “Senior Wastewater Bond Resolution”), the District authorized the issuance, from time to time, of bonds of the District designated as “East Bay Municipal Utility District Wastewater Treatment System Revenue Bonds” (the “Senior Wastewater Bonds”) and secured by a pledge of, and first lien on, the Net Revenues (as defined

in the Senior Wastewater Bond Resolution) of the District's Wastewater System, generally being all of the Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) after payment of Wastewater Operation and Maintenance Costs thereof, all on the terms and conditions set forth in the Senior Wastewater Bond Resolution. At the time of the initial execution and delivery of the Indenture in 1990, the Indenture did not preclude the District from issuing additional Senior Wastewater Bonds pursuant to the Senior Wastewater Bond Resolution. The District last issued Senior Wastewater Bonds in 1986 and all outstanding Senior Wastewater Bonds were retired in 1997. **There are currently no Senior Wastewater Bonds outstanding. Pursuant to the Twelfth Supplemental Indenture, the District has covenanted and agreed that it will not issue any Senior Wastewater Bonds in the future pursuant to the Senior Wastewater Bond Resolution.**

***Outstanding Wastewater System Revenue Bonds and Parity Debt.*** As of April 30, 2022, the District had Outstanding \$347,890,000 aggregate principal amount of Wastewater System Revenue Bonds (collectively, the "Outstanding Wastewater System Revenue Bonds") issued under and pursuant to the Indenture. All of the District's Outstanding Wastewater System Revenue Bonds are fixed rate bonds. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt."

The District's \$150,000,000 Outstanding Wastewater System Revenue Bonds, Series 2010B were issued as "Build America Bonds" that are "qualified bonds" under the provisions of the American Recovery and Reinvestment Act of 2009. For the purpose of calculating Debt Service, Annual Debt Service and Maximum Annual Debt Service under the Indenture, to the extent interest on such Build America Bonds is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program (such interest subsidy payments being referred to herein as "BABs Interest Subsidy Payments"), then in making such calculations, interest payments with respect to the Build America Bonds shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America. Pursuant to Federal sequestration legislation passed by Congress in 2011 and 2013, Federal subsidy payments for direct-pay bonds, including Build America Bonds, have been reduced (by formula) from the original funding subsidy level of 35% of interest costs on direct-pay bonds, including Build America Bonds. The sequestration reduction rate of the Federal subsidy payment for Build America Bonds is 5.7% for the Federal government's fiscal year 2022 (which began on October 1, 2021 and ends on September 30, 2022), and this means that BABs Interest Subsidy Payments sought by the District for its Build America Bonds will be reduced by this percentage. This reduction will increase the District's net interest cost. The sequestration reduction rate will be applied unless and until a law is enacted that cancels or otherwise affects the sequester, at which time the sequestration reduction rate is subject to change. year. At present, pursuant to Federal legislation, sequestration will continue through fiscal year 2030. The District can give no assurance regarding the level of subsidy payments or changes in the sequestration rate, if any, in the future, or whether Congress will adopt legislation in the future that will further reduce subsidy payments for direct-pay bonds, including Build America Bonds. Under the Indenture, the District is obligated to make all interest payments on the Wastewater System Revenue Bonds without regard to the receipt of any federal BABs Interest Subsidy Payments by the District.

The Outstanding Wastewater System Revenue Bonds, together with any additional Wastewater System Revenue Bonds issued under the Indenture (including the Series 2022 Bonds), and any Parity Debt (which may include payment obligations under interest rate swap agreements) heretofore or hereafter issued or incurred in accordance with the Indenture, are on a parity as to the pledge of and lien on Subordinated Wastewater Revenues.

***Parity State Loans.*** The District participates from time-to-time in the Clean Water State Revolving Fund loan program administered by the State Water Resources Control Board (the "SWRCB"), which was established to provide below-market rate financing for qualified water quality

infrastructure projects in the State. Under this program, the District has from time-to-time entered into loan contracts with the SWRCB (the “State Loans”) payable from the Wastewater Revenues. The District currently has no outstanding State Loans payable from Wastewater Revenues.

State Loans entered into under the SWRCB low interest rate loan program generally provide that such State Loans shall be either senior to or on a parity with all future debt of the recipient thereof. Any future State Loans received by the District would likely constitute Parity Debt under the Indenture.

***Subordinate Commercial Paper.*** The District maintains two commercial paper note programs. Under the District’s extendable municipal commercial paper program, commercial paper may be issued at prevailing interest rates for periods of not more than 120 days from the date of issuance with the option by the District to extend the maturity for another 150 days. The extendable municipal commercial paper program is not supported by any liquidity or revolving credit agreement. As of April 30, 2022, the District had outstanding \$9,300,000 aggregate principal amount of tax-exempt Extendable Municipal Commercial Paper Notes (Wastewater Series) issued for the benefit of the Wastewater System under the District’s extendable municipal commercial paper program. Under the District’s traditional commercial paper program, commercial paper notes may be issued at prevailing interest rates for periods of not more than 270 days from the date of issuance. In connection with its traditional commercial paper program, the District has covenanted to procure and maintain in effect for any series or subseries of commercial paper notes issued thereunder one or more liquidity facilities enabling it to borrow an aggregate amount at least equal to the principal amount of such series or subseries of commercial paper notes. As of April 30, 2022, the District had no Commercial Paper Notes (Wastewater Series) issued for the benefit of the Wastewater System under the District’s traditional commercial paper program. Commercial paper notes issued for the benefit of the Wastewater System under either such program (and the District’s repayment obligation for amounts borrowed, if any, under any applicable liquidity facility therefor), are payable from and secured by a pledge of Wastewater Revenues on a basis subordinate to the Wastewater System Revenue Bonds and Parity Debt. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt” for additional information regarding the District’s authorized commercial paper note programs.

### **Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations**

The Indenture provides conditions under which additional Series of Wastewater System Revenue Bonds or other Parity Debt payable from Subordinated Wastewater Revenues may be issued on a parity with the Outstanding Wastewater System Revenue Bonds. Among other conditions, the Indenture requires that the District shall have placed on file with the Trustee a certificate of the District certifying that the sum of: (1) the Subordinated Wastewater Revenues for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Wastewater System Revenue Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Wastewater Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Wastewater Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Wastewater System Revenue Bonds due to improvements to the Wastewater System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Wastewater System Revenue Bonds, shall have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt then Outstanding and the additional Wastewater System Revenue Bonds or Parity Debt then proposed to be issued. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions” for the definition of Maximum Annual Debt Service and Debt Service under the Indenture.

Refunding Wastewater System Revenue Bonds may be authorized and issued by the District without compliance with the provisions described above, subject to the terms and conditions of the Indenture, including the condition that Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt outstanding following the issuance of such refunding Wastewater System Revenue Bonds is less than or equal to Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt outstanding prior to the issuance of such refunding Wastewater System Revenue Bonds. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Refunding Bonds.”

The District has in the past, and may from time-to-time in the future, enter into interest rate swap agreements corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof. Any such interest rate swap agreements may contain such security and payment provisions, including collateral posting obligations and early termination provisions, as determined by the District and subject to any conditions contained in the Indenture. Pursuant to the Indenture, if the District so designates, amounts payable under an interest rate swap agreement may be secured by Subordinated Wastewater Revenues and other assets pledged under the Indenture on a parity basis with the Wastewater System Revenue Bonds and other Parity Debt.

Pursuant to the Indenture, the District may incur obligations which are junior and subordinate to the payment of the principal, redemption price, interest and reserve fund requirements for the Wastewater System Revenue Bonds and all Parity Debt and which subordinated obligations are payable as to principal, redemption price, interest and reserve fund requirements, if any, only out of Subordinated Wastewater Revenues after the prior payment of all amounts then required to be paid under the Indenture from Subordinated Wastewater Revenues for principal, redemption price, interest and reserve fund requirements for the Wastewater System Revenue Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in the Indenture or the instrument authorizing such Parity Debt, as applicable.

### **Investment of Moneys in Funds and Accounts Under the Indenture**

All moneys held in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District, solely in Investment Securities (see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions” for the definition of Investment Securities under the Indenture). If and to the extent the Trustee does not receive investment instructions from the District with respect to the moneys in such funds and accounts, such moneys shall be invested in a cash sweep or similar account arrangement of or available to the Trustee described in clause (xi) of the definition of Investment Securities.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of moneys in any fund or account other than the Rebate Fund shall be transferred to the Revenue Fund when received; provided, however, that an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

### **Limitations on Remedies**

The ability of the District to comply with its covenants under the Indenture and to generate Wastewater Revenues sufficient to pay the principal of and interest on the Series 2022 Bonds may be adversely affected by actions and events outside of the control of the District. Furthermore, any remedies available to the owners of the Series 2022 Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and

delay and could prove both expensive and time consuming to obtain. In addition, enforceability of the rights and remedies of the owners of the Series 2022 Bonds, and the obligations incurred by the District under the Series 2022 Bonds and the Indenture, may become subject to the following: the federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the owners of the Series 2022 Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default; Remedies” for additional information regarding events of default under the Indenture and the remedies available to owners of the Bonds pursuant to the terms thereof.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES**

### **Tax Limitations – Proposition 13**

Article XIII A of the State Constitution, known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum *ad valorem* tax on real property to 1% of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State statutes. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to *ad valorem* taxes levied to pay interest or redemption charges on (1) indebtedness approved by the voters prior to July 1, 1978, and (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the 1975-76 Fiscal Year tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the taxing jurisdiction, or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any *ad valorem* property tax except to pay debt service on indebtedness approved by the voters as described above. Such legislation further provides that each county will levy the maximum tax permitted by Article XIII A, which is \$1.00 per \$100 of assessed market value. The legislation further establishes the method for allocating the taxes collected by each county among the taxing agencies in the county. Special districts, such as the District, receive an allocation that is based primarily upon their tax levies in certain years prior to the amendment’s effective date relative to the tax levies of other congruent agencies. The District receives approximately 1.25% of the non-debt service property taxes collected within its jurisdiction from Alameda and Contra Costa counties. See also APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Property Tax Revenues.”

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These exceptions include certain transfers of real

property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of the District.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the 2% annual adjustment are allocated among the various jurisdictions in the “taxing area” based upon their respective “situs.” Any such allocation made to a local agency continues as part of its allocation in future years.

The effect of Article XIII A on the District’s finances has been to restrict *ad valorem* tax revenues for general purposes to the statutory allocation of the 1% levy while leaving intact the power to levy *ad valorem* taxes in whatever rate or amount may be required to pay debt service on its outstanding general obligation bonds and unissued bonds authorized prior to July 1, 1978. The District has had no outstanding general obligation bonds for the Wastewater System since such bonds were fully retired on April 1, 2018.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

For a description of the property tax collection procedure and certain statistical information concerning tax collections and delinquencies, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Property Tax Revenues.”

## **Spending Limitations**

At the statewide special election of November 6, 1979, the voters approved an initiative entitled “Limitation of Government Appropriations” which added Article XIII B to the California Constitution. Under Article XIII B, State and local governmental entities have an annual “appropriations limit” which limits the ability to spend certain moneys which are called “appropriations subject to limitation” (consisting of tax revenues, state subventions and certain other funds) in an amount higher than the “appropriations.” Article XIII B does not affect the appropriation of moneys which are excluded from the definition of “appropriations subject to limitation.” Among the exclusions is an “appropriation of any special district which existed on January 1, 1978, and which did not as of the 1977-78 Fiscal Year levy an *ad valorem* tax on property in excess of 12.5 cents per \$100 of assessed value.” In the opinion of the District’s General Counsel, the appropriations of the District are excluded from the limitations of Article XIII B under this clause.

## **Proposition 62**

A statutory initiative (“Proposition 62”) was adopted by the voters voting in the State at the November 4, 1986 General Election which (1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity, (2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction, (3) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (4) prohibits the imposition of *ad valorem* taxes on real property by local governmental entities except as permitted by Article XIII A, (5) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities and (6) requires that any tax imposed by a local governmental entity on or after March 1, 1985 be ratified by a

majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

### **Proposition 218**

On November 5, 1996, the voters of the State approved Proposition 218, the so-called “Right to Vote on Taxes Act.” Proposition 218 added Articles XIIC and XIID to the State Constitution, which contain a number of provisions affecting the ability of local governments to levy and collect both existing and future taxes, assessments, fees and charges.

**Article XIID.** Article XIID established procedural requirements for imposition of assessments, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the assessment, with each ballot weighted according to the proportional financial obligation of the affected parcel. The District does not currently impose standby charges or assessments for its Wastewater System.

Article XIID conditions the imposition or increase of any “fee” or “charge” upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIID defines “fee” or “charge” to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIID is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and notice must be mailed to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

Article XIID provides that nothing in Proposition 218 shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development.

The California Supreme Court decisions in *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409 (2004) (“Richmond”), and *Bighorn Desert View Water Agency v. Verjil*, 39 Cal. 4th 206 (2006) (“Bighorn”) have clarified uncertainty surrounding the applicability of Section 6 of Article XIID to service fees and charges. In *Richmond*, the California Supreme Court upheld a Court of Appeal decision that water connection fees (which included a capacity charge for capital improvements to the water system and a fire suppression charge) imposed by the Shasta Community Services District were not property related fees or charges subject to Article XIID because a water connection fee results from the property owner’s voluntary decision to apply for the connection. In both *Richmond* and *Bighorn*, however, the Court stated that a fee for ongoing water service through an existing connection is imposed “as an incident of property ownership” within the meaning of Article XIID, rejecting, in *Bighorn*, the water agency’s argument that consumption based water charges are not imposed “as an incident of property ownership” but as a result of the voluntary decisions of customers as to how much water to use.

The District has followed the notice, hearing and protest procedures in Article XIID in connection with wastewater rate increases since its Fiscal Year 2008 rate increases, and plans to follow such notice, hearing and protest procedures in connection with future rate increases.

In addition to the procedural requirements of Article XIID, under Article XIID all property-related fees and charges, including those which were in existence prior to the passage of Proposition 218 in November 1996, must meet the following substantive standards:

- (1) Revenues derived from the fee or charge cannot exceed the funds required to provide the property-related service.
- (2) Revenues derived from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, must be classified as assessments and cannot be imposed without compliance with Section 4 of Article XIID (relating to assessments).
- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

The California Fourth District Court of Appeal decision in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano*, 235 Cal.App.4<sup>th</sup> 1493 (2015), clarified that tiered rate structures, or inclining block rates, that go up progressively are compatible with the cost of service limitations of Article XIID when each tier reflects the actual costs of service for property owners falling in such tier. The court held that the City of San Juan Capistrano's water rates violated Article XIID because the city failed to meet its burden of proof in demonstrating that its tiered water rates corresponded to the actual costs of providing service to each tier at a given level of usage. On May 19, 2015, the City of San Juan Capistrano announced that the city and the San Juan Capistrano Taxpayers Association, Inc. had reached a settlement, under the terms of which the city agreed that it would not seek review by the California Supreme Court of the Appellate Court decision. Similar water rate challenges under Proposition 218 have been reported to have been filed from time-to-time against other public agencies in California. The District is unable to predict the outcome of any such ongoing litigation or any future litigation under Proposition 218 that may follow.

It is District policy to conduct periodic cost of service studies for its rates and charges. The District believes that its established rates for wastewater service comply with the substantive standards of Article XIID. However, due to the uncertainties of evolving case law and potential future judicial interpretations of Proposition 218, the District is unable to predict at this time whether Proposition 218 could be interpreted, for example, to further limit fees and charges for wastewater services and/or to require stricter standards for the allocation of costs among customers and customer classes. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Rates and Charges.”

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms “local tax,” “assessment,” “fee” or “charge.” On July 24, 2006, the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil* that the

provisions of Article XIII C applied to rates and fees charged for domestic water use. In the decision, the Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District and its General Counsel do not believe that Article XIII C grants to the voters within the District the power to repeal or reduce rates and charges in a manner that would be inconsistent with the contractual obligations of the District.

The interpretation and application of Proposition 218 will likely be subject to further judicial determinations, and the District is unable to predict the outcome of such determinations, or what, if any, further implementing legislation will be enacted. No assurance can be given that the courts will not further interpret Article XIII C and Article XIII D to limit the ability of the District to impose, levy, charge and collect increased fees and charges for wastewater services, or the voters of the District will not, in the future, approve initiatives which seek to repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the District's wastewater service fees and charges, which are the source of Subordinated Wastewater Revenues pledged to the payment of debt service on the Series 2022 Bonds.

### **Proposition 26**

Proposition 26, which amended Articles XIII A and XIII C of the California Constitution, was approved by the electorate at the November 2, 2010 election. Proposition 26 imposes a majority voter approval requirement on local governments such as the District with respect to certain fees and charges for general purposes, and a two-thirds voter approval requirement with respect to certain fees and charges for special purposes, unless the fees and charges are expressly excluded. Proposition 26, according to its supporters, was intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIII A, XIII C and XIII D pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures. Proposition 26 expressly excludes from its scope "a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product" and "assessments and property-related fees imposed in accordance with the provisions of Article XIII D." The District believes that its wastewater fees and charges meet the criteria for exclusion under Proposition 26 and that the initiative is not intended to, and would not, apply to fees for wastewater services charged by the District. The District is unable to predict, however, how Proposition 26 will be interpreted by the courts or what its ultimate impact will be.

### **Other Initiatives**

Articles XIII A, XIII B, XIII C and XIII D and Propositions 62 and 26 were adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiatives have been and could be proposed and adopted affecting the District's revenues or ability to increase revenues. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by the District.

## **CERTAIN RISK FACTORS**

*This section provides a general overview of certain risk factors which should be considered, in addition to the other matters set forth in this Official Statement, in evaluating an investment in the Series 2022 Bonds. The ability of the District to pay principal of and interest on the Series 2022 Bonds depends primarily upon the District's receipt of Subordinated Wastewater Revenues. Any one or more of the risk factors discussed below, among others, could adversely affect the ability of the District to realize Subordinated Wastewater Revenues in amounts sufficient to satisfy the requirements of the Indenture and make timely payments of principal of or interest on the Series 2022 Bonds and/or lead to a decrease in the market price and/or in the marketability of the Series 2022 Bonds. The order in which this information is presented does not necessarily reflect the relative importance of various risks or the probability of their occurrence. Further, there can be no assurance that other risk factors not discussed herein will not become material and the District has not undertaken to update investors about the emergence of the risk factors in the future. This section is provided for convenience and is not meant to be a comprehensive or definitive discussion of all of the risks associated with an investment in the Series 2022 Bonds. Many of the risk factors identified below are more fully discussed elsewhere in this Official Statement. Potential investors are advised to read the entire Official Statement, including the appendices hereto, to obtain information essential to making an informed investment decision.*

### **Limited Obligations; General**

The Series 2022 Bonds are special limited obligations of the District payable solely from and secured solely by a pledge of Subordinated Wastewater Revenues of the District. Neither the full faith and credit nor the taxing power of the District is pledged for the payment of the Series 2022 Bonds or the interest thereon. The Series 2022 Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the District's property or its income, receipts or revenues, except the Subordinated Wastewater Revenues. See "SECURITY FOR THE SERIES 2022 BONDS."

The ability of the District to generate Subordinated Wastewater Revenues in amounts sufficient to pay principal of and interest on the Series 2022 Bonds and all other Outstanding Wastewater System Revenue Bonds and Parity Debt may be adversely affected by actions and events outside the control of the District. Among other matters, general and local economic conditions and changes in law and government regulations (including initiatives and moratoriums on growth) could adversely affect the amount of Wastewater Revenues that the District receives or significantly increase Wastewater Operation and Maintenance Costs. Wastewater System rates and charges are calculated in part based upon metered water volumes. As a result, water deliveries at less than expected levels could result in lower than expected Subordinated Wastewater Revenues. Further, the realization of future Subordinated Wastewater Revenues by the District is subject to, among other things, the capabilities of management of the District, the ability of the District to provide wastewater services to its customers, and the ability of the District to establish, maintain and collect rates and charges sufficient to pay for Wastewater Operation and Maintenance Costs, debt service on Wastewater System Revenue Bonds, and other obligations payable from such Wastewater Revenues. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES."

### **No Bond Reserve Fund**

No bond reserve fund has been established for the Series 2022 Bonds. Amounts on deposit in any bond reserve fund established with respect to any other Series of the District's Wastewater System Revenue Bonds do not secure and are not available for the payment of the Series 2022 Bonds. See "SECURITY FOR THE SERIES 2022 BONDS."

## **Limitations on Rate-Setting**

The generation of Subordinated Wastewater Revenues sufficient to satisfy the requirements of the Indenture and to pay the principal of and interest on the Series 2022 Bonds and all other Wastewater System Revenue Bonds and Parity Debt will require the District to periodically raise the wastewater rates and charges payable by its customers. The increase or imposition of retail wastewater rates is subject to various substantive and procedural requirements and limitations, including Proposition 218, which added Article XIIC and XIID to the State Constitution. Proposition 218 further authorizes the exercise of the initiative power by voters to repeal or reduce wastewater rate and charges. The District's adopted retail wastewater rates for Fiscal Years 2022 and 2023 have been imposed in accordance with the notice, hearing and protest procedures provided for under Proposition 218. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS AND FEES AND CHARGES" and APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Rates and Charges."

## **Statutory and Regulatory Compliance**

The construction and operation of wastewater facilities and the discharge of wastewater are highly regulated activities. Federal, state and local standards and regulations are subject to change. In the event the District were to fail to comply with applicable laws and regulations, significant fines and penalties could be imposed by such agencies. In addition to claims by private parties, changes in the scope and standards for public agency wastewater systems such as the Wastewater System may also lead to administrative orders issued by federal or State regulators. Future compliance with new statutory and regulatory requirements or orders concerning matters such as water quality, discharge requirements and biosolids management could require significant capital investments and/or increases in Wastewater Operation and Maintenance Costs. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM –Regulatory Matters."

## **Costs of Capital Improvement Program; Construction Risks**

As described herein, during the Fiscal Years 2022 through 2026, the District's capital improvement program for the Wastewater System is projected to require cash expenditures of approximately \$243.2 million. The actual cost of acquiring and constructing the various components of the planned capital improvements to the Wastewater System will depend on a variety of factors, including but not limited to potential rising costs or shortages of labor or materials, the discovery of unforeseen subsurface conditions, natural hazards or seismic events encountered during construction, severe weather conditions, access to financial markets or other events outside the control of the District. There can be no assurances that costs for acquisition and construction of capital improvements to the Wastewater System will not significantly exceed the amounts projected by the District. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM – Capital Improvement Program."

## **Casualty Risks**

California is subject to geotechnical and extreme weather conditions which represent potential safety hazards, including floods, expansive soils, wildfires, high winds and areas of potential liquefaction and landslide. Natural disasters, including earthquakes, floods, wildfires, high winds, or man-made disasters or accidents, could cause failure of Wastewater System infrastructure or otherwise interrupt operation of the Wastewater System and thereby impair the ability of the District to generate Wastewater Revenues. The severity and/or frequency of natural disaster occurrences may be exacerbated by the impacts of climate change. The occurrence of such events could also result in liability claims against the District. Under the doctrine of inverse condemnation (a legal concept that entitles property owners to just

compensation if their property is damaged by a public use), California courts have imposed liability on utilities in legal actions brought by property holders for damages caused by the utility's infrastructure. Thus, if certain facilities of the District, such as its wastewater conveyance facilities, are determined to be the substantial cause of damage to property from sewer system overflows and flooding or otherwise, and the doctrine of inverse condemnation applies, the District could be liable for property damages in certain cases without having been found negligent.

The Indenture requires the District to maintain public liability insurance and insurance on the Wastewater System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities but only if it is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District. The District uses a combination of self-funding/self-insuring and insurance coverage in the District's risk management program; however, the program does not provide coverage for every conceivable risk of loss. The District's insurance program does not currently include earthquake coverage. Further, in the event of material damage to Wastewater System facilities, there can be no assurance that any insurance proceeds will be sufficient to rebuild or replace such facilities.

See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM – Seismic Matters” and “– Insurance.”

### **Climate Change**

One of the factors that may pose a risk to the operations of the District's Wastewater System is climate change. Numerous scientific studies on global climate change show that, among other effects on the global ecosystem, sea levels will rise, and extreme temperatures and extreme weather events will become more frequent as a result of increasing global temperatures attributable to atmospheric pollution. The effects of global climate change are expected to increase the risk of inundation at low-lying wastewater facilities as sea levels rise. In addition, higher intensity storms are expected in California as a result of climate change, which are projected to result in potentially higher peak wet weather flow events. The District has incorporated climate change into its planning activities. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM – Wastewater Facilities” and “– Climate Change.”

### **Cybersecurity; Other Safety and Security Risks**

Cybersecurity breaches could damage the District's information and security systems and cause material disruption to its operations. The occurrence of military conflicts and terrorist activities, including cyber terrorism, could also adversely impact the operations of the Wastewater System or the finances of the District. Foreign state-sponsored and other cyber-activities may increase during periods of geopolitical conflict such as the ongoing conflict in Ukraine. United States government agencies have in the past issued warnings indicating that critical infrastructure sectors such as water and wastewater systems may be specific targets of cybersecurity threats. Attacks directed at critical sector operations could damage assets, cause operational malfunctions and outages, and result in costly recovery and remediation efforts. The District maintains active security (including information security) and emergency preparedness programs and has a number of security measures and safeguards in place. However, there can be no assurance that any existing or additional safety and security measures will prove adequate in the event that military conflicts or terrorist activities, including cyber terrorism, or acts of malfeasance are directed against the assets of the Wastewater System or the information technology systems of the District. The costs of security measures or of remedying damage from security breaches could be greater than presently anticipated. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM – Security and Emergency Preparedness; Cybersecurity.”

## **COVID-19 Considerations; Infectious Disease Outbreak**

The outbreak of COVID-19, a respiratory disease caused by a new highly transmissible strain of coronavirus, has been declared as a pandemic by the World Health Organization. The pandemic has affected many parts of the world, including the United States and the State of California. Commerce, travel, asset values and financial markets experienced disruptions worldwide. Although governmental-imposed stay-at-home orders and restrictions on operations of schools and businesses implemented to respond to and control the outbreak have largely been eased or eliminated in California, new variants of the disease continue to emerge and restrictions may be re-imposed in various jurisdictions from time to time as local conditions warrant. Further, it is not known with certainty when a full resumption of normal economic conditions will occur. It is widely expected that the negative effects of the COVID-19 pandemic and its aftermath on global, national and local economies will continue at least for some period of time. Due to the essential nature of the services provided by the District's Wastewater System, the District has not experienced a significant, materially adverse impact on its annual revenues or operations as a result of COVID-19. However, given the remaining uncertainties surrounding the COVID-19 pandemic and its impacts, no assurances can be given that the District and the economy of its service area will not be adversely affected in the future. Another national or localized outbreak of highly contagious or epidemic disease in the future could also negatively impact the District's operations and finances and/or the economy of its service area. For additional information regarding the impacts of COVID-19 on the District, see APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE DISTRICT – COVID-19."

## **Uncertainties of Projections, Forecasts and Assumptions**

Certain information contained in this Official Statement is based upon assumptions and projections. Projections and assumptions are inherently subject to significant uncertainties. Inevitably, some assumptions will not be realized and unanticipated events and circumstances may occur and actual results are likely to differ, perhaps materially, from those projected. Accordingly, such projections are not necessarily indicative of future performance. See "FORWARD-LOOKING STATEMENTS" on page (c) of the inside cover pages of this Official Statement. See also APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Projected Operating Results."

## **Limitations on Remedies**

Upon the occurrence and continuance of an Event of Default under the Indenture, the registered owners of not less than a majority in aggregate principal amount of the Wastewater System Revenue Bonds at the time outstanding are entitled to declare the principal of all of such Wastewater System Revenue Bonds and the interest accrued thereon to be immediately due and payable. However, in the event of a default and such acceleration, there can be no assurance that the District will have sufficient Subordinated Wastewater Revenues available for payment of all of the Wastewater System Revenue Bonds. In addition, enforceability of the rights and remedies of the owners of the Series 2022 Bonds, and the obligations incurred by the District under the Series 2022 Bonds and the Indenture, may become subject to the following: the federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose.

If the District fails to comply with its covenants under the Indenture or to pay the principal of and interest on the Series 2022 Bonds, there can be no assurance that the available legal remedies will be adequate to protect the interests of the owners of the Series 2022 Bonds. See “SECURITY FOR THE SERIES 2022 BONDS – Limitations on Remedies” and APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default; Remedies.”

### **Green Bonds**

The designation of the Series 2022A Bonds as Green Bonds is not based upon the receipt by the District of any third-party certification relating to the status of the Series 2022 Bonds as Green Bonds. The terms “Green Bonds” and “green project” are neither defined in nor related to provisions in the Indenture or otherwise defined under State or federal laws. The use of such terms herein is for identification purposes only and is not intended to provide or imply that an owner of the Series 2022A Bonds is entitled to any additional security other than as provided in the Indenture. The Series 2022A Bonds are being designated by the District as “Green Bonds” consistent with the District’s Green Bond Guidance approved by the District Board. However, there can be no assurance that the green projects funded with the proceeds of the Series 2022A Bonds will meet an investor’s expectations regarding sustainability performance. The purpose of labeling the Series 2022A Bonds as “Green Bonds” is, as noted, to allow owners of the Series 2022A Bonds to invest directly in bonds that are expected to finance environmentally beneficial projects. The District assumes no obligation to ensure that these projects comply with any legal or other principles of green projects as such principles may evolve over time. See “PLAN OF FINANCE – Series 2022A Bonds Designation as Green Bonds.”

### **Tax Law Proposals; Risk of Audit**

Existing law may change so as to reduce or eliminate the benefit to beneficial owners of the Series 2022 Bonds of the exclusion of interest thereon from gross income for federal income tax purposes. Any proposed legislation or administrative action, whether or not taken, could also affect the value and marketability of the Series 2022 Bonds.

The IRS has initiated an expanded program for the auditing of tax-exempt securities issues, including both random and target audits. It is possible that the Series 2022 Bonds will be selected for audit by the IRS. It is also possible that the market value of the Series 2022 Bonds might be affected as a result of such an audit of the Series 2022 Bonds (or by an audit of similar securities). See “TAX MATTERS.”

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement, dated the date of delivery of the Series 2022 Bonds, by and between the District and the Dissemination Agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series 2022 Bonds to provide in an Annual Report certain financial information and operating data relating to the District and the Wastewater System by not later than December 31 of each year in which the Series 2022 Bonds are outstanding (or if the District’s fiscal year changes, by no later than six months after the end of such Fiscal Year), commencing with the Annual Report for Fiscal Year 2021-22, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Trustee on behalf of the District with the Municipal Securities Rulemaking Board through EMMA. The Municipal Securities Rulemaking Board has made such information available to the public without charge through such internet portal. The specific nature of the information to be contained in the Annual Report and the notices of specified events is set forth in APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years. Filings through EMMA are linked to a particular issue of obligations by CUSIP number (which is subject to change after the issuance of obligations as a result of various subsequent actions). The District uses its best efforts to confirm that each report filed through EMMA is linked to all the correct 9-digit CUSIP numbers. However, as a technical matter, it has come to the District's attention that certain filings during the past five years, when made, were not appropriately linked to all applicable CUSIP numbers. The District has since linked the applicable filings to the additional CUSIPs.

## **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the District in the issuance and delivery of, or in any way contesting or affecting the validity of, the Series 2022 Bonds or the Indenture, or the pledge of Subordinated Wastewater Revenues under the Indenture, or contesting or affecting the power or authority of the District to impose rates and charges for services of the Wastewater System. There is no litigation known to be pending, or to the knowledge of the District, threatened, questioning the existence of the District or the title of the officers of the District to their respective offices.

At any given time, including the present, there are certain other claims and lawsuits against the District that arise in the course of operations of the Wastewater System. Certain of such matters could, if determined adversely to the District, affect expenditures by the District, and in some cases, Wastewater Revenues. The District is also a party to various other legal proceedings affecting the Wastewater System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – THE WASTEWATER SYSTEM” for a discussion of certain of such matters. In the view of the District's management and General Counsel, there is no litigation pending against the District, or other ongoing legal proceedings to which the District is a party, which if determined adversely to the District, would individually or in the aggregate materially impair the District's ability to pay debt service on its indebtedness, including the Series 2022 Bonds.

## **RATINGS**

S&P Global Ratings (“S&P”) and Moody's Investors Service, Inc. (“Moody's”) have assigned the Series 2022 Bonds the ratings of “\_\_\_\_” and “\_\_\_\_,” respectively. Each of S&P's and Moody's rating outlook with respect to the Series 2022 Bonds is “\_\_\_\_\_.” No application has been made to any other rating agency for the purpose of obtaining any additional rating on the Series 2022 Bonds. Any desired explanation of such ratings should be obtained from the rating agency furnishing the same. Generally, rating agencies base their ratings on information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. There is no assurance that any rating or rating outlook ascribed thereto will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in the judgment of such rating agency, circumstances so warrant. Any such change in or withdrawal of such ratings may have an adverse effect on the market price of the Series 2022 Bonds.

## **TAX MATTERS**

In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described herein, interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals. In the further opinion of Co-Bond Counsel,

interest (and original issue discount) on the Series 2022 Bonds is exempt from State of California personal income tax.

Co-Bond Counsel's opinion as to the exclusion from gross income for federal income tax purposes of interest (and original issue discount) on the Series 2022 Bonds is based upon certain representations of fact and certifications made by the District and others and is subject to the condition that the District comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2022 Bonds to assure that interest (and original issue discount) on the Series 2022 Bonds will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause interest (and original issue discount) on the Series 2022 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2022 Bonds. The District has covenanted to comply with all such requirements.

The amount by which a Series 2022 Bond Owner's original basis for determining loss on sale or exchange in the applicable Series 2022 Bond (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier call date) constitutes amortizable bond premium, which must be amortized under Section 171 of the Code; such amortizable bond premium reduces the Series 2022 Bond Owner's basis in the applicable Series 2022 Bond (and the amount of tax-exempt interest received with respect to the Series 2022 Bonds), and is not deductible for federal income tax purposes. The basis reduction as a result of the amortization of bond premium may result in a Series 2022 Bond Owner realizing a taxable gain when a Series 2022 Bond is sold by the Owner for an amount equal to or less (under certain circumstances) than the original cost of the Series 2022 Bond to the Owner. Purchasers of the Series 2022 Bonds should consult their own tax advisors as to the treatment, computation and collateral consequences of amortizable bond premium.

The difference between the issue price of a Series 2022 Bond (the first price at which a substantial amount of the Series 2022 Bonds of a maturity is to be sold to the public) and the stated redemption price at maturity of such Series 2022 Bond constitutes original issue discount. Original issue discount accrues under a constant yield method, and original issue discount will accrue to a Series 2022 Bond Owner before receipt of cash attributable to such excludable income. The amount of original issue discount deemed received by a Series 2022 Bond Owner will increase the Series 2022 Bond Owner's basis in the applicable Series 2022 Bond. The amount of original issue discount that accrues to the Owner of a Series 2022 Bond is excluded from the gross income of such Series 2022 Bond Owner for federal income tax purposes, is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals, and is exempt from State of California personal income tax.

The IRS has initiated an expanded program for the auditing of tax exempt bond issues, including both random and targeted audits. It is possible that the Series 2022 Bonds will be selected for audit by the IRS. It is also possible that the market value of the Series 2022 Bonds might be affected as a result of such an audit of the Series 2022 Bonds (or by an audit of similar municipal obligations). No assurance can be given that in the course of an audit, as a result of an audit, or otherwise, Congress or the IRS might not change the Code (or interpretation thereof) subsequent to the issuance of the Series 2022 Bonds to the extent that it materially adversely affects the exclusion from gross income of interest (and original issue discount) on the Series 2022 Bonds or their market value.

It is possible that subsequent to the issuance of the Series 2022 Bonds there might be federal, state, or local statutory changes (or judicial or regulatory interpretations of federal, state, or local law) that affect the federal, state, or local tax treatment of the Series 2022 Bonds or the market value of the Series 2022 Bonds. The introduction or enactment of any of such changes could adversely affect the market value or liquidity of the Series 2022 Bonds. No assurance can be given that subsequent to the issuance of the Series 2022 Bonds such changes (or other changes) will not be introduced or enacted or interpretations will not occur. Before purchasing any of the Series 2022 Bonds, all potential purchasers

should consult their tax advisors regarding possible statutory changes or judicial or regulatory changes or interpretations, and their collateral tax consequences relating to the Series 2022 Bonds.

Co-Bond Counsel's opinions with respect to the Series 2022 Bonds may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. Co-Bond Counsel has not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate relating to the Series 2022 Bonds permit certain actions to be taken or to be omitted if a favorable opinion of Co-Bond Counsel is provided with respect thereto. Co-Bond Counsel expresses no opinion as to the effect on the exclusion from gross income of interest (and original issue discount) for federal income tax purposes with respect to any Series 2022 Bond if any such action is taken or omitted based upon the advice of counsel other than Co-Bond Counsel.

Although Co-Bond Counsel has rendered their opinions that interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes provided that the District continues to comply with certain requirements of the Code, the ownership of the Series 2022 Bonds and the accrual or receipt of interest (and original issue discount) on the Series 2022 Bonds may otherwise affect the tax liability of certain persons. Co-Bond Counsel expresses no opinion regarding any such tax consequences. Accordingly, before purchasing any of the Series 2022 Bonds, all potential purchasers should consult their tax advisors with respect to collateral tax consequences relating to the Series 2022 Bonds.

A copy of the form of the opinions of Co-Bond Counsel relating to the Series 2022 Bonds is included in APPENDIX D hereto.

## **UNDERWRITING**

The Series 2022 Bonds are being purchased by Siebert Williams Shank & Co., LLC, as underwriter of the Series 2022 Bonds (the "Underwriter"), pursuant to and subject to the conditions set forth in the bond purchase contract between the District and the Underwriter, at a purchase price of \$ \_\_\_\_\_ (equal to the \$ \_\_\_\_\_ aggregate principal amount of the Series 2022 Bonds, plus original issue premium of \$ \_\_\_\_\_, less an Underwriter's discount of \$ \_\_\_\_\_). The bond purchase contract provides that the Underwriter will purchase all of the Series 2022 Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the bond purchase contract.

The Underwriter may offer and sell the Series 2022 Bonds to certain dealers (including dealers depositing Series 2022 Bonds into investment trusts) and others at prices lower than the respective public offering prices stated or derived from information stated on the inside cover pages hereof. The initial public offering prices may be changed from time to time by the Underwriter.

## **CERTAIN RELATIONSHIPS**

The Underwriter and its affiliates are independent non-bank financial services firms that offer investment banking, sales and trading, research, and advisory services. The Underwriter and its affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the District, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of sales, trading, brokerage and financing activities, the Underwriter and its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities and financial instruments, as applicable, of the District and other governmental entities and utilities. In

connection with these activities and the provision of other services, the Underwriter may be or become creditors of such entities.

### **APPROVAL OF LEGAL PROCEEDINGS**

All legal matters incident to the offering of the Series 2022 Bonds are subject to the approval of legality by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., as Co-Disclosure Counsel, and for the Underwriter by its counsel, Orrick, Herrington & Sutcliffe LLP, San Francisco, California. The form of the approving opinions of Co-Bond Counsel, in connection with the issuance of the Series 2022 Bonds is included as APPENDIX D–“PROPOSED FORM OF CO-BOND COUNSEL OPINIONS” to this Official Statement.

### **MUNICIPAL ADVISOR**

The District has retained Montague DeRose and Associates, LLC, Walnut Creek, California, as municipal advisor (the “Municipal Advisor”) in connection with the issuance and delivery of the Series 2022 Bonds. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement.

### **INDEPENDENT ACCOUNTANTS**

Included as APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020” to this Official Statement are the audited financial statements of the District for the Fiscal Years ended June 30, 2021 and 2020. The District’s financial statements for the Fiscal Years ended June 30, 2021 and 2020 have been audited by Lance, Soll & Lunghard, LLP, certified public accountants. Lance, Soll & Lunghard, LLP has not been requested to consent to the inclusion of its report in APPENDIX B and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Lance, Soll & Lunghard, LLP with respect to any event subsequent to the date of its report.

It is District policy to competitively select and retain independent accountants on a periodic basis. Following a competitive selection process and District Board approval, Lance, Soll & Lunghard, LLP began serving as the District’s independent accountants in Fiscal Year 2019. The District exercised its option to extend the contract with Lance, Soll & Lunghard, LLP on March 22, 2022 to serve as independent accountants pursuant to the contract terms for an additional two-year period for the fiscal years ending June 30, 2022 and 2023.

### **MISCELLANEOUS**

References made herein to certain documents and reports are brief summaries thereof and do not purport to be complete or definitive and reference is hereby made to such documents and reports for a full and complete statement of the contents thereof.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or registered owners of any of the Series 2022 Bonds. The delivery and distribution of this Official Statement have been duly authorized by the District.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By \_\_\_\_\_  
General Manager

## **APPENDIX A**

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### **THE EAST BAY MUNICIPAL UTILITY DISTRICT**

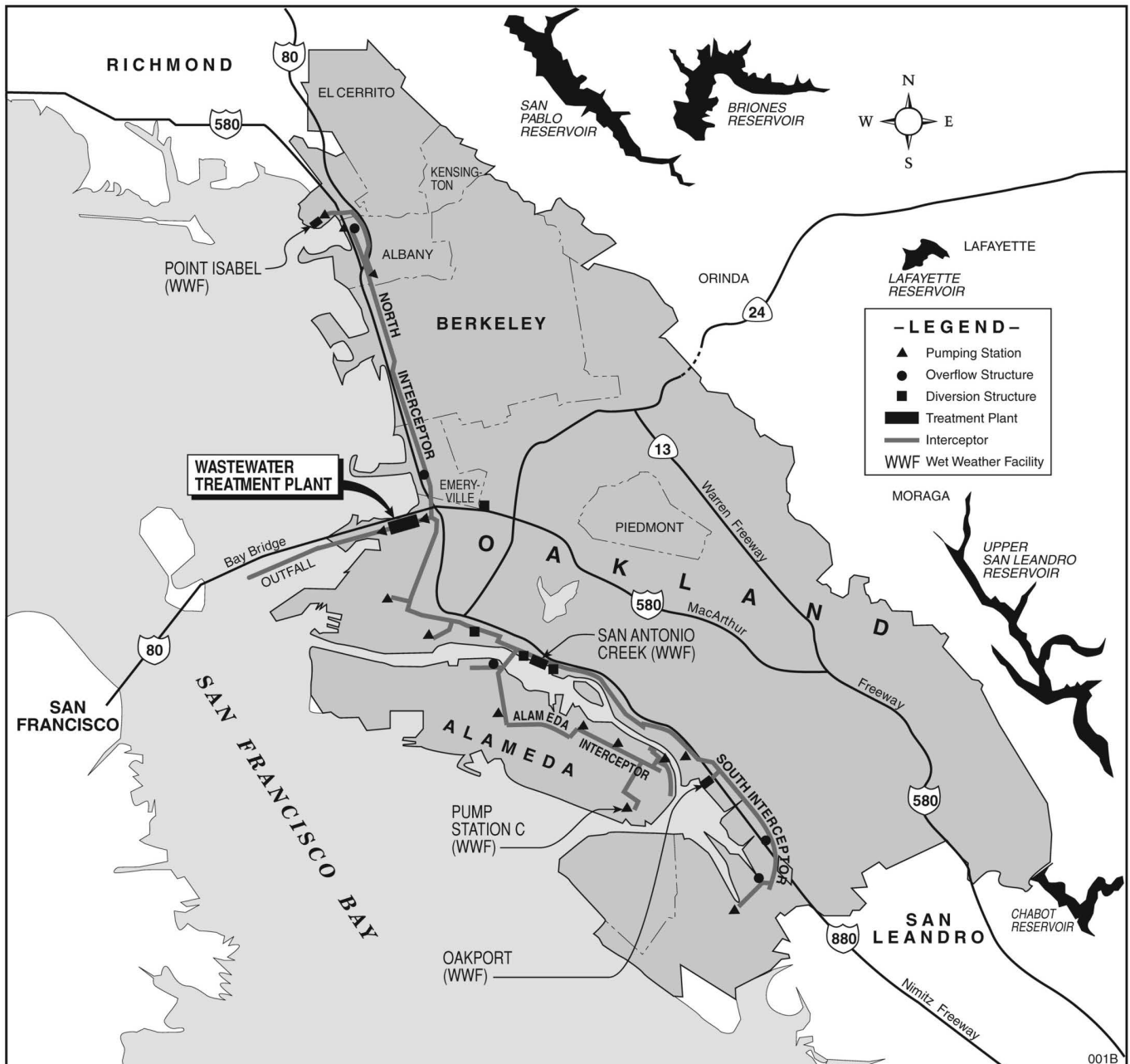
#### **(THE WASTEWATER SYSTEM)**

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The East Bay Municipal Utility District occupies 332 square miles of the San-Francisco-Oakland metropolitan region. The Wastewater System serves approximately 740,000 persons in an area designated as Special District No. 1, which covers approximately 88 square miles primarily within Alameda County.

**EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM  
(SPECIAL DISTRICT NO. 1)**



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## THE DISTRICT

### Organization

In May 1923, voters in cities along the eastern shore of the San Francisco Bay located in portions of Alameda and Contra Costa Counties (known throughout the San Francisco Bay Area as the “East Bay”) elected to create the East Bay Municipal Utility District (the “District”) under the provisions of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the territory of the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

### District Board

The District, a public agency, is governed by an elected seven-member Board of Directors (the “Board” or “District Board”) which determines such matters as rates and charges for services, approval of contracts and District policy. Voters elect directors by ward to four-year terms. There are seven wards which together cover the entire service area of the District. Each year, the Board elects from among its members persons to serve as Board officers (i.e., President and Vice President). The current members of the District Board have an average service tenure of approximately 22 years. Each of the multi-term Board members has served one or more years as an officer of the Board and has chaired one or more of the Board’s standing committees that review financial, long-range planning, and legislative matters. The following persons currently serve on the Board:

**Doug A. Linney** has served on the Board since 2000 and represents Ward 5, which includes the Alameda County cities of Alameda and San Lorenzo, the West Oakland and Oakland Airport Area, and a portion of San Leandro. Mr. Linney is currently President of the Board. He is active in a number of community and environmental organizations, including the California League of Conservation Voters, Friends of the River and ZEV2030, a zero emission vehicle advocacy organization. Mr. Linney is employed as President of The Next Generation, a public relations firm providing services that emphasize achieving environmental protection. Mr. Linney has a Bachelor of Science degree in Environmental Science and Public Policy from the University of California, Davis. His current term expires on December 31, 2024.

**John A. Coleman** has served on the Board since 1990 and represents Ward 2, which includes the Contra Costa County cities of Alamo, Lafayette and Walnut Creek, the Town of Danville, the communities of Blackhawk and Diablo, and portions of Pleasant Hill and San Ramon. Mr. Coleman is currently Vice President of the Board. Mr. Coleman represents the District on the governing boards of the Freeport Regional Water Authority and the Upper Mokelumne River Watershed Authority, as well as the DSRSD/EBMUD Recycled Water Authority (“DERWA”) and the Los Vaqueros Reservoir Joint Powers Authority. Mr. Coleman also serves as a board member of East Bay Leadership Council and as a member of the San Francisco Bay Restoration Authority Advisory Committee. He is also a past president of the Association of California Water Agencies (“ACWA”) board of directors and the California Association of Sanitation Agencies, a

past Chair of ACWA's Federal Affairs Committee, and a past Chair of ACWA's California Finance Water Task Force. Mr. Coleman is employed as the Chief Executive Officer of the Bay Planning Coalition, which represents maritime and shoreline interests and issues in northern California. He has a Bachelor of Science degree in Natural Resources from the University of California, Berkeley and a certificate in management from the University of Pacific School of Business and Public Administration. His current term expires on December 31, 2022.

**Andy Katz** has served on the Board since 2006 and represents Ward 4, which includes Albany, Berkeley, Emeryville and North Oakland in Alameda County, and El Cerrito and Kensington in Contra Costa County. Mr. Katz is employed as an environmental and workers' rights attorney. He is Chair of the Berkeley Community Health Commission and a former Chair of Sierra Club California. Prior to his election to the District Board, he served for five years as a member of the City of Berkeley Zoning Adjustments Board. Mr. Katz has a Bachelor of Arts degree and a Master of City Planning degree from the University of California, Berkeley, and a law degree from Santa Clara University. His current term expires on December 31, 2022.

**Lesia R. McIntosh** has served on the Board since 1999 and represents Ward 1, which includes the Contra Costa County cities of Crockett, Hercules, Rodeo and San Pablo; portions of Richmond and Pinole, and the communities of North Richmond and Selby. Ms. McIntosh represents the District at the Special Districts Association of Contra Costa County and the Los Vaqueros Reservoir Joint Powers Authority. She is a member of the Contra Costa County Bar Association, East Bay Community Development Corporation, and Black Women Organized for Political Action. Ms. McIntosh is an attorney with more than 30 years of experience. She has a Bachelor of Science degree in Political Science from the University of California, Berkeley and a law degree from John F. Kennedy University. Ms. McIntosh's current term expires on December 31, 2024.

**Frank G. Mellon** has served on the Board since 1994 and represents Ward 7, which includes the areas of Castro Valley, communities of Cherryland and Fairview; portions of San Leandro and Hayward in Alameda County, and a portion of San Ramon in Contra Costa County. Mr. Mellon also serves on the District's Retirement Board. He represents the District on the governing board of DERWA and on the Special Districts Association of Alameda County. Mr. Mellon is currently a consultant specializing in human resources and labor relations and has taught labor law in the California State University East Bay Human Resources Certificate Program. Mr. Mellon has a Bachelor of Arts degree in Management from the University of Hawaii and a Master degree in Business Administration from St. Mary's College in Moraga. His current term expires on December 31, 2022.

**William B. Patterson** has served on the Board since 1997 and represents Ward 6, which includes portions of Oakland, including East Oakland and the area south of Park Boulevard/5<sup>th</sup> Avenue to the San Leandro city boundary, in Alameda County. Mr. Patterson represents the District on the boards for the Upper Mokelumne River Watershed Authority and the Freeport Regional Water Authority. He also serves as a representative for the Business Forum and the Oakland Chamber of Commerce. Mr. Patterson is a current member of Oakland's Urban Strategies Council board and previously served on the Oakland Public Ethics and Parks and Recreation Commissions and the Oakland Workforce Investment Board. He retired several years ago, after working for many years as a City of Oakland Manager of Parks and Recreation. Mr. Patterson has Bachelor's and Master's degrees from San Francisco State University. His current term expires on December 31, 2024.

**Marguerite Young** was elected to the Board in 2014 and represents Ward 3, which includes the City of Piedmont and a portion of the City of Oakland in Alameda County, and the Contra Costa County, City of Orinda, the Town of Moraga, the community of El Sobrante, and portions of

Pinole and Richmond. She also serves on the District's Retirement Board. Ms. Young is the principal of Rivernstream Consulting which provides strategic planning, research and policy guidance at the confluence of climate, labor and justice. She recently retired from the Service Employees International Union ("SEIU") where she was the Assistant Director for the union's Climate and Environmental Justice program. Prior to this she was Assistant Director and Senior Policy Analyst for the SEIU Capital Stewardship Program. Ms. Young was co-chair of the CALFED Bay-Delta Program's Water Quality Committee, which instigated regional cooperation among water agencies to address drinking water quality issues related to Bay-Delta water supplies. As California Director of Clean Water Action, her work also included service as an appointed member of California's Source Water Assessment Advisory Committee, the United States Environmental Protection Agency ("USEPA") Federal Advisory Committee on the Multiple Disinfection By-product Rule, and California's Recycled Water Task Force. She co-founded the League of Conservation Voters-East Bay and is a former board member of Friends of the River. Ms. Young has a Bachelor of Science degree in Natural Resource Economics from the University of California, Berkeley. Her current term expires on December 31, 2022.

## **District Management**

**Clifford C. Chan** joined the District in 1997 and was appointed General Manager in 2020. Mr. Chan has nearly 25 years of water industry related experience. Prior to his appointment as General Manager, Mr. Chan served as the District's Director of Operations and Maintenance and was responsible for overseeing nearly one-half of the District's employees tasked with operating and maintaining the District's water system. Previously, he held engineering and management positions in the District's Operations and Maintenance Department, including serving as Manager of Maintenance and Construction. Before joining the District, Mr. Chan was employed as an engineering consultant. He serves on committees for the American Water Works Association and the California Urban Water Agencies. He has a Bachelor of Science degree and a Master's degree in Civil Engineering from the University of California, Berkeley and is a licensed Civil Engineer in California.

**Derek T. McDonald** joined the District in 2007 and was appointed General Counsel in 2021. Mr. McDonald has extensive experience in public agency law, including construction, public bidding and procurement, real estate, water rights, tort and contract litigation, the Public Records Act, and the Brown Act, having worked on a number of significant cases and issues for the District during his tenure in the District's Office of General Counsel. Before joining the District, he was a court research attorney and clerked for a law firm and a public defender's office. Mr. McDonald also worked with local and international nonprofit and nongovernmental organizations in the areas of youth development, environmental restoration, international elections and human rights advocacy. He has a Bachelor's degree in Sociology from the Boston College and a law degree from the University of San Francisco.

**Sophia D. Skoda** joined the District in 2006 and was appointed Director of Finance in 2015. Prior to her appointment as Director of Finance, Ms. Skoda served as Treasury Manager. In addition, Ms. Skoda has previously served as a Senior Civil Engineer for the District. Before joining the District, Ms. Skoda provided a range of financial consulting services to water and wastewater utility clients throughout California. She has a Bachelor of Science degree in Civil Engineering from Stanford University and a Master's degree in Civil Engineering from the University of California, Berkeley.

**Olujimi Yoloye** joined the District in 1985 and was appointed Director of Engineering and Construction in 2019. Mr. Yolooye is responsible for over 280 employees tasked with planning, design and construction of water system infrastructure. Prior to his current appointment, he held

progressively more responsible positions managing engineering design and construction projects in the Water and Wastewater Departments. He has more than 30 years of experience in the engineering field. Mr. Yoloche has a Bachelor's degree in Civil Engineering from the University of Manchester Institute of Science and Technology (England) and a Master's degree in Civil Engineering from Stanford University and is a licensed Civil Engineer in California.

**Michael T. Tognolini** joined the District in 1996 and was appointed Director of Water and Natural Resources in 2018. Mr. Tognolini is responsible for managing divisions that develop and administer programs to protect existing water resources, develop additional water supplies and manage 57,000 acres of water, watershed lands and related facilities. During his tenure with the District, Mr. Tognolini has held a number of engineering and management positions in drought planning and water supply development in the Water and Natural Resources Department. He has more than 32 years of experience in the water industry. Mr. Tognolini has a Bachelor's degree and a Master's degree in Civil Engineering from Stanford University.

**David Briggs** joined the District in 2017 and is presently the Director of Operations & Maintenance and the Emergency Operations Director for the District. In this capacity he manages the operation and maintenance of water facilities and power generation facilities. Prior to joining the District, Mr. Briggs spent 10 years at the San Francisco Public Utilities Commission and 13 years at the Contra Costa Water District. He has been a manager since 2003. During his 27-year career, Dr. Briggs has developed experience in water resources, engineering, construction management, facilities planning, and operations and maintenance. He obtained his Bachelor's degree in mechanical engineering from UC Davis, and his Master's degree and Ph.D. from Stanford University, also in mechanical engineering. He is a licensed Civil Engineer in California.

**Eileen M. White** joined the District in 1987 and was appointed Director of Wastewater in 2017. Prior to that appointment, she held progressively more responsible positions managing the operations of the water system and managing engineering design and construction projects in the Wastewater and Water Departments. Prior to joining the District, Ms. White worked as a design engineer for Pacific Gas and Electric Company. She has more than 30 years of experience in the engineering field. Ms. White has a Bachelor of Science degree in Civil Engineering from the University of California, Berkeley and is a licensed Civil Engineer in California.

**Rischa S. Cole** joined the District in 1997 and was appointed Secretary of the District in 2017. Ms. Cole has served in a variety of lead administrative roles during her career at the District including Executive Assistant II in the Office of the Secretary and, prior to her appointment as Secretary, as Assistant to the General Manager. Ms. Cole received her Bachelor of Science degree in Business Administration from California State University, East Bay. She is a Member of the International Institute of Municipal Clerks and is completing requirements to obtain her credentials as a Certified Municipal Clerk.

**Andrea M. Miller** joined the District in 2020 as the Controller. She has more than 30 years of experience in accounting and finance and is responsible for oversight of the District's annual audit, accounting, and payroll. Prior to joining the District, Mrs. Miller served as Finance Director, Assistant Finance Director, and Budget Administrator for three other local governments. She serves on the California State Controller's Office Advisory Committee on Financial Reporting, and on the Government Finance Officers Association Committee on Governmental Budgeting and Fiscal Policy. Mrs. Miller has a Bachelor of Arts degree in Human Development with a minor in Business Administration from California State University, Hayward, and a Master of Public Administration degree from Golden Gate University.

**Robert L. Hannay** joined the District in 2018 as Treasury Manager. Mr. Hannay is responsible for the oversight of the District's debt management, investment management, and rate planning. Mr. Hannay additionally provides financial management support to the District's retirement system. Prior to joining the District, Mr. Hannay worked in consulting, at a rating agency, at a financial advisory firm, and in public finance investment banking. Mr. Hannay has a Bachelor of Science degree in Civil Engineering from Texas A&M University and Master's degrees in Civil Engineering and City Planning from the University of California, Berkeley. He is also a Chartered Financial Analyst (CFA) charterholder.

**Samuel Feldman** joined the District in 2021 as the District's Debt Administrator. Prior to this role, Mr. Feldman was a local government rating analyst at Moody's Investors Service covering local governments in the West region. Prior to this, Mr. Feldman worked in the City Manager's Office of the City of Phoenix, Arizona and was part of the 61<sup>st</sup> class of the Phoenix Management Intern Program. Mr. Feldman has a Bachelor of Arts degree in Urban & Metropolitan Studies from Arizona State University and his Master's degree in Public Administration from Arizona State University, where he was a Marvin Andrews Fellow in Urban Management.

## **Employees and Employee Relations**

As of January 1, 2021, the District had 1,680 (full-time equivalent) employees in the Water System and 267 (full-time equivalent) employees in the Wastewater System.

The District has four unions representing approximately 1,799 workers out of a total full-time equivalent workforce of 1,947 employees: Local 2019 of the American Federation of State, County and Municipal Employees ("AFSCME") represents white collar workers including professionals; Local 444 of AFSCME represents blue collar workers; Local 21, International Federation of Professional and Technical Engineers represents supervisory employees; and Local 39, International Union of Operating Engineers represents water treatment/distribution workers.

Locals 444, 21 and 39 are each operating under a Memorandum of Understanding (collectively, "MOUs"), approved by the District Board in 2022. The term of the MOUs began on April 26, 2021 and extends through April 20, 2025. The MOU with Local 2019 expired on April 25, 2021. Until a successor contract is executed, the terms of the expired MOU will continue to govern. *{Monitor for update}*. The MOUs are comprehensive in scope and provide for binding arbitration for the resolution of grievances. The District has not had a strike or work stoppage since 1985. For a discussion of the District Employees' Retirement System, see "WASTEWATER SYSTEM FINANCES – Employees' Retirement System."

## **Service Area**

Originally formed to include nine cities covering 92.6 square miles, the District has grown by more than 450 separate annexations to a present area of 332 square miles in 20 incorporated and 15 unincorporated communities in both Alameda and Contra Costa Counties. It covers the eastern shore of San Francisco Bay from Carquinez Strait on the north to and including San Lorenzo on the south and it extends approximately 20 miles east, beyond the Oakland-Berkeley hills, into Contra Costa County.

The District's Water System serves this entire area, reaching approximately 50% of the combined population of Alameda County and Contra Costa County. Approximately two-thirds of the population within the District's service area resides in the cities of Alameda, Berkeley, Oakland, San Leandro, Richmond and Walnut Creek.

The Municipal Utility District Act was amended in 1941 to enable formation of special districts for wastewater service provision. In 1944, voters elected to form the District's Special District No. 1 to

treat wastewater released into the San Francisco Bay. The District's Wastewater System presently serves approximately 740,000 people in an 88-square-mile area of the two counties along the east shore of the San Francisco Bay, extending from Richmond on the north, southward to Oakland's border with San Leandro. Domestic, commercial and industrial wastewater is treated for the six participating cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and for the Stege Sanitary District (which includes El Cerrito, Kensington and part of Richmond) (collectively, the "participating agencies"). Each of these participating agencies operates a sewer collection system that discharges into the District's intercepting sewers. In addition to treating waste received from the participating agencies' sewer collection systems, the District accepts high-organic waste streams delivered in trucks. The wastes include domestic waste from septic tanks, fat, oil and grease from restaurants, and other food and drink wastes. The District's trucked-waste program continues to expand in the scope of wastes accepted. The District anaerobically digests the high-organic wastes with municipal solids to create renewable energy. This energy is used to power the wastewater treatment facility, with excess energy sold to the Port of Oakland under a power purchase agreement.

## **COVID-19**

The spread of the novel strain of coronavirus (and variants thereof) and the disease it causes (known as "COVID-19") has had significant negative impacts throughout the world, including in the State of California (the "State"). In March 2020, the World Health Organization declared the COVID-19 outbreak to be a pandemic, and states of emergency have been declared by the United States, the State, and numerous counties throughout the State, including in each of Alameda and Contra Costa Counties, major portions of which comprise the service areas of the District's Wastewater System. The purpose behind these declarations are to coordinate and formalize emergency actions and across federal, state and local governmental agencies, and to proactively prepare for a wider spread of the virus.

On March 19, 2020, in an effort to slow the spread of COVID-19, Governor Newsom issued Executive Order N-33-20 ordering individuals living in the State to stay home or at their place of residence except for specified exceptions, including exceptions for certain sectors of the workforce that were classified as providing essential services and products. The District's Water System and Wastewater System are in federally designated critical infrastructure sectors with exemptions under the Governor's Executive Order N-33-20. This classification permitted certain of the District's workforce to be excepted from the portion of Executive Order N-33-20 that ordered non-essential workers to remain in their place of residence. The District has continued to operate in accordance with the health guidelines established by Alameda and Contra Costa Counties, the State of California, and the federal government. The District's ability to provide water and wastewater services and to conduct billing and collection functions continued without interruption. Adequate staffing levels were maintained, construction and maintenance activities continued and necessary supplies were received without detrimental delays. As of the date of this Official Statement, the District has not experienced significant material adverse impacts to its annual revenues or operations as a result of COVID-19.

To help mitigate the economic impact of COVID-19 on its customers, beginning in March 2020, the District restored water service to residential customers in occupied residences whose service was discontinued for non-payment during the state of emergency, and suspended the discontinuance of water services due to non-payment. The District's action was consistent with Executive Order N-42-20, signed by Governor Newsom on April 2, 2020. The District has not yet determined when the discontinuance of water services for non-payment may be re-imposed. The District also has in place certain extended payment plans for the payment of past due water and wastewater charges, and a Customer Assistance Program, which provides discounts to qualified low-income customers, to further assist its customers. From Fiscal Year 2018-19 to Fiscal Year 2020-21, the number of accounts delinquent for more than 100 days increased from 1% of customers to approximately 3% of customers.

The District applied in March 2022 for approximately \$3.6 million under California State Water Resources Control Board (“SWRCB”) California Water and Wastewater Arrearage Payment Program (“CWWAPP”) for Wastewater System accounts that have fallen behind during the period of March 4, 2020 through June 15, 2021. Approval of the application and disbursement of funding is expected by the District to occur in spring 2022.

The District was allocated approximately \$9.9 million under the same program to aid the Water System accounts that have fallen behind during the period of March 4, 2020 through June 15, 2021, which in turn is expected by the District to lower the amount of accounts receivable. In addition, \$116 million in funds was allocated from the American Rescue Plan Act to the California Department of Community Services and Development for the Low-Income Household Water Assistance Program (“LIHWAP”) to provide benefit payments for eligible households with service disconnected or pending shut-off. Under this program, customers seeking assistance are required to apply directly through the LIHWAP and if approved, benefit payments will be made to the District to be applied as a bill credit to the applicable customer account. The anticipated statewide rollout of LIHWAP benefit payments will begin in May 2022 to eligible households.

With widespread vaccination currently underway in the United States and many countries worldwide, the governmental-imposed stay-at-home orders and restrictions on operations of schools and businesses implemented to respond to and control the outbreak have generally been lifted; however, new variants of the disease continue to emerge and the State and local governments located within the State have from time-to-time implemented temporary measures and restrictions meant to suppress increases in the number of COVID-19 cases. No assurance can be given that governmental authorities will not reinstate the prior, more restrictive measures in the event that the COVID-19 outbreak worsens. In addition, the pace of the resumption of normal economic conditions and the economic recovery are uncertain and no assurance can be given the District’s operations or finances will not be negatively impacted in the future. To date, the District does not believe the impacts of the COVID-19 pandemic will have a material adverse impact on its ability to pay debt service on its bonds or other debt obligations.

### **Taxation of the District**

All property of the District within the District’s boundaries generally is exempt from property taxation. District-owned land outside of the District’s boundaries is taxable, but improvements constructed on that land by the District are not taxable. As a public agency, the District is exempt from the payment of State income taxes and federal income taxes.

## **THE WASTEWATER SYSTEM**

### **General**

The District’s Wastewater System provides regional wastewater conveyance, treatment, and disposal services for an area within the District designated as Special District No. 1. Special District No. 1, a separate district within the District governed by the Board, was established in 1944 and is administered by the District’s Wastewater Department. The Wastewater System began operations in 1951.

Special District No. 1 intercepts, treats and disposes of wastewater within its wastewater service area, which includes the six participating cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and the Stege Sanitary District. Each of the participating agencies maintains its own separate sanitary sewer system (*i.e.*, a system designed to transport sewage separate from the pipe system constructed to convey storm water runoff directly to surface waters), and is responsible for collecting and conveying wastewater to the District interceptors. The participating agencies and Special District No. 1

operate under separate National Pollutant Discharge Elimination System (“NPDES”) permits issued by the Regional Water Quality Control Board San Francisco Bay Region (the “Regional Board”) and are separately responsible for failures of their own collection, conveyance and/or disposal systems.

In addition to treating wastewater received from the participating agencies through their collection systems, the District also treats high-organic waste streams delivered to District facilities in trucks through its resource recovery program. The trucked wastes include domestic waste from septic tanks, industrial and commercial process wastes, fat, oil and grease from restaurants and other food and drink wastes. See “– Resource Recovery” below.

Table 1 shows the population trends for the seven largest cities within the District’s Wastewater System service area, Alameda and Contra Costa Counties and the State for the five years 2017 to 2021.

**Table 1**  
**SEVEN LARGEST CITIES IN DISTRICT WASTEWATER SYSTEM SERVICE AREA**  
**ALAMEDA, CONTRA COSTA COUNTIES AND CALIFORNIA**  
**Population Trends<sup>(1)</sup>**

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Oakland	427,493	428,750	429,932	432,327	435,514
Berkeley	121,210	121,763	122,297	122,364	116,761
Alameda	80,947	81,195	81,457	81,135	80,884
El Cerrito	24,534	24,645	24,788	24,835	24,846
Albany	18,570	18,818	18,932	18,871	17,055
Piedmont	11,354	11,311	11,325	11,297	11,296
Emeryville	<u>12,087</u>	<u>12,142</u>	<u>12,177</u>	<u>12,448</u>	<u>12,586</u>
Total Seven Cities	696,195	698,624	700,908	703,277	698,942
Alameda County	1,644,303	1,651,760	1,659,608	1,663,114	1,656,591
Contra Costa County	1,137,577	1,143,188	1,147,623	1,149,853	1,153,854
California	39,352,398	39,519,535	39,605,361	39,648,938	39,466,855

<sup>(1)</sup> As of January 1 of each year. Includes the six participating cities and El Cerrito, the largest incorporated portion of the Stege Sanitary District service area.

Source: State of California, Department of Finance, *E-4 Population Estimates for Cities, Counties and the State–2011-2021, with 2010 Census Benchmark*. Sacramento, California, May 2021.

The total civilian labor force in Alameda and Contra Costa Counties, representing all people who work or are seeking work, totaled 1,355,100 in 2020 (the most recent full year information available). In 2020, the unemployment rate approximated 8.8% in Alameda County and 8.9% in Contra Costa County. In comparison, the unemployment rate averaged 10.1% in the State of California and 8.1% in the nation as a whole for the same period. These unemployment rates reflect the impact of the COVID-19 pandemic. As of December 2021, the preliminary unadjusted unemployment rate for Alameda County was 3.9% and was 4.2% for Contra Costa County.

Table 2 shows the labor force and employment trends for Alameda and Contra Costa Counties, the State and the United States for the five years 2016 to 2020.

**Table 2**  
**ALAMEDA COUNTY AND CONTRA COSTA COUNTY**  
**Labor Force and Employment**  
**Calendar Years 2016 through 2020<sup>(1)</sup>**

<b>Year and Area</b>	<b>Civilian Labor Force<sup>(1)</sup></b>	<b>Employment</b>	<b>Unemployment</b>	<b>Unemployment Rate</b>
2016				
Alameda County	831,800	796,000	35,800	4.3%
Contra Costa County	553,200	528,400	24,800	4.5
California	19,012,000	17,965,000	1,046,600	5.5
United States	159,187,000	151,436,000	7,751,000	4.9
2017				
Alameda County	838,700	807,700	31,000	3.7%
Contra Costa County	558,200	536,700	21,600	3.9
California	19,173,800	18,246,800	927,000	4.8
United States	160,320,000	153,337,000	6,982,000	4.4
2018				
Alameda County	841,500	815,700	25,800	3.1%
Contra Costa County	560,300	542,200	18,100	3.2
California	19,263,900	18,442,400	821,500	4.3
United States	162,075,000	155,761,000	6,314,000	3.9
2019				
Alameda County	841,100	815,900	25,200	3.0%
Contra Costa County	559,700	542,100	17,600	3.1
California	19,353,700	18,550,500	803,200	4.2
United States	163,539,000	157,538,000	6,001,000	3.7
2020				
Alameda County	813,800	742,400	71,400	8.8%
Contra Costa County	541,300	493,200	48,000	8.9
California	18,821,200	16,913,100	1,908,100	10.1
United States	160,742,000	147,795,000	12,947,000	8.1

<sup>(1)</sup> Most recent full calendar year information available.

<sup>(2)</sup> Total of Employment and Unemployment figures for any year and area may not add to corresponding Civilian Labor Force number due to rounding.

*Sources:* For State and County information, State of California Employment Development Department, California Labor Market Division. For U.S. information, U.S. Department of Labor, Bureau of Labor Statistics.

Median household income in Alameda and Contra Costa Counties exceeded \$100,000 in 2020 (the most recent calendar year information available). This compares to a median household income in 2020 of approximately \$83,000 in California and just over \$67,000 in the United States.

Table 3 shows the median household income for Alameda and Contra Costa Counties, the State and the United States for the five years 2016 to 2020.

**Table 3**  
**ALAMEDA COUNTY AND CONTRA COSTA COUNTY**  
**Median Household Income**  
**Calendar Years 2016 through 2020<sup>(1)</sup>**

	<b>Year and Area</b>	<b>Median Household Income<sup>(1)</sup></b>
2016	Alameda County	\$89,472
	Contra Costa County	90,920
	California	67,715
	United States	57,617
2017	Alameda County	\$95,550
	Contra Costa County	95,062
	California	71,785
	United States	60,336
2018	Alameda County	\$101,744
	Contra Costa County	101,463
	California	75,250
	United States	61,937
2019	Alameda County	\$107,589
	Contra Costa County	106,555
	California	80,423
	United States	65,712
2020	Alameda County	\$113,518
	Contra Costa County	106,484
	California	83,001
	United States	67,340

<sup>(1)</sup> Most recent full calendar year information available.

<sup>(2)</sup> Median Household Income values are not adjusted for inflation.

*Source:* U.S. Census Bureau, 1-Year American Community Surveys.

### **Wastewater Facilities**

The District's existing Wastewater System facilities consist of, among other things, the District's Main Wastewater Treatment Plant in Oakland near the entrance of the San Francisco-Oakland Bay Bridge (the "Main Wastewater Treatment Plant") and interceptors and pumping stations for the conveyance of wastewater collected by the participating agencies to the Main Wastewater Treatment Plant, as well as certain wet weather facilities (the "Wet Weather Facilities") which are operated during wet weather events when flows from the participating agencies' collections systems exceed the capacity that can be treated at the Main Wastewater Treatment Plant.

The District's interceptors consist of 29 miles of reinforced concrete gravity pipeline, ranging from 18 inches to 9 feet in diameter, and 8 miles of pressure pipeline from pump stations. The

interceptors collect wastewater from approximately 1,600 miles of public sewers owned and operated by the participating agencies. Fifteen pumping stations, ranging in capacity from 1.5 to 60 million gallons per day (“MGD”), lift wastewater throughout the interceptors as it travels to the District’s Main Wastewater Treatment Plant for treatment prior to discharge of the treated effluent into the San Francisco Bay. The Main Wastewater Treatment Plant provides secondary treatment for permitted dry weather flow of up to 120 MGD and a maximum flow of 168 MGD during wet weather storm events. Primary treatment can be provided at the Main Wastewater Treatment Plant for a peak of up to 320 MGD, with peak influent hydraulic capacity of 415 MGD when utilizing an on-site 11 million gallon storage basin, a component of the District’s Wet Weather Facilities, which is used to temporarily store peak storm flows in excess of the permitted limits for treatment at the Main Wastewater Treatment Plant after flows subside.

Primary treatment removes floating material, oils and greases, sand and silt and organic solids heavy enough to settle in water. Secondary treatment biologically removes most of the suspended and dissolved organic and chemical impurities that would otherwise reduce the oxygen content of the waters of the San Francisco Bay if allowed to decompose naturally. The treatment steps are pre-chlorination, screening, grit removal, primary sedimentation, secondary treatment using high-purity, oxygen-activated sludge, final clarification, biosolids digestion, dewatering and beneficial use of biosolids through land application at farm sites and as feedstock for compost and other fertilizer products. The treated effluent is then disinfected, dechlorinated and discharged one mile off the East Bay shore through a deep-water outfall into San Francisco Bay.

The annual average daily flow through the District’s Main Wastewater Treatment Plant over the last five years has been approximately 58 MGD. See “– Wastewater Flows” below. Peak daily flows from the participating agencies’ collection systems to the District’s interceptors increase significantly during wet weather primarily due to inflow and infiltration. Inflow is water that enters a sewer system from sources such as roof leaders, yard drains, area drains, manhole covers, and cross-connections between storm sewers and sanitary sewers. Infiltration is water that enters the system from the ground (particularly when saturated due to storms or flooding) through such means as defective pipes, pipe joints, connections or manholes. Although the participating agencies’ wastewater collection systems are all separate sanitary systems designed to transport only sewage (with a separate stormwater system in place to discharge stormwater runoff), all sewer systems have some degree of inflow and infiltration of surface water and groundwater.

District facilities designed to address increased flows during wet weather periods include three Wet Weather Facilities (Oakport, San Antonio Creek and Point Isabel), as well as five overflow structures located at Temescal Creek, Oakland Inner Harbor (Alice Street), Oakland Inner Harbor (Webster Street), Elmhurst Creek and San Leandro Creek.

The 158-MGD Oakport Wet Weather Facility, completed in 1990, provides primary treatment for peak wet weather flow diverted along the District’s South Interceptor. Following primary treatment, effluent from this facility is currently disinfected and discharged to East Creek Slough in the lower San Francisco Bay. The 100-MGD Point Isabel Wet Weather Facility, completed in 1993, accepts peak wet weather flows from the District’s North Interceptor, for primary treatment after which the effluent from this facility is currently disinfected and discharged to the central San Francisco Bay. The 51-MGD San Antonio Creek Wet Weather Facility, completed in 1996, provides preliminary treatment to wastewater diverted from the District’s South Interceptor. The effluent from this facility is currently disinfected and discharged to the Oakland Inner Harbor, in lower San Francisco Bay. As described herein, the operations of the District’s Wet Weather Facilities are subject to a NPDES permit issued by the Regional Board which prohibits the District from discharging flows from its Wet Weather Facilities to the San Francisco Bay. See “– Regulatory Matters – *Litigation Relating to the District’s Wet Weather Facilities NPDES Permit*” below.

The Wet Weather Facilities also serve as storage facilities. After a wet weather event, when the Main Wastewater Treatment Plant again has available capacity, wastewater flows stored in these facilities can be returned to the interceptors for transport to the Main Wastewater Treatment Plant for secondary treatment prior to discharge.

The District's Wet Weather Facilities increase the Wastewater System's wet weather capacity to 724 MGD.

During significant wet weather events, when the carrying capacity of the interceptors and/or the treatment capacity of the Main Wastewater Treatment Plant is exceeded or in the event of a major Wastewater System failure, the five overflow structures control the location of overflows and allow for the discharge of untreated sewage into the San Francisco Bay when necessary to avoid sanitary system overflows occurring in the collection system or at the Main Wastewater Treatment Plant. (A sanitary sewer overflow occurs when wastewater comes out of the sanitary sewer system, including when it enters a street, residence, business or yard. This is usually caused by blockage, failure or lack of capacity).

See also "– Regulatory Matters" below for a discussion of regulatory framework under which the District's wastewater facilities operate, including its Wet Weather Facilities, and certain litigation relating thereto.

## Wastewater Flows

Table 4 presents a ten-year record of wastewater flows through the Main Wastewater Treatment Plant, expressed as the average daily flow for each Fiscal Year.

**Table 4**  
**AVERAGE DAILY WASTEWATER FLOW**  
**(million gallons per day)**

<i>Fiscal Year Ended</i> <i>June 30</i>	<i>Flow</i>
2012	62
2013	61
2014	56
2015	55
2016	56
2017	69
2018	54
2019	61
2020	61
2021	51

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Source: The District.

## Wastewater Source Control Program

The District's wastewater service area includes more than 19,000 commercial, industrial and institutional accounts. See "WASTEWATER SYSTEM FINANCES – Rates and Charges." In 1972, the District began a local source control program. Source control involves the removal of such toxics as heavy metals and organic pollutants before discharging wastes into the sewer system. The District's Wastewater Source Control Program issues permits and requires pretreatment of wastes by certain categories of industrial customers. The Wastewater Source Control Program has reduced approximately

93% of the toxic metals discharged into sewers, and the District's treatment process reduces the remaining toxic metals by approximately another 83%. These two steps together have reduced by approximately 99% the toxic metals discharged by the Wastewater System into the San Francisco Bay since 1974. Since 1988, the District has expanded its local source control program efforts to include pollution prevention. Currently, the District is focused on reducing the discharge into the District's Wastewater System of fats, oils, grease, non-flushable wipes, and contaminants of emerging concern, such as pharmaceuticals. The District's pollution prevention efforts consist primarily of education and outreach, including conducting live and self-guided treatment plant tours, distributing publications, attending outreach events, and collaborating with numerous partners. In addition, the District sponsors several take-back programs for fats, oils, grease and pharmaceuticals.

## **Biosolids Management**

The solid, stabilized organic materials removed from the wastewater treatment process are called biosolids. The District generates approximately 75,000 wet tons per year of biosolids from wastewater treatment. Because there is no biosolids storage space available at the Main Wastewater Treatment Plant, each day's biosolids production must have a reliable daily destination for beneficial use. The District's biosolids from its Main Wastewater Treatment Plant are predominantly beneficially used through land application on farmland. Other end uses are compost feedstock and conversion to liquid fertilizer. Biosolids handling is managed under a contract, which has a scheduled expiration date of June, 30, 2022. The District is evaluating proposals for biosolids management services that would commence at the end of the current contract.

The District implemented a Biosolids Environmental Management System in July 2005 and received program certification from the National Biosolids Partnership ("NBP") in September 2006. Through ten years of participation in the program and the completion successful external audits, the District developed a robust biosolids management system. In 2016, the District elected to withdraw from the formal NBP program in favor of maintaining a customized program that continues to focus on continuous improvement, environmental performance beyond meeting regulatory requirements, proactive communications, and implementation of corrective and preventive measures to address programmatic issues without a rigid external audit process. In addition to the District's internally-focused controls, District staff tracks regulatory, scientific, and public concern issues related to biosolids. In particular, District staff participates in monthly calls with the California Association of Sanitation Agencies Regulatory Workgroup.

In September 2016, Senate Bill 1383 ("SB 1383") was signed into law and established methane emissions reduction targets in state-wide effort to reduce short-lived climate pollutants, such as methane. Among other things, SB 1383 set statewide targets to reduce 50% of organic waste going to landfills by 2020, and a 75% reduction of organic waste going to landfills by 2025 (based on 2014 levels). In addition, SB 1383 directed the State's Department of Resources Recycling and Recovery, in consultation with the California Air Resources Control Board, to develop regulations to achieve the targets the organic waste reduction targets set forth in SB 1383. The regulations developed by the Department of Resources Recycling and Recovery became effective on January 1, 2022. SB 1383 and the related regulations significantly limit the ability to use biosolids as landfill alternative daily cover, a practice which the District undertook for several decades but tapered beginning in 2017. Biosolids management costs gradually increased as the District reduced the use of biosolids as landfill alternative daily cover. The District expects additional cost increases in connection with its biosolids management in Fiscal Year 2023 and beyond, as the District's new biosolids handling contract is expected to include terms that would fully eliminate the use of District biosolids as landfill alternative daily cover.

Consistent with the District's Integrated Main Wastewater Treatment Plant Master Plan and Board Policy 8.02, the District continues to undertake activities to ensure long-term, cost-effective, and

beneficial use of biosolids produced at the Main Wastewater Treatment Plant. The District continues to advocate for the benefits of land application and explores alternative beneficial uses such as composting, conversion to biochar, thermal drying, and other technologies to diversify options for end uses. The District is active with industry associations at the State and national level to advocate for expanded beneficial use of biosolids. In 2017, the District joined the multi-agency Bay Area Biosolids Coalition dedicated to expanding sustainable uses for biosolids. This coalition has developed several pilot and demonstration scale facilities to test emerging technologies for biosolids processing.

## **Regulatory Matters**

***General Regulatory Framework.*** The construction and operation of wastewater treatment facilities and the discharge of wastewater are highly regulated activities. The two major laws governing the Wastewater System are the federal Clean Water Act enacted in 1972 (the “Clean Water Act”) and the State’s Porter-Cologne Act first enacted in 1969 (the “Porter-Cologne Act”). Both laws require that policies, plans, requirements and standards for discharges be developed for all water bodies in order to protect the beneficial uses of the water. The Clean Water Act also regulates the disposal of sewage sludge and authorizes the adoption of sediment standards. The Porter-Cologne Act specifically requires the adoption of sediment standards for enclosed bays and estuaries. In 2008, the State approved sediment quality objectives for enclosed bays and estuaries, including the San Francisco Bay.

The USEPA, the federal agency charged with implementation and enforcement of the Clean Water Act, has delegated much of the planning, permitting and enforcement activities to the states. In California, the SWRCB develops policies, plans, requirements and discharge standards for the three types of State waters: inland surface waters, enclosed bays and estuaries, and the ocean.

The Clean Water Act requires the adoption of criteria for priority toxic pollutants that may reasonably be expected to interfere with designated beneficial uses of the waters of the State. As they apply to inland surface waters, enclosed bays, and estuaries, these criteria are found in the California Toxics Rule (“CTR”) promulgated by the USEPA in 2000 (40 C.F.R. §131.38), and are implemented by the SWRCB’s “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (commonly known as the State Implementation Plan or “SIP”) approved in 2000 and amended in 2005 (SWRCB Order No. 2005-0019). These two documents form the basis of the NPDES permitting process for Publicly Owned Treatment Works (“POTWs”) in the State. The CTR provides the Water Quality Objectives for priority toxic pollutants and the SIP prescribes the methodology for determining whether a limit for a toxic pollutant should be included in a NPDES permit and the method for calculating the limit if one is needed.

In May 2006, the SWRCB adopted Statewide General Waste Discharge Requirements (“GWDR”) for Sanitary Sewer Systems (SWRCB Order No. 2006-0003-DWQ). The GWDR is a proactive approach to ensure system-wide operation, maintenance and management plans to reduce sewer system overflows. Basic requirements of GWDR include on-line reporting of sewer system overflows and the development of a Sewer System Management Plan. In 2013, SWRCB issued Order No. WQ 2013-0058-EXEC, which amended the monitoring and reporting program of the GWDR to better advance the SWRCB’s sewer overflow reduction objectives.

The Regional Board is the enforcement arm of the State and federal water pollution control programs in the San Francisco Bay region. The Regional Board issues NPDES permits under Section 401 of the Clean Water Act, and establishes waste discharge requirements under the Porter-Cologne Act. Discharge permits are issued for a five-year period. The District’s Wastewater System currently has two NPDES permits, one for the Main Wastewater Treatment Plant and one for the Wet Weather Facilities. The current NPDES permit for the Main Wastewater Treatment Plant (Regional Board Order No. R2020-0024) was reissued effective on November 1, 2020 and will expire on October 31, 2025. The NPDES

permit for the Wet Weather Facilities (Regional Board Order No. R2-2020-0003) was most recently reissued effective on April 1, 2020 and will expire on March 31, 2025. See also “– *Litigation Relating to the District’s Wet Weather NPDES Permit*” below.

***Other Agencies with Regulatory Oversight Affecting the Wastewater System.*** Other regulatory agencies with approval or oversight responsibilities over the construction or operation of the Wastewater System include the Bay Area Air Quality Management District (“BAAQMD”), the Bay Conservation and Development Commission, the California Department of Public Health, and the U.S. Army Corps of Engineers. The roles these other agencies play with respect to operations of the Wastewater System are summarized as follows:

*The Bay Area Air Quality Management District:* responsible for administering and enforcing local, state and federal air emissions regulations and issues air permits under Title V of the federal Clean Air Act (the “Clean Air Act”). The District currently has a BAAQMD-issued Title V air permit for the Main Wastewater Treatment Plant which expires in 2024, as well as a number of permits to operate at its Wet Weather Facilities and pump stations. The Title V air permit is issued for a five-year period. Permits to operate for other facilities are generally issued annually.

*The Bay Conservation and Development Commission:* responsible for approving all projects undertaken within San Francisco Bay or within 100 feet of the mean high tide line of the Bay.

*The California Department of Public Health:* responsible for setting standards for the use of recycled water.

*The U.S. Army Corps of Engineers:* responsible for approving all construction projects undertaken within navigable waters of the United States.

***District Permit Compliance History.*** As noted above, the District’s Wastewater System currently has two NPDES permits, one for the Main Wastewater Treatment Plant, and one for the Wet Weather Facilities. As described below, operation of the District’s Wet Weather Facilities is also subject to a Consent Decree effective as of September 22, 2014. Except where expressly authorized by permit, sewer system overflows and the discharge of partially treated or untreated wastewater that reach the surface waters of the U.S. are violations of the Clean Water Act and are subject to fines by the SWRCB and the Regional Board. Since 2000, the District has had fines imposed for unauthorized discharges and permit violations under its NPDES permits for the Wastewater System several times, which has resulted in fines totaling approximately \$684,000. In addition, a fine of approximately \$200,000 was imposed as part of the Consent Decree civil settlement. See “–*Litigation Relating to the District’s Wet Weather Facilities NPDES Permit*” below. These fines related primarily to wet weather events. The District has also self-reported to the Regional Board four additional sewer system overflows between 2018 and 2021. Three for these sewer system overflows were above 10,000 gallons and the District currently expects to receive fines of approximately \$25,000 per occurrence as stipulated in the Consent Decree. As of the date of this Official Statement, the Regional Board has not taken an enforcement action with respect to these violations, so there can be no assurance that the actual fines imposed by the Regional Board on the District will not exceed the estimated amount of \$25,000 per violation. In October 2021, a significant unauthorized discharge occurred at the Point Isabel Wet Weather Facility during a large storm. The discharge consisted of 12.2 million gallons of chlorinated effluent and 4.3 million gallons of partially treated effluent. The District has investigated the cause of the discharge and has implemented several corrective actions, including an updated comprehensive dichlorination dosing procedure and program. The District expects the fine for this discharge to be issued in April 2022.

The District has had no NPDES effluent limit permit violations at its Main Wastewater Treatment Plant since August 1999.

The Main Wastewater Treatment Plant is also subject to a Major Facility Review Permit (also known as a Title V permit) issued by the BAAQMD pursuant to Title V of the Clean Air Act, the California Health & Safety Code, and BAAQMD regulations. The District has had three violations for the improper release of digester gas to the atmosphere during the last five years. Three other violations were also issued in the last five years for: (1) a torn vapor recovery hose on a gasoline dispenser, (2) an oxides of nitrogen exceedance from flare emissions, and (3) a failure to abate odors from the blend tank system for a period of 81 days. Fines imposed by BAAQMD in the last five years for the foregoing violations ranged between \$500 to \$16,000 each, totaling \$33,500 in the aggregate. Several corrective actions have been implemented by the District, including equipment repairs, standard operating procedure updates, and other actions, to prevent the reoccurrence of the incidents that resulted in such violations.

***Litigation Relating to the District's Wet Weather Facilities NPDES Permit.*** On January 12, 2007, the SWRCB on its own motion for review issued a draft order (the "Draft SWRCB Remand Order") reviewing the District's 2005 Wet Weather Facilities NPDES Permit (Regional Board Order No. R2-2005-0047) and concluding that the 2005 Wet Weather Facilities NPDES Permit and time schedule order (Regional Board Order No. R2-2005-0048, the "TSO") approved in connection with the issuance of the Wet Weather Facilities NPDES Permit by the Regional Board in September 2005 were inconsistent with the mandates of the Clean Water Act (33 U.S.C. §1251 et seq.) and the implementing USEPA Regulations (40 C.F.R. Part 123). The Draft SWRCB Remand Order concluded that the District's 2005 Wet Weather Facilities NPDES Permit failed to implement secondary treatment requirements and to ensure compliance with applicable water quality standards. Following a public hearing held on May 1, 2007, the SWRCB approved the Draft SWRCB Remand Order with slight modifications (SWRCB Order No. WQ 2007-0004, the "SWRCB Remand Order") and remanded the 2005 Wet Weather NPDES Permit and the TSO to the Regional Board for revisions consistent with the SWRCB Remand Order.

On January 14, 2009, the Regional Board issued the District a subsequent Wet Weather Facilities NPDES permit (Regional Board Order No. R2-2009-0004), effective for the five-year period January 14, 2009 through January 13, 2014. Previous permits issued by the Regional Board allowed the District to discharge flows from its three Wet Weather Facilities during heavy storm events, following primary treatment and disinfection, as part of a regional solution to help prevent sewer overflows on streets in the East Bay communities. This approach was consistent with USEPA policy at the time the Wet Weather Facilities were constructed. The 2009 permit, however, was more stringent and prohibited the District from discharging any flows from its Wet Weather Facilities to San Francisco Bay even during heavy storm events. Recognizing that discharges from the Wet Weather Facilities cannot be immediately halted without causing sewer overflows, the Regional Board simultaneously issued a Cease and Desist Order ("CDO," Regional Board Order No. R2-2009-0005) requiring the District to develop a plan for eliminating discharges from the Wet Weather Facilities at the earliest possible date. The CDO noted that the time schedules therein accounted for the considerable uncertainty in determining effective measures to achieve compliance and may be revisited. The inability of the District to meet the terms of the new Wet Weather Facilities NPDES permit also prompted the USEPA, the SWRCB and the Regional Board to seek judicial entry of a Stipulated Order memorializing the compliance plan and rendering it enforceable. Towards that end, a Stipulated Order for Preliminary Relief (the "SO") was negotiated among the District and the USEPA, the SWRCB, the Regional Board and the Department of Justice. After negotiations were completed, the regulatory agencies initiated a lawsuit against the District on January 15, 2009 (*United States of America, et al. v. East Bay Mun. Util. Dist.*, No. CV 09-0186 RS (N.D. Cal.)) and simultaneously filed the proposed SO for the Court's approval. The SO was approved by the Court and became effective on July 22, 2009.

The objective of the SO was to develop remedial measures to address the excess wet weather flow issues. It was intended as an interim remedy and was designed to develop information to tailor a final remedy for inclusion in a final Consent Decree which is anticipated to fully and finally resolve the litigation. The SO required the District, among other things, to initiate a number of programs, including:

(i) a flow monitoring and data assessment program, including the monitoring of flows to the District's interceptor system from the participating agencies that discharge into the District's interceptors (see "Wastewater Facilities" above), the modeling of peak flows under design storm conditions, and the development of alternative sets of capacity flow limits; (ii) a private sewer lateral regional ordinance program requiring the District to develop, adopt and implement a regional ordinance setting standards for the performance of lateral sewer pipes that extend from privately-owned structures to the participating agencies' collection systems and requiring property owners to obtain private sewer lateral compliance certificates at specified junctures, such as upon sale of property, upon obtaining building permits, and upon requests for changes in District water meter size; (iii) a private lateral incentive program requiring the District to provide \$2 million per year in incentives to encourage private lateral inspection and replacement; (iv) an interceptor system asset management program to develop protocols for interceptor condition assessment, including an inspection of the entire system within five years and annual repairs and reporting; and (v) development of a collection system asset management template through an interactive process among the District, the participating agencies and regulators.

The SO programs represented the first phase in the development of a long-term solution to address peak wet weather discharges. In parallel to the litigation and SO involving the District, the participating agencies that cause and contribute to the District's Wet Weather Facility discharges entered into their own SO with the USEPA, the SWRCB, the Regional Board and the U.S. Department of Justice, which was approved by the Court in a related lawsuit and became effective on September 6, 2011. The activities undertaken by the participating agencies under their parallel SO yielded further information and progress toward development of a long-term solution.

In January 2013, the District and the participating agencies began joint settlement negotiations with the USEPA, the SWRCB, the Regional Board and the Department of Justice with a goal of adopting a long-term Consent Decree and resolving both parallel lawsuits, which were consolidated. The negotiators for all parties reached tentative agreement on a proposed Consent Decree, which was approved for execution by their respective approving officials in July 2014. On July 28, 2014, the proposed Consent Decree was lodged with the federal court by the regulatory agencies, and the terms of the proposed Consent Decree were publicly released. On September 22, 2014, the U.S. District Court entered the Consent Decree, which became effective the same day. The final Consent Decree supersedes the SO and lays out a program of work by the District and the participating agencies designed to result in reducing peak wet weather flows over time to the point that the District's Wet Weather Facilities would no longer discharge during storm events smaller than a pre-determined rainfall event. Once the program of work is complete, it is anticipated that, in the vast majority of storms, the District's Wet Weather Facilities would be used only to provide temporary storage of peak flows which would be drained back to the District's Main Wastewater Treatment Plant for secondary treatment and discharge.

The Consent Decree is expected to be in effect for approximately 22 years. The Consent Decree requires the District and the participating agencies to demonstrate by mid-2036 that sufficient work has been performed on their regional wastewater facilities to eliminate discharges from the District's Wet Weather Facilities except during storm events of exceptional magnitude. Under the terms of the Consent Decree, the participating agencies are required to rehabilitate approximately 500 miles of their local wastewater collection systems to reduce infiltration and inflow. The District is required to, among other things: (i) continue the regional private sewer lateral ordinance program developed pursuant to the SO; (ii) upgrade segments of its interceptors; (iii) develop and implement a regional technical support program to identify inflow sources within the participating agencies' regional collection systems and assist in prioritizing them for repair by the participating agencies; and (iv) design and implement a plan to evaluate performance through flow monitoring and modeling and to report to the regulatory agencies on the overall progress toward achieving the Consent Decree mandates. The Consent Decree requires the District and the participating agencies to meet certain pre-established interim benchmark percentage reductions for Wet Weather Facility discharges (8 and 16 years into the Consent Decree term, which will occur in

September 2022 and September 2030, respectively). Failure to achieve any of these targets would result in additional flow monitoring obligations under the Consent Decree and may also result in revisions to the work plan developed under the Consent Decree. Work plan revisions could include additional work obligations for the District and/or the participating agencies. If and when work plan revisions become necessary, the Consent Decree parties would negotiate the nature and scope of such revisions and, if additional expenditures are required to implement the revisions, each party's share of such expenditures.

The District's identified goal in developing the Consent Decree was to achieve a plan that serves the interests of the District and its ratepayers by adequately reducing wet weather flows while ensuring any necessary financial investments are apportioned and scheduled in the most cost-effective and equitable manner possible. The District currently estimates that the cost of implementation of the programs and activities required to be undertaken by the District under the Consent Decree (exclusive of certain of the interceptor improvements which the District would expect to budget and undertake in the normal course of its long-term capital improvement program) would average approximately \$5 million per year over the life of the Consent Decree, portions of which are ongoing projects or programs included in the current capital and operating budgets. Under the terms of the Consent Decree, the District and the participating agencies paid certain civil penalties, the District's share of which was \$201,600. The Consent Decree provides for the possible future imposition of financial penalties on the District and/or the participating agencies in the event of failure to perform the required work or meet a deadline established under the Consent Decree.

***Future Statutory and Regulatory Compliance.*** As noted above, the construction and operation of wastewater facilities and the discharge of wastewater are highly regulated activities. Federal, State and local standards and regulations are subject to change. Changes in the scope and standards for regulation of wastewater systems, such as the District's Wastewater System, may lead to more stringent operating requirements and the imposition of future administrative or judicial orders issued by federal or State regulators or a court. Compliance with future requirements and orders that may be adopted could impose substantial additional costs on the Wastewater System. Furthermore, claims against the Wastewater System for failure to comply with applicable laws and regulations could be significant. The District is actively involved with major wastewater industry associations and routinely monitors and participates in the regulatory process in order to ensure that a "sound science" approach is applied in determining the need, and (if deemed necessary) implementation approach, for potential regulatory changes. However, no assurance can be given that the laws and regulations currently in effect will not change or that the Wastewater System will always be able to obtain all required operating permits or that the cost and/or impact of compliance with applicable laws, regulations or orders will not adversely affect the finances or operations of the District's Wastewater System.

One area identified for potential future regulatory change is with respect to the discharge of nutrients. Wastewater often contains large amounts of nitrogen and phosphorus, known as nutrients. There is some data indicating that there are potential impairment issues in the San Francisco Bay related to these nutrients, a significant portion of which come from wastewater treatment plants. The District is a principal agency of the Bay Area Clean Water Agencies ("BACWA"), a joint powers agency, formed under the California Government Code by the five largest wastewater treatment agencies in the San Francisco Bay Area, presently supporting a multi-year work plan to study possible impairment of the San Francisco Bay due to nutrients. BACWA is also engaged in an effort with the Regional Board that resulted in the development of a watershed-based permit for all of the San Francisco Bay wastewater agencies in order to provide a level of regulatory certainty for the timeframe of the study. The NPDES permit (Regional Board Order No. R2-2014-0014), which became effective on July 1, 2014, required wastewater agencies to monitor and evaluate approaches to reduce nutrient discharges, and provided financial support to fund regional scientific studies investigating nutrient impacts to San Francisco Bay. This permit expired on June 30, 2019 and was replaced with a second nutrient watershed NPDES permit (Order No. R2-2019-0017) on July 1, 2019. This second permit includes total inorganic nitrogen ("TIN")

discharge load targets for each BACWA agency (based on each agency's previous TIN load to the San Francisco Bay) that will become regulatory discharge requirements on July 1, 2024, when a third nutrient watershed permit is expected to take effect. District staff is currently evaluating options to ensure the District's 2024 TIN discharge requirement will be met.

## **Resource Recovery**

In 2001, the District initiated a pilot program to provide revenue enhancement for the Wastewater System through the utilization of excess dry weather capacity at its Main Wastewater Treatment Plant to accept trucked waste from outside its service area. The District's resource recovery program accepts a variety of trucked liquid and solid waste streams from outside the service area of Special District No. 1 for disposal in an environmentally sound manner. High strength trucked wastes are discharged into underground tanks, processed and anaerobically co-digested with biosolids. This program provides an additional source of methane gas for use in the District's power generation plant at the Main Wastewater Treatment Plant (see "– Power Generation/Energy Recovery" below) and generates an additional source of revenue for the Wastewater System through the collection of tipping fees charged to the trucked waste haulers. See also "WASTEWATER SYSTEM FINANCES – Resource Recovery Revenues."

***Related Litigation.*** On April 1, 2021, Waste Management of California ("WMAC") filed a lawsuit against the District alleging the District had breached an agreement with WMAC to receive and process commercial food waste at a facility to be constructed by the District. WMAC's suit asserts the District's failure to build the facility and receive its food waste caused WMAC to incur damages in the form of additional hauling and processing costs and lost revenues. WMAC seeks damages for its increased processing costs for the ten-year contractual period of July 1, 2016 through June 30, 2025. Though WMAC has not specified the total amount it is seeking for its increased costs, it submitted a claim with the District in the amount of \$1.65 million for the 2017 and 2018 fiscal years. Additionally, WMAC seeks to have the District defend and indemnify it against a \$24 million liquidated damages claim assessed against it by the City of Oakland, which asserts in part that WMAC breached its own contractual obligations to the City regarding the processing of organic waste. This litigation is ongoing. The District is unable to predict with certainty the outcome of the litigation. However, District management believes that the ultimate resolution of this matter will not have a material adverse impact on the District's financial position or results of operations.

## **Power Generation/Energy Recovery**

In addition to biosolids, another wastewater treatment byproduct is methane gas, which is produced by the sludge digestion process. The District currently operates a 10.8 megawatt power generation plant fueled by the methane gas produced at the Main Wastewater Treatment Plant, consisting of three 2.1 megawatt engines installed in 1985 and an additional 4.5 MW turbine installed in 2011, which is utilized to supply energy to operate the Main Wastewater Treatment Plant. As a result of the installation of the additional turbine in 2011, the District is able to generate more electric energy than is required to operate the Main Wastewater Treatment Plant, making the District's Main Wastewater Treatment Plant the first net electricity producing wastewater facility in the United States. Electrical energy produced in excess of that needed for plant operations is sold to the Port of Oakland through the utility grid. The ability to generate power to operate the Main Wastewater Treatment Plant facility reduces the District's exposure to energy cost volatility in its Wastewater System operations.

## **Climate Change**

The effects of global climate change are expected to increase the risk of inundation at low-lying wastewater facilities as sea levels rise. In addition, higher intensity storms are expected in California as a result of climate change, which are projected to result in potentially higher peak wet weather flow events.

The District completed a Wastewater Climate Change Plan in June 2020. The Wastewater Climate Change Plan was an expansion of the District's efforts to assess the impact of climate change on the Wastewater System facilities and operations and propose responses to such impacts. The Wastewater Climate Change Plan included an assessment of the District's contribution to greenhouse gas ("GHG") emission, mitigation measures, an assessment of the District's vulnerability to climate change impacts and adaption strategies to be implemented by the District.

The Wastewater Climate Change Plan builds upon the District's other climate change policies, including the District's Strategic Plan. The District's Strategic Plan identifies the District's goals, strategies, objectives and key performance indicators and guides District staff in setting priorities and allocating resources. The Strategic Plan is reviewed and updated every two years. In 2008, the District incorporated climate change into its Strategic Plan. The District also prepared a Climate Action Plan in 2021 that focused on sustainability and resilience, and acknowledges impacts and vulnerabilities, and includes mitigation measures and adaptation strategies to manage changing climate and its impact on the District's water resources.

In addition, the District has adopted a Sustainability and Resilience Policy, which sets forth an overarching objective for the District to consider environmental, social and economic impacts in the District's policies, programs and work practices. It also establishes a specific objective for the District to identify and implement projects and plans that mitigate climate change impacts and reduce GHG emissions.

The District has also adopted a policy (Policy 7.07) to promote energy efficient practices within the District's Wastewater System and Water system, service area and watersheds, minimize reliance on fossil fuels, diversify its energy sources, reduce energy costs, and strive to achieve a goal of being carbon free for direct and indirect greenhouse gas ("GHG") emissions. To support this policy, the District has adopted the following goals for GHG emission reductions: (i) for the Wastewater System – to eliminate indirect GHG emissions by 2040 and reduce direct GHG emissions by 50% over 2000 levels and (ii) for the Water System – to eliminate direct and indirect GHG emissions by 2030.

In furtherance of the District's objective of reducing GHG, the District utilizes anaerobic digestion to treat the solids from the wastewater treatment process, which produces biogas. This biogas is combusted and converted to energy. The District's Wastewater System Resource Recovery Program, which the District has operated since 2002, creates additional renewable energy by accepting trucked-in organic wastes. The program reduces GHG emissions in three ways. First, the enclosed anaerobic process converts methane to carbon dioxide. Without this process, the disposal of some of these wastes would result in the uncontrolled releases of methane gas, which has 30 times more global warming potential than carbon dioxide. Second, combustion of the methane generates renewable electricity, which displaces fossil fuel use and associated GHG emissions. Third, anaerobic digestion residuals, or biosolids, are land applied whereas carbon is partially sequestered in the soil.

In connection with the preparation of the Wastewater Climate Change Plan, the District performed a climate impact vulnerability assessment of the Wastewater System facilities to identify the facilities most at risk, when such facilities are expected to be impacted by sea level rise and other climate change impacts, the investments required to mitigate such risks and the timing of such investments. The primary climate impact identified by the climate impact vulnerability assessment was sea level rise, due to proximity of the District's facilities to the San Francisco Bay shoreline. Secondary risks identified by the climate impact analysis included more intense rainfall events, which could increase peak wet weather flows in District interceptor sewer pipelines, and drought, which could reduce sewer flows due to water conservation in response to drought.

The District has determined to undertake sea level rise mitigation measures through a cooperative, regional approach with other jurisdictions, agencies, and land owners. A cooperative approach allows the District to pool resources with other jurisdictions, agencies, and land owners and to develop multi-benefit projects that, in addition to mitigating sea level rise, could provide benefits such as habitat creation, water quality improvement and recreational access expansion for the public. The District participates in regional groups that focus on climate change mitigation and adaptation, such as the Bay Area Climate Action Network (BayCAN), the San Leandro Bay/Oakland-Alameda Estuary Adaptation Working Group, and the Bay Adapt (led by the San Francisco Bay Conservation and Development Commission) to collaborate with other jurisdiction and agencies in the region, identify potential projects, and work toward securing State and federal funding for implementation of sea level rise mitigation projects. The District expects that the impact of sea level rise will be moderate for several decades, until the sea level rises by more than four feet, which is not expected to occur until the year 2100. In the near term, the District projects the impact of sea level rise will be limited to temporary shallow flooding of access roads to District facilities. The District has implemented climate change design guidelines, which determine the appropriate elevation to install sensitive equipment, such as electrical and control panels, to avoid damaging equipment from temporary flooding.

The District is mitigating the impact of more intense rainfall events by implementing an inflow & infiltration (“I&I”) reduction program, which is a partnership with the District’s tributary agencies, which are cities that own sewer collection systems that flow into the District’s interceptor system. The District’s efforts under the I&I program, including identifying sources of I&I and correcting them, work to reduce peak wet weather flows and groundwater infiltration. Groundwater infiltration could increase in areas adjacent to the San Francisco Bay shoreline, where rising sea levels are expected to proportionally raise surrounding groundwater levels.

Reduced flows in the District’s collection system as a result of water conservation in response to drought conditions could result in sewage with a higher concentration of certain constituents. A higher concentration of such constituents can potentially increase corrosion of concrete, which requires the inspection of sewer pipes and concrete basins, as well as regular rehabilitation projects, which are included in the District’s Capital Improvement Program.

## **Seismic Matters**

The District is located in a seismically active region of California. The Hayward Fault runs through the entire western portion of the District and the Calaveras Fault runs through the southeastern portion of the District. The Concord Fault is located several miles to the east of the District and the San Andreas Fault is located to the west.

The District commissioned a seismic evaluation study, completed in 1994, that examined the potential impacts on the District’s Wastewater System of various magnitudes of earthquakes along the Hayward Fault. The study found that many of the Wastewater System facilities are located on poor soil and could be affected by liquefaction and settlement. Although structures supported on pile foundations should withstand the liquefaction with minimal structural damage, piping and electric conduit penetrating into basement walls of these structures could be sheared, effectively causing loss of function in the facility. The study further concluded that, in the event of the largest credible earthquake measuring 7.5 on the Richter scale from the Hayward Fault, approximately half of the facilities at the Main Wastewater Treatment Plant would suffer significant damage, that three of the District’s 15 pump stations could possibly experience loss of function and that interceptor blockage could lead to sewage backup into the San Francisco Bay or onto city streets. A major earthquake could also have a severe adverse impact on the economy of the District’s wastewater service area.

In response to the 1994 seismic evaluation study, the District initiated a multi-year Wastewater Seismic Repairs Program, which focused on the retrofit of all the facilities that, if a failure occurred, would endanger life and/or public health. All of the high priority projects identified in the 1994 seismic evaluation study have been completed. Each of the operations center, sludge dewatering building, primary sedimentation blower building and oxygenation tank control buildings have been seismically retrofitted. The District has also made seismic improvements through other capital upgrade projects.

In 2016, the District began work on an update to the 1994 seismic evaluation study focused on the Main Wastewater Treatment Plant facilities. The update was completed in 2018 and evaluated seismic performance under current industry standards and codes, which changed greatly since the 1994 seismic evaluation study, and developed recommendations for mitigating seismic risk based on such updated standards and codes. The design and maximum earthquake levels are equivalent to approximately magnitude 6.4 and magnitude 7.3 on the Hayward Fault, respectively. Findings of the seismic evaluation update study indicate that it is expected that a large number of Main Wastewater Treatment Plant facilities may sustain significant damage in the event of a large earthquake and not meet life safety performance criteria. Evaluations and risk assessments were performed to support the prioritization of further seismic evaluations and mitigation improvements.

Following the completion of the seismic evaluation update study, the District performed geotechnical investigations for seismic hazard mitigation, and additional evaluations and conceptual retrofit designs for 25 high priority facilities. In 2021, the District began the design phase for seismic retrofits for (1) a group of personnel buildings referred to as the “Administrative Facilities,” and (2) the maintenance center. Additional seismic mitigation projects have been included in the wastewater 10-year Capital Improvement Program for the Wastewater System, including projects to seismically retrofit the influent pump station, primary sedimentation tanks and the effluent pump station.

Despite the completed and continuing seismic work, in the event of significant earthquake damage to the Wastewater System and/or the District’s service area, there can be no assurance that Subordinated Wastewater Revenues would be sufficient to pay the principal of and interest on any outstanding Wastewater System Revenue Bonds.

### **Security and Emergency Preparedness; Cybersecurity**

The District has implemented a security program to provide a secure work place; maintain safe and reliable water supply and wastewater services; and to prevent or mitigate potential damage or loss of assets from internal and external threats. The District’s Security Office manages the security program which includes assessment, capital, operational and coordination elements. These efforts are guided by the Security Vulnerability Assessment (SVA), water/wastewater industry experience, actual experience at District facilities, and industry standards/guidelines. The program’s systems, procedures, and personnel are designed to deter, detect, delay and assess potential criminal actions.

The District has a Security Operations Control Center (the “SOCC”) that is staffed seven days a week, 24 hours a day. The SOCC houses a proprietary centralized security system to monitor access controls, video cameras and recorders, and security alarms. The dispatchers at the SOCC monitor alarms, assess conditions using the security system, and dispatch security and law enforcement response as needed for alarms and reports of suspicious circumstances or crimes at District facilities. The security system maintains access controls for water and wastewater treatment, administrative and maintenance facilities, its storage yards and service centers, and the reservoirs and pumping plants in its water distribution system. District security includes an internal security staff and security contractors. Contract security officers are also used to supplement automated access controls at certain key facilities.

The District maintains an active emergency preparedness program that includes an Emergency Operations Plan to help manage the District's critical operations during any emergency and protect people, property, and the environment. The District also maintains a Business Continuity Program Plan to minimize impacts to critical business functions and enhance its capability to recover operations expediently and successfully following a disruptive incident. Pursuant to State law, District employees are sworn disaster service workers, and staff is trained to use California's Standardized Emergency Management System (referred to as SEMS) and the National Incident Management System (referred to as NIMS) in response to emergencies and security incidents. As part of its Emergency Operations Plan, the District maintains two strategically located emergency operations centers and a mobile emergency command center, and has in place an emergency operations team to lead emergency response activities. The District also has adopted business continuity plans for individual work units to ensure the District's ability to respond to, and recover from, any emergency or other event that disrupts its normal business functions.

The District, like many other large public and private entities, relies on an extensive and complex technology environment to conduct its operations, and faces multiple cybersecurity threats including, but not limited to, hacking, phishing, executive impersonation, denial of service, malware, and other attacks on its information systems, networks, and data. Cybersecurity incidents could result from unintentional events or from deliberate attacks by unauthorized entities, nation state actors, or individuals attempting to gain access to the District's systems for the purposes of misappropriating assets or information or causing operational disruption and damage. Cyberattacks are becoming more sophisticated and the threats continually evolve. Certain cyber incidents, such as surveillance, may remain undetected for an extended period. Attacks directed at critical Wastewater System operations and facilities could damage distribution and storage assets, cause operational malfunctions and outages, and result in costly recovery and remediation efforts.

The District's cybersecurity program leverages a defense-in-depth approach to maintain the confidentiality, integrity, and availability of the District's business information systems, data, and water and wastewater control systems. There are dedicated District IT and OT Security and third-party staff who perform a variety of functions, including intrusion detection and prevention, incident response, monitoring for malware, vulnerabilities, and anomalous network traffic, promoting cybersecurity awareness to District staff, and auditing the environment to ensure that configurations remain consistent with security objectives as well as implementing new security controls as needed to stay ahead of continually evolving security threats. Third-party audits and vulnerability assessments are also utilized periodically by the District to identify any potential areas of improvement for the overall cybersecurity program. The District maintains a backup data center to facilitate recovery of critical business systems after a disaster.

## **Insurance**

The District uses a combination of self-funding/self-insuring and insurance coverage in the District's risk management program. The program provides protection for the District's buildings and facilities, including their contents and equipment, from fire, explosion and related perils, including flood. The District's insurance program does not currently include earthquake coverage. The District's reserves, self-insured retentions, deductibles, and insurance are described below.

The District self-insures liability claims up to \$10 million for bodily injury and property damage that may arise from the District's operations, including but not limited to use of its property, facilities, or vehicles. The District also maintains fidelity protection against fraudulent acts of its employees.

The District maintains a reserve of approximately \$7 million that is earmarked to pay both liability and workers' compensation claims that may arise from the District's water and wastewater

systems' operations. See also "WASTEWATER SYSTEM FINANCES – Financial Management Policies."

Selected insurance coverages include the following:

- \$90 million of commercial general and automobile liability insurance, subject to a \$10 million per occurrence self-insured retention for both the Water System and the Wastewater System;
- Statutory limits of excess workers' compensation coverage, subject to a \$5 million self-insured retention for both the Water System and the Wastewater System;
- \$200 million in coverage for "all risk" property insurance, subject to a \$500,000 deductible, with exclusions including, but not limited to, all underground property and pipelines, earthquake and flood;
- \$25 million in coverage for flood perils (except for areas within the FEMA-designated 100-year floodplain in which a \$10 million limit is applicable), subject to a \$1.5 million minimum deductible per occurrence, except 5% of the total insurable property values at the time of the loss at each location involved in the loss subject to a minimum deductible of \$1.5 million for any occurrence in areas of 100-year flooding as defined by FEMA, all such flood insurance excluding coverage for underground property and pipelines;
- \$25 million in coverage for boiler and machinery insurance, subject to a \$25,000 deductible; and
- \$10 million in coverage for crime insurance for protection against fraudulent acts of employees (except for "faithful performance" claims in which a \$6 million limit is applicable), subject to a \$25,000 deductible.

### **Capital Improvement Program**

Since Fiscal Year 2002, the District has implemented a biennial budget. In the spring of odd-numbered years, a budget is presented to the Board for consideration for the two ensuing Fiscal Years. The District's biennial budget planning process includes a review of projected long-term (10 years or longer) facilities needs and the development of a capital expenditure forecast for the ensuing five fiscal years. A series of master plans document the identified facilities needs by asset classes and include assessments of the District's key facilities, taking into consideration condition assessments, operational performance and maintenance histories. Facilities in need of rehabilitation or replacement are identified and prioritized. Project scopes are also defined (for example, replacement of aging mechanical or electrical equipment, seismic upgrades, or other defined scopes).

The master plans are considered during the biennial update to the Capital Improvement Program (the "CIP"). The most recent CIP update was completed in 2021 in connection with developing the biennial budget for Fiscal Years 2022 and 2023, which was approved by the Board on June 8, 2021. The CIP update included a five-year capital expenditure forecast for Fiscal Years 2022 through 2026. In the CIP for Fiscal Years 2022 through 2026, the District is continuing its focus on investments in general improvements and rehabilitation work. Based upon the CIP forecast for Fiscal Years 2022 through 2026, cash expenditures for capital improvements to the Wastewater System for Fiscal Years 2022 through 2026 are projected to aggregate approximately \$243.2 million, a 3.7% increase over the prior CIP. The increase is primarily related to the District's work to improve buildings that serve multiple treatment processes, including seismic retrofits, as well as rehabilitation work on sewer interceptors and pump stations. Additional major work will include a new dewatering process that will entirely replace the existing one, and other major work will focus on preliminary and secondary treatment, which includes

rehabilitation of concrete structures such as primary sedimentation tanks and channels, the oxygen production plant, and secondary clarifiers. This strategy is reflected in the substantial portion of the CIP expenditure forecast dedicated to maintaining infrastructure.

Table 5 summarizes the District’s projected CIP cash expenditures for Fiscal Years 2022 through 2026 by major category as forecast in the biennial budget for Fiscal Years 2022 and 2023.

**Table 5**  
**Fiscal Years 2022-2026**  
**Capital Improvement Program**  
**FY 2022 and FY 2026 Biennial Budget**  
**Forecast – Cash Expenditures<sup>(1)</sup>**  
**(Millions)**

	<i>Fiscal Year Ending June 30,</i>					
	<i>2022</i>	<i>2023</i>	<i>2024</i>	<i>2025</i>	<i>2026</i>	<i>Total<sup>(3)</sup></i>
Maintaining Infrastructure	\$40.7	\$42.7	\$38.3	\$39.4	\$46.7	\$207.9
Regulatory Compliance	1.3	3.2	3.3	2.5	5.2	15.5
Admin. & General Expenses <sup>(2)</sup>	3.8	3.9	4.0	4.1	4.1	19.9
Total <sup>(3)</sup>	<u>\$45.8</u>	<u>\$49.8</u>	<u>\$45.6</u>	<u>\$45.9</u>	<u>\$56.0</u>	<u>\$243.2</u>

<sup>(1)</sup> Cash expenditures include spending for projects appropriated in earlier Fiscal Years.

<sup>(2)</sup> Includes overhead, construction management and other administrative costs which are allocated to individual projects upon their completion.

<sup>(3)</sup> Totals may not add due to rounding.

Source: The District.

The cost estimates are subject to revision in connection with the subsequent five-year CIP forecast prepared as part of the biennial budget planning process. See also “– *Construction-Related Risks*” below.

The District’s currently estimated funding sources for its CIP for Fiscal Years 2022 through 2026 as reflected in the biennial budget for Fiscal Years 2022 and 2023 are set forth in Table 6:

**Table 6**  
**Fiscal Years 2022-2026**  
**FY 2022 and FY 2023 Biennial Budget**  
**Sources of Funds for Capital**  
**Improvement Program Expenditures**

<i>Funding Sources</i>	<i>(Millions)</i>
Revenues	\$145.2
Bond Proceeds <sup>(1)</sup>	<u>98.0</u>
Total	<u>\$243.2</u>

<sup>(1)</sup> See footnote 9 to the Table 18 for additional information regarding the District’s currently planned bond issuances to finance the District’s CIP expenditures.

Source: The District.

Included in the five-year CIP for Fiscal Years 2022 through 2026 as reflected in the biennial budget for Fiscal Years 2022 and 2023 are the major programs and projects described below:

***Maintaining Infrastructure.*** The projects and programs in this category are aimed at furthering the District's objectives to improve the infrastructure at both the Main Wastewater Treatment Plant and remote facilities to ensure reliable, high quality service. The primary work under this category focuses on rehabilitating the digesters, concrete structures, and treatment process facilities; upgrading the resource recovery receiving station; rehabilitating sections of the sewer interceptors; expanding and improving the power generation station; and retrofitting various structures at the Main Wastewater Treatment Plant.

The General Wastewater System project includes improvements that are essential to systemwide wastewater conveyance and treatment but are not limited to a single treatment process. Components of the project include improvements to buildings that serve multiple treatment processes such as the periodic replacement of capital equipment, the application of protective coatings plant-wide, the replacement of hardware and software, and the procurement of additional vehicles. Two major components of the project are the seismic retrofitting of the maintenance building and the operations center, two buildings that are heavily used and were prioritized in the Main Wastewater Treatment Plant seismic evaluation. The seismic retrofitting of these buildings is scheduled to occur between Fiscal Years 2022 and 2026. Additional seismic-related components include the retrofitting of various concrete masonry buildings at the Main Wastewater Treatment Plant, the field services building and the administration building.

The Interceptors and Pump Stations project provides for the rehabilitation of gravity interceptors, force mains, and pump stations that convey wastewater from the satellite agencies to the Main Wastewater Treatment Plant, and improved access to such facilities for maintenance and repairs. Interceptor rehabilitation includes the underground piping, select manholes and tie-in structures. Pipe rehabilitation will be conducted on the older interceptors that have not been addressed recently. Pump station rehabilitation includes the rehabilitation equipment, piping, and access improvements to several stations. In Fiscal Year 2022, Pump Station M in Alameda is planned to be rehabilitated, and access will be improved for making bypass connections during an emergency. Other components of this project include construction for the Special Structures Rehabilitation Phase 1, rehabilitation of Pump Station L in Oakland, and access improvements to force mains. In future Fiscal Years, the District expects to undertake improvements relating to the Second Street and Embarcadero interceptors in Oakland, the second phase of the Special Structures Rehabilitation, and Pump Station A in Albany, Pump Station C in Alameda, and Pump Station H in Oakland.

The Secondary Treatment project consists of the rehabilitation and upgrade of structures associated with wastewater treatment including the oxygen production plant where liquid oxygen is produced, the oxygen reactors where oxygen is mixed with wastewater, and the secondary clarifiers. The rehabilitation to these facilities will be undertaken in phases to allow the Main Wastewater Treatment Plant to remain operational during such rehabilitation work. Rehabilitation of the oxygen production plant includes upgrading the control system. Planning and design work is expected to take place in Fiscal Year 2022, and construction is expected to commence in Fiscal Year 2023. Rehabilitation of the oxygen reactors includes concrete resurfacing of the interior walls and columns, coating of the roof slabs, strengthening the interior support columns, recoating or replacing sections of piping, and refurbishing the aerator gear boxes. Design for the first of four phases was completed in Fiscal Year 2021, and construction is expected to be completed in Fiscal Year 2022. Rehabilitation of the secondary clarifiers is expected to include concrete work, replacement of the clarifier mechanisms, resurfacing or replacing other mechanical components, and replacing the baffles to improve performance. Three of the twelve clarifiers have been rehabilitated to date. The design for the second phase was completed in Fiscal Year 2021 and construction is expected to be completed in Fiscal Year 2022.

The Dewatering project includes upgrades to the District's solids dewatering capability, which produces beneficial use biosolids from the byproducts of the wastewater treatment process. A major component is the replacement of the dewatering building, which will include the replacement of the existing structure and implementation of new feed pumps, dewatering equipment, cake storage hoppers, polymer feed equipment, and odor control facilities. In Fiscal Year 2023, the planning phase of the project is expected to begin, with design work commencing in Fiscal Year 2024. The construction phase is planned to begin in Fiscal Year 2025 and is expected to be completed in Fiscal Year 2029. The existing dewatering building will continue to be used for the secondary solids thickening process and improvements will be made including upgrades to the building's odor control system and seismic retrofits.

The Preliminary Treatment project provides for the rehabilitation and upgrade of assets associated with wastewater receiving, screening, pumping, and trash and grit removal to keep wastewater flowing from the interceptor system into the Main Wastewater Treatment Plant before primary treatment. Partial replacement of de-gritting equipment at the grit handling facility is planned for completion in Fiscal Year 2022. The District expects to undertake the seismic retrofitting of the influent pump station through which all wastewater passes in Fiscal Year 2023. In connection with the seismic retrofitting, the District also plans to implement upgrades to the large pumps, electrical system, and certain other equipment. The Utilities and Site Work project includes the rehabilitation and improvement of the utility systems at the Main Wastewater Treatment Plant, including chemical piping, compressed air, wash-down water, potable water, natural gas, and drains and site work, including landscaping and paving. A multi-phase project to improve and replace hypochlorite piping around the Main Wastewater Treatment Plant is currently in progress, with the second phase expected to be completed in Fiscal Year 2022, and the third phase expected to begin in Fiscal Year 2023. Construction of the District's Process Piping Replacement is expected to be completed in Fiscal Year 2022.

The District plans to assess and improve the wash down water pumps and piping, including the surge and cathodic protection systems. The District plans to establish a new connection to the recycled water system to provide a back-up supply. Portions of the piping will be assessed by the District starting in Fiscal Year 2022 and construction is planned to take place through Fiscal Year 2025. Planned improvements to the plant gallery drains are intended to address ponding in the galleries and make it easier to empty the tanks and basins when maintenance is needed. Phase one improvements have been completed. The design work for the second phase improvements is expected to begin in Fiscal Year 2022.

The Electrical and Controls project includes the replacement of aging equipment and the improvement of the seismic performance and reliability of the electrical power distribution and control systems to prevent outages and optimize processes to meet regulations. Four large variable frequency drives associated with the return activated sludge pump drives and the digester hot water recirculation pump drives for the anaerobic digesters have been identified for replacement. Aging motor control centers for the aerated grit removal process and the oxygen reactors are also planned for replacement. The replacement of these components is expected to occur in Fiscal Year 2022. The ovation control system is also expected to be replaced. Based on seismic evaluations performed by the District, two phases of seismic improvements have been identified for the electrical system at the Main Wastewater Treatment Plant. The first phase is planned to address immediate needs, such as improved bracing and supports for electrical distribution lines between the main substation and the power generation plan, and improved unit anchorage for substations. The second phase is planned to address reliability needs following completion of an Electrical Master Plan for the District in Fiscal Year 2023.

The Power Generation and Biogas project consists of the rehabilitation of the biogas and power generation plant equipment, flares, piping, and related components to improve utilization of biogas produced in the digesters to generate renewable electricity and produce heat for the digesters. The project is intended to increase the reliability of the power generation components in both normal operation and during grid power outages to improve overall plant reliability. The third phase of the Power Generation

Station Reliability Improvements is ongoing with construction planned to begin in Fiscal Year 2022. Construction on the fourth phase is scheduled to commence in Fiscal Year 2024. The design for upgrades to the original flares was completed in Fiscal Year 2021, and construction is expected to begin in Fiscal Year 2022.

The Primary Treatment project provides for the rehabilitation and seismic retrofitting of the Primary Sedimentation Tanks (“PST”), channels, and galleries to extend the life of concrete assets. The concrete rehabilitation work to the PST includes replacing three primary influent channel control gates and rehabilitating and coating concrete roof and walls in the influent channel adjacent to the gates, and in upstream areas that were not addressed in previous phases. The PST will be seismically retrofitted beginning in Fiscal Year 2024. Phase 1 of the project will encompass tanks 1 through 10, the adjoining influent channels and gallery and effluent channel. The blower building is planned to be relocated; the influent channel and gallery joints are expected to be retrofitted at various locations; channel, roof slab and tank walls are planned to be strengthened; and exterior pile foundations are planned to be added at four expansion joints. The second phase is expected to begin in Fiscal Year 2026 and will address the influent channels, gallery and vortex grit facilities.

The Digesters project includes upgrades to the digestion process at the Main Wastewater Treatment Plant to convert sludge from primary and secondary treatment, as well as high strength waste, into biogas and biosolids for beneficial use. The District has eleven digesters operating at elevated temperatures along with various support equipment including blend tanks, pumps, mixers, heat exchangers, and biogas storage covers that work together to provide the appropriate conditions to convert sludge into biogas and biosolids. Under Phase 3 of the planned upgrades, two digesters are scheduled for new covers and mixing systems with construction having begun in Fiscal Year 2021. These digesters will also be seismically retrofitted to prevent catastrophic collapse in the event of an earthquake. Construction is expected to be completed in Fiscal Year 2022. Phase 4 of the work to upgrade the remaining three digesters is planned to commence in Fiscal Year 2028.

The Resource Recovery project consists of the rehabilitation and upgrade facilities associated with trucked waste which provides additional feedstock to produce biogas. Odor control improvements are planned to be implemented that include a new three-stage treatment system serving the fats, oils, and grease and high strength waste receiving stations and blend tanks. This component of the project also involves safety improvements and drainage improvements to prevent odors and plugging of drains. The design for the project was completed in Fiscal Year 2021, and construction is planned to start in Fiscal Year 2022. Another component of the project consists of creating a new de-gritting facility for trucked waste. This component is expected to involve construction of a new building and hydrocyclone-classifiers, a local odor control unit, pumps, and associated piping. Temporary improvements are planned to be made in Fiscal Year 2022, with the construction on the main project expected to begin after Fiscal Year 2028.

***Regulatory Compliance.*** Projects in the Regulatory Compliance category are designed to further the District’s objectives to operate and maintain facilities to meet all water discharge, air emission, and land disposal requirements; ensure protection and stewardship of San Francisco Bay; and implement preventative and corrective maintenance programs. The primary work scheduled to be undertaken focuses on upgrading the wet weather treatment facilities to maintain reliable operations; developing strategic nutrient management solutions to address future regulatory requirements; and, upgrading the dichlorination facilities to protect the San Francisco Bay.

The Nutrients project includes improvements to prepare the District for complying with stricter effluent limits for nitrogen discharged into San Francisco Bay anticipated in the upcoming San Francisco Regional Water Quality Control Board Watershed Permit. The current nutrient watershed permit will expire in mid-2024, and the next five-year permit is expected to impose a nutrient discharge load cap. To

meet the expected effluent load cap, the District anticipates that a process to treat high ammonia in the centrate generated in the dewatering process will be required. The District plans to conduct studies to determine the feasibility of other nutrient reduction improvements that can be made with existing facilities at the Main Wastewater Treatment Plant. These studies will include pilot and full-scale testing to evaluate sidestream nutrient treatment/recovery technologies and explore innovative approaches to nitrogen reduction. Nutrient studies are expected to begin in Fiscal Year 2022, and the planning phase of the sidestream treatment project is expected to begin in Fiscal Year 2023.

The Wet Weather Facilities project includes conducting mandated work related to the I&I program and maintaining the Wet Weather Facilities for reliable performance during wet weather events. This project includes the ongoing implementation of the regional private sewer lateral ordinance, flow modeling, and reporting, as required by the Consent Decree. The Parshall flumes at Oakport and Point Isabel wet weather facilities, and the San Antonio Creek wet weather facilities in Oakland will be inspected for physical deficiencies, such as damage to liners and concrete and rehabilitated. Design is scheduled to start in Fiscal Year 2022, with construction expected to be completed in Fiscal Year 2024. The project also includes rehabilitation of chemical tanks, wet well liner repair, and concrete restoration at the wet weather facilities which is scheduled to start Fiscal Year 2023.

The Effluent Discharge project includes maintaining and upgrading infrastructure necessary for disinfection and dechlorination of Main Wastewater Treatment Plant effluent and conveyance to its final discharge in the San Francisco Bay. As the final stage of liquid-stream treatment at the Main Wastewater Treatment Plant, treated wastewater is dosed with chlorine or sodium hypochlorite and conveyed through a 9,000-foot long land section of the effluent outfall pipe to the Dechlorination Facility. At the Dechlorination Facility, sodium bisulfite is added to react with any remaining chlorine, and water quality samples are collected to ensure a chlorine-free discharge to the San Francisco Bay. The final conveyance is through 7,500-foot long section of subaqueous outfall pipe. Over the next five years, the District plans to conduct a hydraulic study and to implement a rehabilitation of pumps at the effluent pump station, as well as the rehabilitation of the Dechlorination Facility. Seismic improvements also planned to be made at the effluent pump station and the outfall later in the ten-year CIP.

***Construction-Related Risks.*** Construction projects for the Wastewater System are subject to ordinary construction risks and delays applicable to projects of their kind, including but not limited to (i) inclement weather affecting contractor performance and timeliness of completion, which could affect the costs and availability of, or delivery schedule for, equipment, components, materials, labor or subcontractors; (ii) contractor claims or nonperformance; (iii) failure of contractors to execute within contract price; (iv) work stoppages or slowdowns; (v) failure of contractors to meet schedule terms; (vi) errors or omissions in contract documents requiring change orders; (vii) the occurrence of a major seismic event; or (viii) unanticipated project site conditions, including the discovery of hazardous materials on the site or other issues regarding compliance with applicable environmental standards, and other natural hazards or seismic events encountered during construction. In addition, Wastewater System construction projects may require scheduling system shutdowns to avoid impacting services and many shutdown windows are inflexible. Increased construction costs or delays could impact the Wastewater System's financial condition in general and the implementation of its CIP in particular. Construction bids may also be higher than anticipated for budgeting purposes due to the uncertainties and supply chain issues from the COVID-19 pandemic.

## WASTEWATER SYSTEM FINANCES

### Basis of Accounting

The District reports operations on a Fiscal Year basis (currently July 1 through June 30). Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the costs of providing goods and services to the general public are financed or recovered primarily through user charges. Enterprise funds are accounted for using the accrual basis of accounting. The accounting policies of the District conform to generally accepted accounting principles for municipal water and wastewater utilities. The accounts are maintained substantially in accordance with the Uniform System of Accounts prescribed for investor-owned and major municipally-owned water and wastewater utilities.

### Sources of Funds

The District finances its wastewater operations with rates and charges and a share of the county-wide real property tax levy. The Wastewater System's principal source of revenues is dry weather user charges billed directly to customers of the participating agencies. In Fiscal Year 2021, dry weather user charges of \$81.1 million provided approximately 57.1% of the Wastewater System's \$142.1 million total sources of funds. Wet weather facilities charges collected on the property tax bills issued by Alameda and Contra Costa counties accounted for approximately 19.9% of the total sources of funds of the Wastewater System and are designed to recapture the cost of financing the District's Wet Weather Facilities. The District's resource recovery program generated approximately 8.6% of the Wastewater System's total sources of funds in Fiscal Year 2021.

Table 7 sets forth the District's Wastewater System sources of funds for the five Fiscal Years ended June 30, 2021. The sources of funds in Table 7 include certain funds which do not constitute Subordinated Wastewater Revenues for purposes of funds pledged under the Indenture. Subordinated Wastewater Revenues include all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System or arising from the Wastewater System, which includes, without limitation, the District's dry weather user charges, wet weather facilities charges, wastewater capacity fees and resource recovery program revenues, as well as investment income, less Operation and Maintenance Costs. Property taxes are applied to reduce Operation and Maintenance Costs (or, prior to their retirement on April 1, 2018, to pay debt service on the District's outstanding general obligation bonds) and are not pledged to the repayment of the Wastewater System Revenue Bonds. See "–Property Tax Revenues" below. Certain grants and contributions earned on construction which are restricted to use for specified purposes are not included in Subordinated Wastewater Revenues for purposes of the Indenture. Only Subordinated Wastewater Revenues are pledged to the payment of the Wastewater System Revenue Bonds. See "SECURITY FOR THE SERIES 2022 BONDS – Pledge of Subordinated Wastewater Revenues" in the front part of this Official Statement. Comparative summaries of the Wastewater System's historical operating results and debt service coverage ratio for each of the last five Fiscal Years appear in Table 17.

**Table 7**  
**WASTEWATER SYSTEM SOURCES OF FUNDS**  
**Five Fiscal Years ended June 30, 2021**  
**(Millions)**

	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
<b>Operating Revenue and Other Income:</b>					
Dry Weather User Charges	\$ 70.0	\$ 74.7	\$ 78.1	\$ 79.9	\$ 81.1
Wet Weather Facilities Charges	23.1	24.3	25.1	27.1	28.3
Resource Recovery	11.8	11.8	12.2	12.1	12.3
Interest <sup>(1)</sup>	0.7	1.2	2.4	1.9	0.3
Taxes <sup>(2)</sup>	7.8	6.8	5.9	6.3	6.9
Other Revenues <sup>(3)</sup>	<u>5.3</u>	<u>7.0</u>	<u>4.6</u>	<u>5.3</u>	<u>5.8</u>
<b>Total Revenues</b>	<b>\$ 118.7</b>	<b>\$ 125.8</b>	<b>\$ 128.3</b>	<b>\$ 132.5</b>	<b>\$ 134.6</b>
<b>Capital Contributions:</b>					
Wastewater Capacity Fees	\$ 8.0	\$ 11.4	\$ 13.3	\$ 5.7	\$ 7.2
Earned contributions on construction	0.7	0.0	(0.1)	0.0	(0.0)
Grants and reimbursements	<u>0.2</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.3</u>
<b>Total Contributions</b>	<b>\$ 8.9</b>	<b>\$ 11.4</b>	<b>\$ 13.2</b>	<b>\$ 5.7</b>	<b>\$ 7.5</b>
<b>TOTAL<sup>(4)</sup></b>	<b><u>\$127.6</u></b>	<b><u>\$ 137.2</u></b>	<b><u>\$ 141.5</u></b>	<b><u>\$138.2</u></b>	<b><u>\$142.1</u></b>

(1) Includes interest earnings on Wastewater System Fund, including earnings on proceeds of the District's Wastewater System Revenue Bonds.

(2) Includes the District's share of 1% countywide property tax and, prior to their retirement on April 1, 2018, the *ad valorem* tax levied for repayment of Special District No. 1's general obligation bonds.

(3) Other Revenues includes amounts received from the sale of energy to the utility grid, Build America Bonds (BABs) interest subsidy payments received and due to the District in connection with its Series 2010B Bonds, and various other revenues. Other Revenues excludes certain reimbursements and other receipts applied directly to operating expenses.

(4) Totals may not add due to rounding.

Source: The District.

## Rates and Charges

The District's rates and rate structure are established by the District's Board after a public hearing process, and are not subject to regulation by any other agency. Under California law, the imposition of, or any increase in, a property-related fee or charge, including fees and charges for ongoing wastewater service, is subject to specified procedural requirements (including notice, hearing and protest procedures). In addition, pursuant to California law all such property-related fees and charges meet certain substantive standards, including that such fees and charges must be proportional to the cost of providing service. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Proposition 218" in the front part of this Official Statement for a discussion of the procedural and substantive requirements to which the District's rate increases are subject.

From Fiscal Year 2017 through Fiscal Year 2021, total annual residential wastewater charges imposed by the District have increased by an average of approximately 4.3% per Fiscal Year. The overall average rate increase, which includes the rate increases for all customer classes and rate components (including District treatment and disposal charges, wet weather facilities charges and San Francisco Bay Pollution Prevention Fee), over the same period was approximately 4.6%. The District's most recent increases in wastewater service rates and charges included the adoption on June 8, 2021 of overall rate increases of 4.00% and 4.00% for Fiscal Years 2022 and 2023, respectively.

Table 8 sets forth a history of the average residential rate increases and overall average rate increases for all customers enacted by the District for the five Fiscal Years 2017 through 2021, and the

average residential and overall average rate increases as adopted by the Board on June 8, 2021 for Fiscal Years 2022 and 2023.

**Table 8**  
**HISTORY OF WASTEWATER**  
**RATE INCREASES<sup>(1)</sup>**

<i><b>Fiscal Year</b></i>	<i><b>Average Residential Rate Increase<sup>(1)</sup></b></i>	<i><b>Overall Average Rate Increase<sup>(2)</sup></b></i>
2017	4.88%	5.00%
2018	4.87	5.00
2019	5.05	5.00
2020 <sup>(3)</sup>	2.70	4.00 <sup>(3)</sup>
2021	3.95	4.00
2022 <sup>(4)</sup>	3.91 <sup>(4)</sup>	4.00 <sup>(4)</sup>
2023 <sup>(4)</sup>	4.07 <sup>(4)</sup>	4.00 <sup>(4)</sup>

<sup>(1)</sup> Residential average rate increase includes wastewater treatment and disposal charges, wet weather facilities charges, and San Francisco Bay Pollution Prevention Fee.

<sup>(2)</sup> Overall average rate increase includes wastewater treatment and disposal charges and wet weather facilities charges for all customer classes (including residential).

<sup>(3)</sup> Fiscal Year 2020 rates and charges include cost of service study adjustments that resulted in some rates and charges decreasing and others increasing. Overall revenue from rates were estimated to be approximately 4.00% higher than under Fiscal Year 2019 rates and charges.

<sup>(4)</sup> The adopted rate increase for Fiscal Year 2022 is effective on bills issued on and after July 1, 2021 and the adopted rate increase for Fiscal Year 2023 will be effective on bills issued on and after July 1, 2022.

Source: The District.

Table 9 shows the rate schedule effective July 1, 2021 for Fiscal Year 2022, and the rate schedule to be effective July 1, 2022 for Fiscal Year 2023 as approved by the Board on June 8, 2021. The District believes that the current rate structure is consistent with federal and State regulations, which require generally that wastewater charges be proportionate to the operation, maintenance and replacement costs associated with providing service for each discharger or class of dischargers. See also Table 18 under “Projected Operating Results” for a description of projected future rate increases.

**Table 9**  
**WASTEWATER SYSTEM RATES AND CHARGES**

	<i>Effective July 1, 2021</i>	<i>Effective July 1, 2022</i>	
<b>Residential Charge:</b>			
Service Charge (per account)	\$ 7.59	\$ 7.89	per month
Strength Charge (per dwelling unit)	7.90	8.22	per month
Flow Charge	1.37	1.43	per 100-cubic foot unit, to a maximum of 9 units
San Francisco Bay Pollution Prevention Fee	0.20	0.20	per month per dwelling unit
<b>Non-Residential Charge:</b>			
Service Charge (per meter)	7.59	7.89	per month
Treatment Charge	1.42-19.47	1.48-20.29	per unit, depending on the nature of the business
San Francisco Bay Pollution Prevention Fee	5.48	5.48	per month
<b>Minimum Monthly Charge:</b>			
Apartment Buildings (5 or more dwelling units)	47.09	48.99	per month
All others	7.59	7.89	per month
<b>Permit Accounts:</b>			
Flow Charge	1.370	1.425	per hundred cubic feet
COD	0.139	0.145	per pound of discharge
Suspended Solids	0.573	0.596	per pound of discharge
<b>Wet Weather Facilities Charge:</b>			
Small lot (0-5,000 sq. ft.)	120.34	125.16	per year per land parcel
Medium lot (5,001-10,000 sq. ft.)	187.98	195.50	per year per land parcel
Large lot (>10,000 sq. ft.)	429.62	446.80	per year per land parcel

Source: The District.

### **Comparison of Wastewater System Charges**

Annual charges of various Bay Area wastewater service providers for single family residences discharging 6.0 hundred cubic feet (“Ccf”) of wastewater per month (as determined based upon metered water consumption) are shown in Table 10. Charges for cities served by the District include both the cities’ charge for collection and the District charge for treatment and disposal. Charges for these cities include costs of sewer rehabilitation programs, now underway, to reduce wet weather infiltration and inflow into their collection systems. The District rates also reflect an additional wet weather facilities charge (based on lot size: for Fiscal Year 2022 to be \$120.34 for lots from 0 to 5,000 square feet) to pay the cost of the wet weather program.

**Table 10**  
**COMPARATIVE ANNUAL WASTEWATER CHARGES<sup>(1)</sup>**  
**Single Family Residences 6.0 Ccf/Month**  
**Effective Rates as of July 1, 2021<sup>(2)(3)</sup>**

City and County of San Francisco	\$1,097
City of Richmond	924
<b>East Bay Municipal Utility District<sup>(4)</sup></b>	<b>880</b>
Central Marin Sanitary District	861
City of Pinole	857
City of Vallejo	769
City of Livermore	743
West Contra Costa Sanitary District	639
Central Contra Costa Sanitary District	598
Delta Diablo Sanitary District	556
City of Pleasanton	512
City of San Jose	500
Union Sanitary District	491
Dublin San Ramon Services District	469
City of San Leandro	466
Oro Loma Sanitary District	296

(1) Includes collection and treatment charges.

(2) Unless otherwise noted, the table reflects charges based on rates applicable as of calendar year 2021 or fiscal year 2022 regardless of characterization as base rates or other characterization.

(3) Rates have been obtained from publicly available sources and have not been independently verified by the District.

(4) Monthly charges vary by metered water consumption. The District portion of the charge assumes a monthly wastewater discharge of 6.0 Ccf for an annual charge of \$407, based on rates for Fiscal Year 2022 (including the \$98.80 wet weather facilities charge for small lots), plus an average community collection charge of \$422 per year throughout the wastewater service area. Reflects the District's rates for Fiscal Year 2022 as adopted on June 8, 2021.

Source: The District.

### **Wastewater User Charge Revenues and Number of Accounts by User Type**

Table 11 sets forth a breakdown of the District's dry weather user charge revenues and number of accounts by customer class for the Fiscal Year ended June 30, 2021.

**Table 11**  
**WASTEWATER DRY WEATHER USER CHARGE REVENUES**  
**AND NUMBER OF ACCOUNTS BY USER TYPE**  
**Fiscal Year ended June 30, 2021**

<i>Type of Customer</i>	<i>User Charge Revenues<sup>(1)</sup></i>	<i>Percent of Revenues</i>	<i>Number of Accounts<sup>(2)</sup></i>	<i>Percent of Accounts</i>
Residential	\$45,381,849	56.0%	160,348	88.8%
Commercial	29,220,178	36.0	16,811	9.3
Industrial	2,349,540	2.9	722	0.4
Public	<u>4,126,624</u>	<u>5.1</u>	<u>2,653</u>	<u>1.5</u>
Total <sup>(3)</sup>	<u>\$81,078,191</u>	<u>100.0%</u>	<u>180,534</u>	<u>100.0%</u>

(1) Dry weather user charges collected on the water bill includes permit fees, pollution prevention fees and late fees. Does not include wet weather facilities charges, resource recovery treatment fees or private sewer lateral compliance certificate fees.

(2) This table referred to number of connections in the District's prior disclosure documents. The data presented is more accurately referred to as number of accounts and the table has been re-labeled accordingly. The data presented is on a basis consistent the presentation in the District's prior disclosure documents.

(3) Totals may not add due to rounding.

Source: The District.

## Billing and Collections

All wastewater service customers are billed by the District bimonthly for dry weather user charges, with the exception of the 450 largest accounts, which are billed monthly. Billing is staggered throughout the billing cycle by geographic location. Water service may be discontinued if an overdue wastewater account is not paid after appropriate customer notification. Since March 12, 2020, the District has suspended the discontinuance of water service due to non-payment in order to assist customers experiencing negative economic impacts as a result of the COVID-19 pandemic. See “THE DISTRICT-COVID-19.”

The District considers its rates of payment delinquency, service discontinuance for non-payment and write-offs for uncollectible accounts to be low by wastewater industry standards for urban areas. Following retention of a new collection vendor and implementation of a new delinquent payment process, write-offs for uncollectible revenues have been further reduced. Write-offs for uncollectible accounts for the last five Fiscal Years are set forth in Table 12.

**Table 12**  
**WASTEWATER CHARGES UNCOLLECTIBLE REVENUES<sup>(1)</sup>**  
**Last Five Fiscal Years**

<i>Fiscal Year Ended June 30</i>	<i>Uncollectible Revenues</i>	<i>Percent of Gross Billings</i>
2017	\$146,608	0.21%
2018	135,443	0.19
2019	137,661	0.18
2020	162,213	0.20
2021	140,230	0.18

<sup>(1)</sup> Since the suspension of the discontinuance of service for past due residential accounts was implemented in March 2020, the District has not written off past due residential accounts as uncollectible while potential collection or recovery through State and federal economic assistance programs is pending. See also “THE DISTRICT – COVID-19.”

Source: The District.

## Wastewater Capacity Fees

The District assesses a Wastewater Capacity Fee on each new Wastewater System customer or each existing Wastewater System customer that increases demand for treatment processing on or after July 1, 1984, measured in wastewater volume and strength. The Wastewater Capacity Fee is a one-time charge based on the maximum monthly wastewater volume and average strength. In 2013, the Board approved a change in the Wastewater Capacity Fee calculations. These changes were made in order to address the recognition that the District’s ultimate build-out scenario now projects lesser demand growth than previously assumed. This change resulted in a 60% increase in the calculated Wastewater Capacity Fee, which was phased-in over five years beginning in Fiscal Year 2014. In Fiscal Year 2022, the Wastewater Capacity Fee for a single family residence is \$2,850. The fees for multi-family dwellings are \$1,560 per dwelling unit 500 sq. ft. or less and \$2,000 per dwelling greater than 500 sq. ft. The Wastewater Capacity Fee for other applicants is based on an analysis of the applicant’s expected wastewater treatment needs.

## Resource Recovery Revenues

As described under “THE WASTEWATER SYSTEM – Resource Recovery,” the District accepts truck waste from outside its Wastewater System service area for disposal at the Main Wastewater Treatment Plant through its resource recovery program. Waste generators interested in disposing of trucked waste at the District’s facilities are required to obtain a permit from the District (either directly or by utilizing an approved hauler possessing a District permit). Tipping fees are charged by the District for waste streams delivered by truck for disposal based upon type of waste and volume or weight. Types of customers include chicken processors, dairies, wineries, breweries, and industrial wastewater brokers and haulers. The District has approximately 190 permit holders bringing in both regular deliveries such as chicken blood or dairy brine and one time projects from industrial facility clean-outs.

In Fiscal Year 2021, total resource recovery programs revenues received by the District from tipping fees totaled \$12.3 million. For budgeting purposes, the District assumes resource recovery program revenues will be less in future years than currently generated due to increased competition from wastewater facilities that are beginning trucked waste acceptance programs that will be located closer to waste generators.

## Property Tax Revenues

The District’s share of the countywide 1% *ad valorem* property tax levy allocated to Special District No. 1 has provided approximately 4% to 5% of the revenues of the Wastewater System in each of the past five Fiscal Years for the District. The District’s share of the countywide 1% *ad valorem* property tax levy allocated to Special District No. 1 is not pledged as a source of payment for the Wastewater System Revenue Bonds, although such amounts are applied to pay Wastewater Operation and Maintenance Costs in accordance with the Indenture.

Table 13 shows a five-year record of assessed valuations, secured roll levies and delinquencies for the taxable property included within Special District No. 1. Assessed valuations are expressed by county assessors as “full cash value” as defined by Article XIII A of the State Constitution. The tax levy shown includes both the District’s allocated share of the maximum *ad valorem* tax levy by each county of 1% of full cash value and the *ad valorem* tax levy imposed to pay debt service on the District’s outstanding Wastewater System general obligation bonds, which were fully retired in April 2018.

Pursuant to California Revenue and Taxation Code Sections 4701 *et seq.*, Contra Costa County and Alameda County each maintain a reserve fund for the purpose of guaranteeing 100% of the secured levies of the electing governmental jurisdictions for which such county collects taxes (commonly referred to as the “Teeter Plan”). The District has elected to participate in Contra Costa County’s Teeter Plan program but has elected not to participate in Alameda County’s Teeter Plan program. Consequently, the District is exposed to the effect of delinquencies in collections only for property located in Alameda County.

A Teeter Plan remains in effect unless the board of supervisors of the county that has established a Teeter Plan orders its discontinuance or unless, prior to the commencement of any fiscal year of such county, such board of supervisors receives a petition for its discontinuance joined in by a resolution adopted by at least two-thirds of the participating revenue districts within the county, in which event the such board of supervisors is to order the discontinuance of the Teeter Plan effective at the commencement of the subsequent fiscal year. If the Board of Supervisors of the Contra Costa County, or in the event that the District elects to participate in Alameda County’s Teeter Plan, the Board of Supervisors of Alameda County, is to order the discontinuance of the Teeter Plan, only those secured property taxes actually collected would be allocated to political subdivisions (including the District) for which such county acts as the tax-levying or tax-collecting agency.

**Table 13**  
**TAXABLE PROPERTY WITHIN THE WASTEWATER SYSTEM**  
**Assessed Valuation and Tax Collection Record**

	<i>Fiscal Year Ending June 30</i>				
	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Assessed Valuation for Taxation Purposes <sup>(1)(2)</sup>					
Alameda County	\$ 91,776,237,397	\$ 98,101,088,469	\$104,791,049,008	\$112,571,652,641	\$122,248,493,183
Contra Costa County	<u>5,674,453,030</u>	<u>6,027,338,924</u>	<u>6,396,906,019</u>	<u>6,769,204,055</u>	<u>7,187,871,396</u>
Total	\$ 97,450,690,427	\$104,128,427,393	\$111,187,955,027	\$119,340,856,696	\$129,436,364,579
Secured Roll Tax Levy <sup>(3)</sup>					
Alameda County	\$ 7,232,843	\$ 6,300,863	\$ 5,385,714	\$ 5,782,135	\$ 6,377,478
Contra Costa County	<u>547,352</u>	<u>473,110</u>	<u>470,322</u>	<u>506,767</u>	<u>479,713</u>
Total	\$ 7,780,195	\$ 6,773,973	\$ 5,856,036	\$ 6,288,902	\$ 6,857,192
Delinquent June 30 <sup>(4)</sup>					
Amount	\$ 111,290	\$ 79,688	\$ 59,959	\$ 74,239	\$ 77,975
Percent	1.43%	1.18%	1.02%	1.18%	1.14%

(1) Net of all exemptions except homeowner's exemptions, the taxes on which are paid by the State. All valuations are stated on a 100% of full cash value basis as defined by law. Assessed valuations shown include redevelopment project area incremental valuations.

(2) Minor differences in assessed valuation numbers from amounts previously reported can occur from time to time due to a change in source data used.

(3) Net basis excluding all exemptions. Levies reflect the tax reductions effected by the adoption of Article XIII A of the State Constitution in 1978, the "Jarvis-Gann Initiative." Includes *ad valorem* tax levied for repayment of Special District No. 1's general obligation bonds, which were fully retired in April 2018. For Alameda County, receipts include the District's share of prior years' delinquencies when collected.

(4) Amounts apply to Alameda County only, since Contra Costa County guarantees 100% payment of the District's secured roll levy. The delinquency percentages are based on the two counties' secured roll levies.

Sources: Auditor-Controller's Office, Alameda and Contra Costa Counties, as compiled by the District.

Historically, from time to time, legislation was enacted as part of the State budget to provide for the reallocation of local governments' shares of the countywide 1% *ad valorem* tax, including by shifting a portion of the property tax revenues collected by the counties from special districts (such as the District) to school districts or other governmental entities. Subsequently, certain amendments to the State Constitution have been enacted to reduce the State Legislature's authority over local revenue sources by placing restrictions on, among other things, the State's access to local governments' property tax revenues. For example, on November 2, 2004 voters within the State approved Proposition 1A, which prevented the State from reducing local government's share of the 1% *ad valorem* property tax below levels in effect as of November 3, 2004, except in the case of fiscal emergency. Proposition 1A provided that in the case of fiscal emergency, the State could borrow up to 8% of local property tax revenues to be repaid within three years. Following the exercise by the State of its authority to borrow such local property tax revenues as part of the 2009-10 State budget act, on November 2, 2010, voters within the State approved Proposition 22, which prohibits any future action by the State Legislature to take, reallocate or borrow money raised by local governments for local purposes, and prohibits changes in the allocation of property taxes among local governments to aid State finances or pay for State mandates. Proposition 22 thereby effectively repealed the provisions of Proposition 1A allowing the State to borrow local property tax revenues from local governments, and prohibits any such future borrowing.

There can be no assurances that legislation or voter initiatives enacted or approved in the future will not reduce or eliminate the District's share of the 1% countywide *ad valorem* property tax revenues. See also "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS" in the front part of this Official Statement.

The tax rolls for property located within the District's Wastewater System service area for the Fiscal Year ended June 30, 2021, aggregated a total assessed valuation of approximately \$129.4 billion, including redevelopment project areas incremental valuations of which the taxes payable were due to the redevelopment agency. In 2011, the State enacted legislation commonly referred to as "AB1X 26," which required the dissolution of California redevelopment agencies and the dissolution and winding up of the operations of those agencies, which dissolution occurred on February 1, 2012. AB1X 26 provides a framework for the management of the remaining obligations of the dissolved redevelopment agencies by their respective successor agencies and oversight boards to oversee those successor agencies. Pursuant to AB1X 26, tax increment will continue to flow to the payment of "enforceable obligations" (such as tax allocation bonds) of the dissolved redevelopment agencies.

### **Grants and Reimbursements**

The District periodically receives grants for specific projects. In addition, the District from time to time receives certain reimbursements for capital costs, primarily in connection with facility relocations. In Fiscal Year 2021, the District collected approximately \$1.8 million in grants and reimbursements for the Wastewater System. No grants and reimbursements are anticipated for Fiscal Year 2022. No grant receipts and facility relocation reimbursements are budgeted for Fiscal Years 2023 and 2024. Grants and facility relocation reimbursements received are treated as capital contributions and are not included in Subordinated Wastewater Revenues for purposes of the Indenture.

### **Operation and Maintenance Costs**

The primary component of the District's Wastewater System Operation and Maintenance Costs is labor costs, including wages, salaries and benefits. Operation and Maintenance Costs also include materials, supplies and services such as treatment chemicals and sludge disposal costs, and other general and administrative expenses.

### **Outstanding Debt**

Table 14 shows Wastewater System debt outstanding as of April 30, 2022. As provided in the Municipal Utility District Act, prior to the exercise by the District of its power to issue Wastewater System revenue bonds, a preliminary resolution is adopted by the Board declaring its intention to authorize the issuance of revenue bonds and specifying, among other things, the maximum principal amount of bonds then proposed to be issued (excluding refunding bonds) pursuant to such resolution. As of April 30, 2022 (and prior to the issuance of the Series 2022 Bonds), the District has \$186,025,00 of authorized but unissued Wastewater System revenue bonds under Resolution No. 33781-10 adopted on September 14, 2010, pursuant to which the Board declared its intention to authorize the issuance of up to \$200,000,000 of Wastewater System revenue bonds, from time to time in one or more series. The issuance of revenue bonds by the District is not subject to prior voter approval, although such resolutions of intention to authorize the issuance of bonds are subject to a 60-day referendum period (which, with respect to Resolution No. 33781-10, expired without challenge). The District may from time to time in the future adopt other resolutions authorizing the issuance of additional Wastewater System Revenue Bonds, subject to the satisfaction of the conditions set forth in the Indenture. See "SECURITY FOR THE SERIES 2022 BONDS – Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations" in the front part of this Official Statement.

From time to time, the District applies for and is granted loan funds from the SWRCB under the Clean Water State Revolving Fund loan program. The SWRCB loans ("State Loans") are low-interest loans made by the SWRCB to fund various water quality infrastructure projects. The District may in the future apply for additional State Loans. The SWRCB requires all future debt issued by agencies involved in loan contracts under the Clean Water State Revolving Fund loan program to be issued on a parity with

or subordinate to the State Loans. The District currently has no outstanding State Loans for the Wastewater System. Any future State Loans would likely constitute Parity Debt under the Indenture.

Pursuant to the authority of the Municipal Utility District Act, the Board has declared its intention to authorize the issuance of short-term indebtedness of the District (which may include commercial paper notes and/or other forms of bonds, notes or other evidences of short-term indebtedness, including bank credit) in a maximum outstanding principal amount not exceeding the lesser of (1) the annual average of the District's total revenue for the three preceding years or (2) 25% of the District's total outstanding bonds issued pursuant to Chapters 6, 7 and 8 of the Municipal Utility District Act. The District has determined the maximum authorized principal amount of short-term indebtedness (including short-term indebtedness of the Water System and the Wastewater System) pursuant to the above limit to be an amount not to exceed \$669,174,000 as of June 30, 2021. The District currently maintains two commercial paper note programs for the benefit of the Wastewater System and the District's Water System. Under the extendable municipal commercial paper program, commercial paper may be issued for the Wastewater System or the Water System at prevailing interest rates for periods of not more than 120 days from the date of issuance with the option by the District to extend the maturity for another 150 days. The extendable municipal commercial paper program is not supported by any liquidity or revolving credit agreement. Under the District's traditional commercial paper program, commercial paper notes may be issued for the Wastewater System or the Water System at prevailing interest rates for periods of not more than 270 days from the date of issuance. In connection with its traditional commercial paper program, the District has covenanted to procure and maintain in effect for any series or subseries of commercial paper notes issued thereunder one or more liquidity facilities enabling it to borrow an aggregate amount at least equal to the principal amount of such series or subseries of commercial paper notes. As of April 30, 2022, the District had outstanding \$322,100,000 principal amount of commercial paper notes, including \$9,300,000 of Tax-exempt Extendable Municipal Commercial Paper Notes (Wastewater Series) ("Wastewater System CP Notes") issued under the District's extendable municipal commercial paper program. As of April 30, 2022, the District had no Commercial Paper Notes (Wastewater Series) issued under the District's traditional commercial paper program. The Wastewater System CP Notes, together with any additional commercial paper notes issued by the District for the benefit of the Wastewater System under either the District's extendable municipal commercial paper program or its traditional commercial paper program (and the District's repayment obligation for amounts borrowed, if any, under any applicable liquidity facility therefor), are payable from and secured by a pledge of Wastewater Revenues on a basis subordinate to the Wastewater System Revenue Bonds and Parity Debt.

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**Table 14**  
**OUTSTANDING WASTEWATER SYSTEM DEBT**  
**(as of April 30, 2022)**

	<i><b>Date of Issue</b></i>	<i><b>Last Maturity</b></i>	<i><b>Amount Issued</b></i>	<i><b>Outstanding April 30, 2021</b></i>
<u>Wastewater System Revenue Bonds:</u>				
Revenue Bonds, Series 2010B (Build America Bonds)	10/20/10	06/01/40	\$150,000,000	\$150,000,000
Revenue Refunding Bonds, Series 2012A <sup>(1)</sup>	10/10/12	06/01/37	20,000,000	20,000,000
Revenue Refunding Bonds, Series 2014A	08/28/14	06/01/31	82,150,000	50,415,000
Revenue Refunding Bonds, Series 2015A	03/03/15	06/01/38	68,370,000	68,370,000
Revenue Refunding Bonds, Series 2015B	03/03/15	06/01/30	2,795,000	1,800,000
Revenue/Refunding Bonds, Series 2017A	06/14/17	06/01/45	<u>69,420,000</u>	<u>57,305,000</u>
Total Wastewater System Revenue Bonds			<u>\$392,735,000</u>	<u>\$347,890,000</u>
<u>Subordinate Debt:</u>				
Extendable Commercial Paper Notes (Wastewater Series)	Various	Various	<u>9,300,000<sup>(2)</sup></u>	<u>9,300,000</u>
<b>Total Debt</b>			<u><b>\$402,035,000</b></u>	<u><b>\$357,190,000</b></u>

<sup>(1)</sup> Anticipated to be refunded in full in connection with the issuance of the Series 2022 Bonds. See "PLAN OF FINANCE" in the front part of this Official Statement.

<sup>(2)</sup> Commercial paper notes may be issued in an amount up to the statutory limit described herein. In Fiscal Year 2021, the District paid down \$0.7 million of outstanding Extendable Municipal Commercial Paper Notes (Wastewater Series) from available cash.

Source: The District.

### Debt Service Requirements

Table 15 shows future payments on outstanding debt.

[Remainder of page intentionally left blank.]

**Table 15**  
**WASTEWATER SYSTEM ESTIMATED DEBT SERVICE<sup>(1)</sup>**

<i>Fiscal Year Ending June 30</i>	<i>Outstanding Wastewater System Revenue Bonds</i>			<i>Series 2022 Bonds</i>			<i>Total Bonds</i>	<i>Wastewater System CP Notes<sup>(3)</sup></i>	<i>Total Debt Service<sup>(4)</sup></i>
	<i>Principal</i>	<i>Interest<sup>(2)</sup></i>	<i>Total</i>	<i>Principal</i>	<i>Interest</i>	<i>Total</i>			
2022	\$ 11,480,000	\$ 17,376,463	\$ 28,856,463				\$ 28,856,463	\$ 285,000	\$ 29,141,463
2023	12,010,000	16,806,963	28,816,963				28,816,963	285,000	29,101,963
2024	12,575,000	16,210,423	28,785,423				28,785,423	285,000	29,070,423
2025	13,155,000	15,585,743	28,740,743				28,740,743	285,000	29,025,743
2026	13,760,000	14,932,283	28,692,283				28,692,283	285,000	28,977,283
2027	14,220,000	14,247,583	28,467,583				28,467,583	285,000	28,752,583
2028	14,925,000	13,539,965	28,464,965				28,464,965	285,000	28,749,965
2029	15,670,000	12,797,180	28,467,180				28,467,180	285,000	28,752,180
2030	16,445,000	12,025,314	28,470,314				28,470,314	285,000	28,755,314
2031	17,255,000	11,210,889	28,465,889				28,465,889	285,000	28,750,889
2032	18,115,000	10,354,652	28,469,652				28,469,652	285,000	28,754,652
2033	19,010,000	9,458,969	28,468,969				28,468,969	285,000	28,753,969
2034	19,955,000	8,512,736	28,467,736				28,467,736	285,000	28,752,736
2035	20,945,000	7,522,209	28,467,209				28,467,209	285,000	28,752,209
2036	21,985,000	6,482,644	28,467,644				28,467,644	285,000	28,752,644
2037	23,075,000	5,391,583	28,466,583				28,466,583	285,000	28,751,583
2038	24,365,000	4,246,650	28,611,650				28,611,650	285,000	28,896,650
2039	26,250,000	2,991,194	29,241,194				29,241,194	285,000	29,526,194
2040	27,610,000	1,632,494	29,242,494				29,242,494	285,000	29,527,494
2041	940,000	203,400	1,143,400				1,143,400	285,000	1,428,400
2042	975,000	165,800	1,140,800				1,140,800	285,000	1,425,800
2043	1,015,000	126,800	1,141,800				1,141,800	285,000	1,426,800
2044	1,055,000	86,200	1,141,200				1,141,200	285,000	1,426,200
2045	1,100,000	44,000	1,144,000				1,144,000	285,000	1,429,000
Total <sup>(4)</sup>	<u>\$347,890,000</u>	<u>\$201,952,134</u>	<u>\$549,842,134</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$549,842,134</u>	<u>\$6,840,000</u>	<u>\$556,682,134</u>

(1) Debt service is calculated on a cash basis.

(2) Includes debt service on the Series 2010B Bonds, Series 2012A Bonds to be refunded, the Series 2014A Bonds, the Series 2015A Bonds, the Series 2015B Bonds and the Series 2017A Bonds.

(3) Assumes \$9,500,000 outstanding at assumed interest rate of 3.00%. Includes interest only (no principal amortization). While the commercial paper program is limited by statute to seven years, it is the District's intention to reestablish the commercial paper program after each seven-year period. The District may increase the amount of the commercial paper program in the future subject to the limit described herein.

(4) Totals may not add due to rounding.

Source: The District.

## **Financial Management Policies**

The District has detailed management policies that include guidelines for debt, capital planning, investments, derivatives, and formal reserves. It is the current Board-approved policy of the District to seek to maintain a debt service coverage ratio of 1.6 times on its outstanding Wastewater System Revenue Bonds and to fund no more than 65% of its capital program over each five-year planning period from proceeds of debt. The debt policy also limits unhedged variable rate debt to 25% of the total debt portfolio. Derivatives use is governed by a comprehensive derivatives policy with guidelines for counterparties, termination, and risk exposure. The District's current policy target for debt service coverage is higher than that required by the rate covenant under the Indenture and may be changed at the Board's discretion. See "SECURITY FOR THE SERIES 2022 BONDS – Rate Covenant."

In accordance with its current cash reserves policy, the District budgets for a number of formal reserves for the Wastewater System, including the following:

- a working capital reserve of at least three times monthly net operating and maintenance expenses;
- a self-insurance liability program reserve in an amount based upon established actuarially determined funding guidelines or, if not yet available at the end of the fiscal year, 1.15 times the prior year reserve target (which reserve amount was approximately \$1.2 million as of December 31, 2021);
- a workers' compensation program reserve in an amount based upon established actuarially determined funding guidelines or, if not yet available at the end of the fiscal year 1.15 times the prior year reserve target (which amount was approximately \$0.9 million as of December 31, 2021); and
- a contingency/rate stabilization reserve of at least 5% of operating and maintenance expenses (which contingency/rate stabilization reserve is included in the Rate Stabilization Fund provided for in the Indenture (see "SECURITY FOR THE SERIES 2022 BONDS – Pledge of Subordinated Wastewater Revenues")).

The aggregate reserves maintained by the District for these four formal reserves for the Wastewater System as of December 31, 2021 was approximately \$55.4 million, which satisfies or exceeds the reserve policy target level.

The current investment policy dictates investment criteria, reporting, and administrative requirements. See "– District Investment Policy" below.

## **District Investment Policy**

Funds of the District are invested in accordance with the Government Code of the State, the Municipal Utility District Act and the District's investment policy. The four primary investment criteria set forth in the District's written investment policy are (in order of priority): (1) safety; (2) liquidity; (3) yield; and (4) diversification. In order to keep funds available to meet commitments, the District's investment policy provides that the maturity date (or put provision) of individual investments shall not exceed five years and that the average maturity of the portfolio shall not exceed 900 days. Investments permitted by the District's current investment policy include U.S. Treasury Obligations, U.S. Government Agencies Obligations, State of California's Local Agency Investment Fund (LAIF), a Local Government Investment Pool (LGIP), including the California Asset Management Program (CAMP) and the Investment Trust of California (CalTRUST), Money Market Mutual Funds, Certificates of Time Deposit, Negotiable Certificates of Deposit, Commercial Paper, Medium Term Corporate Notes, Repurchase

Agreements and Municipal Obligations, limited to California issuers, including the State of California. Monies in the funds and accounts held by the Trustee under the Indenture may be invested only in Investment Securities, as defined therein. The District does not enter into reverse repurchase agreements or otherwise borrow for purposes of investing. The District does not invest in highly volatile derivatives and other such securities.

Pursuant to the District's investment policy, all securities purchased from dealers and brokers are held in safekeeping by the District's custodial bank. All transactions require delivery of the security prior to payment for the security (delivery vs. payment). Collateral, when required, would only be in U.S. Treasury or U.S. Government Agencies Obligations, with a Master Repurchase Agreement on file with the District. Trade confirmations are reviewed for conformity to the original transaction by an individual other than the one who originated the transaction. On a monthly basis, a report listing transactions is submitted to the General Manager and the District's Board; and on a quarterly basis, an investment report is submitted to the General Manager and the Finance/Administration Committee of the District's Board. This quarterly report includes the type of investment, issuer, date of maturity, par and dollar amount invested for all securities, investments and moneys held by the District, and provides an investment summary by security type, percent of the portfolio, investment yield and the remaining period of investment to maturity.

## Cash and Investments

The District's cash and investments are segregated by restricted and unrestricted amounts. Restricted cash and investments generally include bond proceeds and debt service reserve funds, developer advances and capital contributions, and other miscellaneous restricted amounts. At June 30, 2021, the breakdown between restricted and unrestricted amounts for the Wastewater System is as follows:

**Table 16**  
**WASTEWATER SYSTEM**  
**CASH AND INVESTMENTS**  
**(As of June 30, 2021)**  
**(Thousands)**

Cash and investments included in current and unrestricted assets	\$110,829
Cash and investments included in restricted assets	<u>333</u>
Total cash and investments	<u>\$111,162</u>

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Source: The District.

See also “– *Cash and Investments by Fund*” in the Management's Discussion and Analysis included in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2020 AND 2021.” Additional information regarding the District's investment portfolio may also be found in Note 2 in the District's financial statements included in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2020 AND 2021.”

## **Historical Operating Results**

The District's financial statements for Fiscal Year 2021, and the Report of Maze & Associates, independent accountants, are included as Appendix B, and should be read in their entirety. The summary of operating results for Fiscal Years 2017 through 2021 contained in Table 17 is derived from information from the audited financial statements for such Fiscal Years and is qualified in its entirety by reference to such statements, including the notes thereto.

Table 17 sets forth the historical operating results and the calculation of the debt service coverage ratio for the Wastewater System for each of the last five Fiscal Years.

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**Table 17**  
**WASTEWATER SYSTEM**  
**Historical Operating Results and Debt Service Coverage<sup>(1)</sup>**  
**Fiscal Years 2017 through 2021**

	2017	2018	2019	2020	2021
<b>WASTEWATER REVENUES<sup>(2)</sup></b>					
Dry Weather User Charges	\$ 69,999,373	\$ 74,726,870	\$ 78,108,092	\$ 79,881,685	\$ 81,078,226
Wet Weather Facilities Charges	23,104,818	24,293,238	25,112,787	27,090,108	28,315,516
Interest	654,595	1,217,101	2,372,907	1,851,344	281,743
Resource Recovery	11,904,249	11,786,366	12,214,540	12,074,141	12,315,606
Wastewater Capacity Fees	7,969,321	11,418,610	13,259,943	5,697,283	7,203,746
Other Revenues <sup>(3)</sup>	5,253,614	4,477,132	2,125,817	2,760,262	3,221,007
<b>TOTAL WASTEWATER REVENUE</b>	<b>\$118,885,970</b>	<b>\$127,919,317</b>	<b>\$133,194,086</b>	<b>\$129,354,823</b>	<b>\$132,415,844</b>
<b>RATE STABILIZATION FUND TRANSFERS</b>					
Deposits to the Rate Stabilization Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ (7,910,000)
Withdrawals from Rate Stabilization Fund for Inclusion in Revenues	0	0	0	0	0
<b>WASTEWATER REVENUES AFTER RATE STABILIZATION TRANSFER</b>	<b>\$118,885,970</b>	<b>\$127,919,317</b>	<b>\$133,194,086</b>	<b>\$129,354,823</b>	<b>\$124,505,844</b>
<b>WASTEWATER OPERATION &amp; MAINTENANCE COSTS<sup>(4)</sup></b>					
Operating Expenses	\$ 58,550,842	\$ 62,608,477	\$ 63,362,686	\$66,485,966	\$69,009,326
(Less Tax Receipts) <sup>(5)</sup>	(4,914,980)	(5,428,849)	(5,768,972)	(6,285,937)	(6,858,522)
<b>TOTAL WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>	<b>\$ 53,635,862</b>	<b>\$ 57,179,628</b>	<b>\$ 57,593,714</b>	<b>\$ 60,200,029</b>	<b>\$ 62,150,804</b>
<b>NET WASTEWATER REVENUES</b>	<b>\$ 65,250,108</b>	<b>\$ 70,739,689</b>	<b>\$ 75,600,372</b>	<b>\$ 69,154,794</b>	<b>\$ 62,355,040</b>
<b>PARITY DEBT SERVICE</b>					
Wastewater System Revenue Bonds <sup>(6)</sup>	\$ 29,099,228	\$ 26,695,724	\$ 26,738,995	\$ 26,733,361	\$ 26,338,512
Parity State Loans	0	0	0	0	0
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$ 29,099,228</b>	<b>\$ 26,695,724</b>	<b>\$ 26,738,995</b>	<b>\$ 26,733,361</b>	<b>\$ 26,338,512</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>2.24</b>	<b>2.65</b>	<b>2.83</b>	<b>2.59</b>	<b>2.37</b>
<b>SUBORDINATE WASTEWATER SYSTEM DEBT SERVICE<sup>(7)</sup></b>	<b>\$ 109,216</b>	<b>\$ 166,796</b>	<b>\$ 249,715</b>	<b>\$ 163,043</b>	<b>\$ 19,875</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$ 29,208,444</b>	<b>\$ 26,862,520</b>	<b>\$ 26,988,710</b>	<b>\$ 26,896,404</b>	<b>\$ 26,358,387</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>2.23</b>	<b>2.63</b>	<b>2.80</b>	<b>2.57</b>	<b>2.37</b>

(1) Calculated in accordance with the Indenture as footnoted.

(2) Wastewater Revenues exclude grant receipts, taxes and certain reimbursements.

(3) Through Fiscal Year 2017, Other Revenues includes BABs Interest Subsidy Payments received and due to the District in connection with Series 2010B Bonds which are Build America Bonds. In Fiscal Year 2018, the subsidy is not included in Other Revenues (see Note 6). Other Revenues also includes revenues received from the sale of energy to the utility grid of \$900,014 in Fiscal Year 2017, \$1,109,183 in Fiscal Year 2018, \$542,293 in Fiscal Year 2019, \$ 914,620 in Fiscal Year 2020 and \$662,514 in Fiscal Year 2021.

(4) Excludes depreciation and amortization expenses. Also reflects certain adjustments for non-cash pension and OPEB expenses.

(5) Wastewater Operation and Maintenance Costs exclude those expenses paid from the share of the 1% countywide *ad valorem* tax levy allocated to Special District No. 1.

(6) Net of capitalized interest. Through Fiscal Year 2017, debt service on the Series 2010B Bonds is gross of the BABs Interest Subsidy Payments received by the District. In accordance with amendments to the Indenture which became effective on June 14, 2017, commencing in Fiscal Year 2018 BABs Interest Subsidy Payments received and due to the District are treated as an offset to interest paid by the District on the 2010B Bonds.

(7) Includes outstanding Wastewater System commercial paper notes and interest only with no principal amortization.

Source: The District.

## **District Management’s Discussion of Fiscal Year 2021 Operating Results**

As reflected in the preceding table summarizing the District’s operating revenues operating expenses and debt service coverage ratios for the five Fiscal Years ended June 30, 2017 through June 30, 2021, recent Fiscal Years have been characterized by annual rate increases leading to generally stable-to-increasing revenues and debt service coverage above the District’s policy target of 1.60 times. Wastewater Revenues increased approximately \$3.1 million from \$129.4 million in Fiscal Year 2020 to \$132.4 million in Fiscal Year 2021, reflecting a stable customer base, rate increases, and year-over-year growth in Wastewater Capacity Fees. Property tax receipts increased in Fiscal Year 2021, growing \$0.6 million, or 9.1% year-over-year.

Operating expenses increased from approximately \$66.5 million in Fiscal Year 2020 to \$69.0 million in Fiscal Year 2021, partially due to higher treatment plant operating costs and higher costs associated with sewer lines and pumping.

Net Wastewater Revenue decreased from approximately \$69.2 million in Fiscal Year 2020 to \$62.4 million in Fiscal Year 2021, reflecting a \$7.9 million transfer to the Rate Stabilization Fund reserves for such Fiscal Year.

Parity lien debt service coverage in Fiscal Year 2021 was approximately 2.37 times, reflecting the growth in revenues, offset by growth in expenses and the transfer to the Rate Stabilization Fund. The Rate Stabilization Fund deposit provides the District with a tool to maintain stable revenues and policy level coverage in future years. Debt service coverage has remained above 2.00 times each year between Fiscal Year 2017 and Fiscal Year 2021.

See also “Management’s Discussion and Analysis” contained in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020.”

### **Projected Operating Results**

In the preparation of the projections in this section, the District has made certain assumptions with respect to conditions that may occur in the future. While the District believes these assumptions are reasonable for the purpose of the projections, they are dependent on future events. See the footnotes to Table 18 below for relevant assumptions, including assumed future average annual rate increases in wastewater rates. See also “– Discussion of Projected Operating Results for Fiscal Year 2022” and “– Discussion of Budget Projections for Fiscal Years 2022 through 2026.” Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur. To the extent actual future factors differ from those assumed by the District or provided to the District by others or unanticipated events or circumstances occur, the actual results will vary from those forecasted, and such variations may be material. The projected information has not been compiled, reviewed or examined by the District’s independent accountants.

Table 18 sets forth the projected operating results and calculation of the debt service coverage ratios for the Wastewater System for the current Fiscal Year and as derived from the Five-Year Financial Forecast for the five Fiscal Years 2022 through 2026. Projected results for Fiscal Year 2022 were originally developed in connection with the District’s biennial budget for Fiscal Years 2022 and 2023, and were subsequently updated in connection with the District’s semi-annual budget performance review to reflect actual results experienced through December 31, 2021 and expectations as of such date for the remainder of Fiscal Year 2022. The Five-Year Financial Forecast for Fiscal Years 2022 through 2026 was developed in connection with the District’s biennial budget for Fiscal Years 2022 and 2023. The District’s biennial budget and rate increases for Fiscal Years 2022 and 2023 were approved and adopted by the

Board on June 8, 2021. In the preparation of the projected operating results and five-year forecast, the District has taken into account limited growth in the service area and the expectations for the future economic environment. See also “– Discussion of Projected Operating Results for Fiscal Year 2022” and “– Discussion of Budget Projections for Fiscal Years 2022 through 2026” below.

The projection period reflects the approved overall rate increases of 4.00% for Fiscal Year 2022 and 4.00% for Fiscal Year 2023. Annual rate increases of 4.00% are assumed for each of Fiscal Years 2024 through 2026. Any such assumed rate increases will be subject to future Board approval. Projected Operating Expenses incorporate salary and benefit expectations.

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**Table 18**  
**WASTEWATER SYSTEM**  
**Projected Operating Results and Debt Service Coverage (Millions)**  
**Fiscal Years 2022 through 2026**

	<i><b>FY 2022 Projected Results</b></i>	<i><b>FY 2022 and 2023 Budget Five-Year Financial Forecast</b></i>				
	<u><b>2022<sup>(1)</sup></b></u>	<u><b>2022<sup>(2)</sup></b></u>	<u><b>2023<sup>(2)</sup></b></u>	<u><b>2024<sup>(2)</sup></b></u>	<u><b>2025<sup>(2)</sup></b></u>	<u><b>2026<sup>(2)</sup></b></u>
<b>WASTEWATER REVENUES<sup>(3)</sup></b>						
Dry Weather User Charges <sup>(4)</sup>	\$ 85.6	\$ 86.5	\$ 90.1	\$ 93.9	\$ 97.9	\$102.0
Wet Weather Facilities Charges <sup>(4)</sup>	29.7	29.7	30.9	32.1	33.4	34.8
Interest Earnings <sup>(5)</sup>	0.1	0.3	0.5	0.5	0.8	1.1
Resource Recovery	12.0	9.0	8.0	7.8	7.6	7.4
Wastewater Capacity Fees	4.3	3.0	3.1	3.2	3.3	3.4
Other Revenue <sup>(6)</sup>	<u>3.5</u>	<u>4.2</u>	<u>3.9</u>	<u>3.7</u>	<u>3.4</u>	<u>3.4</u>
<b>TOTAL WASTEWATER REVENUES</b>	<b>\$135.2</b>	<b>\$132.6</b>	<b>\$136.5</b>	<b>\$141.2</b>	<b>\$146.4</b>	<b>\$152.1</b>
<b>RATE STABILIZATION FUND TRANSFERS:</b>						
Deposits to the Rate Stabilization Fund	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0
Withdrawals from Rate Stabilization Fund for Inclusion in revenues	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<b>WASTEWATER REVENUES AFTER RATE STABILIZATION TRANSFER</b>	<b>\$135.2</b>	<b>\$132.6</b>	<b>\$136.5</b>	<b>\$ 141.2</b>	<b>\$146.4</b>	<b>\$152.1</b>
<b>WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>						
Operating Expense <sup>(7)</sup>	\$ 78.4	\$ 79.0	\$ 83.2	\$ 85.9	\$ 88.9	\$ 92.1
(Less Tax Receipts) <sup>(8)</sup>	<u>(6.5)</u>	<u>(6.3)</u>	<u>(6.3)</u>	<u>(6.3)</u>	<u>(6.3)</u>	<u>(6.3)</u>
<b>TOTAL WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>	<b><u>\$ 71.9</u></b>	<b><u>\$ 72.7</u></b>	<b><u>\$ 76.9</u></b>	<b><u>\$ 79.6</u></b>	<b><u>\$ 82.6</u></b>	<b><u>\$ 85.8</u></b>
<b>NET WASTEWATER REVENUES</b>	<b>\$ 63.3</b>	<b>\$ 59.8</b>	<b>\$ 59.6</b>	<b>\$ 61.6</b>	<b>\$ 63.9</b>	<b>\$ 66.4</b>
<b>PARITY DEBT SERVICE</b>						
Wastewater System Revenue Bonds <sup>(9)</sup>	\$ 26.4	\$ 26.9	\$ 28.1	\$ 29.5	\$ 30.6	\$ 32.0
Parity State Loans	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$ 26.4</b>	<b>\$ 26.9</b>	<b>\$ 28.1</b>	<b>\$ 29.5</b>	<b>\$ 30.6</b>	<b>\$ 32.0</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>2.40</b>	<b>2.22</b>	<b>2.13</b>	<b>2.09</b>	<b>2.09</b>	<b>2.08</b>
<b>SUBORDINATE WASTEWATER SYSTEM CP NOTES DEBT SERVICE<sup>(10)</sup></b>	<b><u>\$ 0.1</u></b>	<b><u>\$ 0.1</u></b>	<b><u>\$ 0.1</u></b>	<b><u>\$ 0.1</u></b>	<b><u>\$ 0.1</u></b>	<b><u>\$ 0.1</u></b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$ 26.4</b>	<b>\$ 27.0</b>	<b>\$ 28.1</b>	<b>\$ 29.6</b>	<b>\$ 30.7</b>	<b>\$ 32.1</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>2.40</b>	<b>2.21</b>	<b>2.12</b>	<b>2.08</b>	<b>2.08</b>	<b>2.07</b>

<sup>(1)</sup> Fiscal Year 2022 projected results are based upon the District's biennial budget for Fiscal Years 2022 and 2023 which was approved by the Board on June 8, 2021, as subsequently updated in connection with the District's Fiscal Year 2022 semi-annual budget performance review to reflect actual results through December 31, 2021. See also "– Discussion of Projected Operating Results for Fiscal Year 2022" below.

<sup>(2)</sup> Reflects Fiscal Years 2022 through 2026 projected results as derived from the District's Five-Year Financial Forecast prepared in connection with the biennial budget for Fiscal Years 2022 and 2023 which was approved by the Board on June 8, 2021. Certain figures have been adjusted to account for the treatment of revenues and expenses under the Indenture which differs in certain respects from treatment for budgetary purposes.

<sup>(3)</sup> Wastewater Revenues exclude grant receipts, taxes and certain reimbursements.

(Table footnotes continued on following page.)

(Footnotes to table continued from prior page.)

- (4) Reflects adoption of 4.0% average annual rate increase for Fiscal Years 2022 and 2023, and assumes average annual rate increases of 4% in each of Fiscal Years 2024, 2025 and 2026. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” in the front part of this Official Statement.
- (5) Fiscal Year 2022 is based on estimated earnings for that year. Excludes non-cash change in fair market value of investments.
- (6) Other Revenue includes estimated collections from power sales and inspection fees from the private sewer laterals program.
- (7) Assumes approximately 4.2% annual increase in Operating Expenses.
- (8) Wastewater Operation and Maintenance Costs excludes those expenses paid from *ad valorem* taxes.
- (9) Debt service on the Series 2010B Bonds is net of the expected BABs Interest Subsidy Payments and capitalized interest. In light of the potential effect on ongoing sequestration, the District has assumed cash receipts of approximately 32.5% of the interest payable on the Series 2010B Bonds (93% of the BABs Interest Subsidy Payments of \$2.69 million of the BABs Interest Subsidy Payments of 35% provided for under the American Recovery and Reinvestment Act of 2009) for Fiscal Years 2022 through 2026. Debt service for the Fiscal Year 2022 projected results is actual projection for Fiscal Year 2022, less BABs Interest Subsidy Payments. The Five-Year Financial Forecast is as projected in the biennial budget for Fiscal Years 2022 and 2023, which does not reflect the actual structure and timing of the issuance of the Series 2022 Bonds. See “PLAN OF FINANCE” in the front part of this Official Statement. For the Five-Year Financial Forecast, assumes issuance of additional Wastewater System Revenue Bonds of approximately \$20 million in Fiscal Year 2023, \$25 million in Fiscal Year 2024, \$20 million in Fiscal Year 2025, and \$25 million in Fiscal Year 2026, while not including the additional \$10 million in expected issuance with the Series 2022 Bonds. The actual size and timing of future debt issuances undertaken by the District will be determined by the District based on market considerations and other factors.
- (10) Fiscal Year 2022 projected results is based on estimated interest for that year. For the Five-Year Financial Forecast, assumes interest only at 1.0%, 1.0%, 1.0%, 1.25%, and 1.50% per annum, respectively, for Fiscal Years 2022 through 2026. There were \$9.3 million of Wastewater System CP Notes outstanding at the start of Fiscal Year 2022.

Source: The District.

## **Discussion of Projected Operating Results for Fiscal Year 2022**

Total Wastewater System revenues for Fiscal Year 2022 are projected to be \$135.2 million or \$2.6 million more than originally budget primarily due to higher than budgeted revenues for the Resource Recovery Program and Wastewater connection charges. Wastewater treatment revenues for Fiscal Year 2022 are projected to be \$85.6 million which is \$0.9 million less than budgeted due to the expectation that customers will continue to conserve water throughout the duration of the current drought. Projected Fiscal Year 2022 operating expenses are projected to be \$78.4 million, which is \$0.6 million less than budgeted, primarily attributable to unspent contingency. If the current projections of revenues and expenditures are realized, the District would end Fiscal Year 2022 with a parity debt service coverage ratio of 2.40x.

As described, the projected operating results for Fiscal Year 2022 were originally developed in connection with the District’s biennial budget for Fiscal Years 2022 and 2023, and were subsequently updated in connection with the District’s semi-annual budget performance review to reflect actual results experienced through December 31, 2021 and expectations as of such date for the remainder of Fiscal Year 2022. The actual results may differ from those projected.

## **Discussion of Budget Projections for Fiscal Years 2022 through 2026**

The Five-Year Financial Forecast for the period between Fiscal Years 2022 and 2026 is based on specified assumptions, reflected in the footnotes to Table 18 and outlined below. The first two years in the Five-Year Financial Forecast are based upon the District’s two-year budget. The final biennial budget for Fiscal Years 2022 and 2023 was approved by the Board on June 8, 2021. In conjunction with the Board’s approval of the District’s biennial budget, the Board adopted rate increases for Fiscal Years 2022 and 2023, following a public hearing on the proposed rate increases held on June 8, 2021. See “– Rates and Charges” above.

Based upon the base budget assumptions outlined below, revenues are forecast to increase by 3.5% annually over the five-year period between Fiscal Years 2022 and 2026 as reflected in the budget forecasted amounts, while forecasted operating expenses are expected to grow by an average of approximately 4.2% per year and debt service increases by an average of 4.3% per year. Capital cash flow spending is projected at \$243.2 million over the five-year period between Fiscal Years 2022 and 2026. Projected capital expenditures are directed at sustained reinvestments in physical infrastructure. Planned capital projects include treatment plant infrastructure improvements, interceptor rehabilitation, odor control improvements and digester upgrades.

The average percentage of capital funded from debt is projected at 40.3% over that period, lower than the financial policy maximum of 65%. Revenue bond debt service coverage is projected to meet or exceed the 1.6x policy target each year and increase annually throughout the period. In Fiscal Year 2022, revenue bond debt service coverage was projected in the Five-Year Financial Forecast to be 2.22x. In Fiscal Year 2023 revenue bond debt service coverage is projected to be 2.13x. Debt service coverage is projected to remain relative steady, at 2.09x, 2.09x, and 2.08x in Fiscal Years 2024, 2025 and 2026, respectively. Reserve balances, including the Rate Stabilization Fund reserve, are projected to meet or exceed the policy reserve levels throughout the five-year period. Total reserves are projected at over \$99.3 million in each year, and the Rate Stabilization Fund reserve is projected to remain at \$32.0 million throughout the five-year projection period.

The Five-Year Financial Forecast for the period between Fiscal Years 2022 and 2026 is based on certain assumptions, which the District believes to be reasonable, incorporating among other factors a slight decrease in the volume of treatment flow due to lower water use in recent years. The assumed overall increases to treatment rates and wet weather charges for Fiscal Years 2022 and 2023 are 4% and 4%, respectively, consistent with the adopted budget and Proposition 218 notice. The same overall rate increases of 4% per annum are assumed for Fiscal Years 2024, 2025 and 2026.

## **Employees' Retirement System**

**General.** The District has a contributory retirement system covering substantially all of its employees (including the Water System and Wastewater System). The East Bay Municipal Utility District Employees' Retirement System (the "Retirement System") was established in 1937 to administer a single-employer, contributory, defined benefit pension plan (the "Plan") to provide retirement, disability, survivorship and post-employment health insurance benefits ("HIB") for eligible directors, officers and employees of the District. The Plan is funded by contributions from its members and from the District, and from investment earnings on Plan assets. The payment of benefits earned by Plan members of the Retirement System is an obligation of the District. Employees of the District are also covered by Social Security.

The Retirement System is administered by a Retirement Board composed of three members appointed by the District Board, two members elected by and from the active membership and one (nonvoting) member elected by and from the retired membership of the Retirement System. Ordinance No. 40 of the District, effective October 1, 1937, as amended (the "Retirement System Ordinance"), assigns the authority to establish Plan benefit provisions to the District Board.

Contributions to the Retirement System are made by the members and the District. Each member's contribution is based upon a percentage of that member's covered compensation. The employee contribution rates for 1955/1980 Plan members (*i.e.*, employees first hired prior to January 1, 2013) are prescribed in the Retirement System Ordinance and may be adjusted by the District Board solely pursuant to the terms of a negotiated collective bargaining agreement or MOU with employee bargaining units. Pursuant to applicable provisions of the California Public Employees' Pension

Reform Act of 2013 as codified (“PEPRA”), 2013 Tier members (*i.e.*, employees first hired on or after January 1, 2013) are required to contribute at least 50% of the “normal cost” rate. The District employees’ contribution rate for 1955/1980 Plan members (which includes a 0.09% contribution to the HIB) is 8.75%, effective since April 18, 2016. The District employees’ contribution rate for 2013 Tier members (which also includes a 0.09% contribution to the HIB) is established by the District Board, and such rates are based upon actuarial valuations. The current District employees’ contribution rate for 2013 Tier members (including the 0.09% contribution to the HIB) is 9.50%, effective since July 1, 2021.

The District (employer) contributions are based upon percentages of the aggregate amount of members’ covered compensation. Employer contribution percentages are established by the District Board. Such percentages are based upon actuarial valuations. The District’s employer contribution percentage for 1955/1980 Plan members has been established at 47.16% for Fiscal Year 2022 (including a 4.79% contribution to the HIB) and has been established at 37.84% for 2013 Tier members (including a 4.52% contribution to the HIB). For Fiscal Year 2023, based upon the June 30, 2021 funding valuation reports prepared by the actuary, the recommended District employer contribution percentage for 1955/1980 Plan members is 44.81% (including a 4.78% contribution to the HIB) and is 35.81% for 2013 Tier members (including a 4.48% contribution to the HIB). The June 30, 2021 funding valuation reports, which provide the recommended contribution rates for Fiscal Year 2023, were presented by the actuary to the Retirement Board at their January 20, 2022 meeting. While the valuation reports were adopted by the Board at that meeting, the Board elected to continue the same employer contribution rates from Fiscal Year 2022 for Fiscal Year 2023 (*i.e.*, 47.16% for 1955/1980 Plan members and 37.84% for 2013 Tier members) to help reduce year-to-year volatility in case future investment returns are lower than expected. In addition, at the time of the June 30, 2021 valuations, salary negotiations were still ongoing and the outcome of those negotiations may lead to future employer contribution rate increases. The Retirement System may also revisit its economic actuarial assumptions for the June 30, 2022 valuations which could lead to additional employer contribution rate increases. Lastly, maintaining the employer contribution rates helps pay down the System’s unfunded actuarial accrued liability.

The District estimates that approximately 85% of the District’s annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

As of June 30, 2021, collectively for the Water and Wastewater Systems, there were 1,896 active (non-retired) Plan members, 327 terminated Plan members entitled to but not yet receiving benefits and 1,977 retirees and beneficiaries receiving benefits.

Table 19 sets forth the number of active (non-retired) members, total Plan assets, District and Member contributions and retirement allowances paid in the five Fiscal Years 2017 through 2021.

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**Table 19**  
**RETIREMENT SYSTEM**  
**Active (Non-Retired) Members, Total Plan Assets,**  
**District and Member Contributions and Allowances Paid**  
**Five Fiscal Years Ended June 30, 2021<sup>(1)</sup>**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Active (Non-Retired) Members<sup>(2)</sup></b></i>	<i><b>Total Plan Assets<sup>(3)</sup></b></i>	<i><b>District Contribution<sup>(4)</sup></b></i>	<i><b>Member Contributions</b></i>	<i><b>Allowances Paid From Retirement Plan<sup>(5)</sup></b></i>
2017	2,069	\$1,612,644,000	\$76,860,000	\$16,018,000	\$ 98,617,000
2018	2,112	1,753,240,000	81,096,000	17,079,000	106,377,000
2019	2,150	1,832,965,000	84,551,000	17,865,000	114,435,000
2020	2,215	1,857,609,000	88,734,000	18,885,000	122,351,000
2021	2,223	2,328,722,000	90,624,000	19,336,000	130,472,000

(1) Includes Health Insurance Benefit.

(2) Includes active plan members and terminated plan members entitled to but not yet receiving benefits.

(3) Market value as of June 30 of such Fiscal Year as shown in the audited financial statements of the Retirement System.

(4) The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

(5) Includes benefits paid and refunds of contributions.

Source: The District.

The Retirement System is an integral part of the District and, as noted above, the District appoints the majority of the governing body of the Retirement System and provides for its funding. Accordingly, the Retirement System's operations are reported as a Pension and Other Employee Benefit Trust Fund in the District's basic financial statements. The Retirement System also issues separately available financial statements on an annual basis. Such financial statements can be obtained from the District at 375 Eleventh Street, Oakland, California 94607.

The amounts set forth in this discussion of the District's Retirement System, including, for example, actuarial accrued liabilities and funded ratios, are based upon numerous demographic and economic assumptions, including investment return rates, inflation rates, salary increase rates, cost of living adjustments, postemployment mortality, active member mortality, and rates of retirement. Prospective purchasers of the District's bonds are cautioned to review and carefully assess the reasonableness of the assumptions set forth in the documents that are cited as the sources for such information. In addition, prospective purchasers of the District's bonds are cautioned that such sources and the underlying assumptions are made as of their respective dates, and are subject to change. Prospective purchasers of the District's bonds should also be aware that some of the information presented in this discussion of the Retirement System contains forward-looking statements and the actual results of the Retirement System may differ materially from the information presented herein.

**Benefits.** All regular full-time employees (as well as certain job share and intermittent employees) of the District are members of the Plan. In accordance with the Retirement System Ordinance, eligible employees become members of the Plan on the first day they are physically on the job. Retirement plan benefits are generally determined by a formula based on the employee's highest two years of compensation (highest 36 months for 2013 Tier members) and the length of employment with the District. Benefits adopted by the District vest in part with members after five years of continuous full-time employment. Vested members who terminate employment may elect a refund of their contributions or leave them in the Plan until eligible to receive benefits.

In addition to retirement benefits, the District provides post-employment health benefits assistance, administered by the Retirement System, for employees who retire from the District or their surviving spouses. As of June 30, 2021, there were 1,735 participants receiving these healthcare benefits. For participants entering the Retirement System prior to July 1, 1996, a monthly allowance of up to \$450 (up to \$550 for married retirees and retirees with domestic partners) is paid to retirees with at least five years of full-time service to reimburse the retiree-paid medical expenses (including any health, dental or long-term care insurance premiums paid by the retiree for his or her self, and current spouse or domestic partner, or any health, dental or long-term care insurance premiums paid by the eligible surviving spouse or domestic partner of a retiree). Effective July 1, 1996, a 20-year vesting schedule for full benefits was implemented for all new employees. Effective January 1, 1999, retired members who had separated from the District prior to their retirement and who had at least five years of service also become eligible for the post-employment healthcare benefits based on the same vesting schedule.

***Actuarial Assumptions and Funding Policy.*** Under the Retirement System Ordinance, the District is required to have an actuarial study performed at least every two years, but the District's current policy is to have an actuarial study performed each year. The most recent actuarial study of the Retirement System, including the pension and the HIB trusts, was performed by Segal, as of June 30, 2021.

The actuarial report provides a basis for the District Board's decision regarding the rate of contributions by the District to the Retirement System, including both the pension and the HIB trusts. The District makes its contribution using rates determined by its outside actuaries.

The Governmental Accounting Standards Board ("GASB") issued Statements 67 and 68 affecting the reporting of net pension liabilities for accounting purposes, and Statements 74 and 75 affecting the reporting of net other post-employment healthcare benefits ("OPEB") liabilities for accounting purposes. Statements 67 and 74 are for plan reporting, and Statements 68 and 75 are for employer reporting. The information needed to comply with Statements 67 and 74 was provided by the actuary in separate reports (*i.e.*, separate from the pension and health insurance benefits funding valuation reports) dated January 11, 2022, and the information needed to comply with Statements 68 and 75 is scheduled to be provided by the actuary in separate reports before the end of Fiscal Year 2022 (for employer reporting as of June 30, 2022). The GASB Statements require shorter periods for recognition of non-investment gains/losses and actuarial assumption changes, as well as for recognition of investment gains/losses. The GASB Statements provide for a complete separation between financial reporting and funding requirements for pension and health insurance benefit plans. Under the GASB statements, the District is required to report the Net Pension Liability (*i.e.*, the difference between the Total Pension Liability and the Pension Plan's Fiduciary Net Position or market value of assets) and the Net OPEB Liabilities (*i.e.*, the difference between the Total OPEB Liability and the OPEB Plan's Fiduciary Net Position or market value of assets) in its financial statements. See Note 9 and the Required Supplementary Information in the audited financial statements of the District included in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020" for additional information regarding the Net Pension Liability and the Net OPEB Liability of the District for the Retirement System.

To calculate the required contribution for each Fiscal Year, assumptions are made about future events that affect the amount and timing of benefits to be paid and assets to be accumulated. Each year actual experience is measured against the assumptions. If overall experience is more favorable than anticipated (an actuarial gain), the contribution requirement will decrease from the previous year. On the other hand, the contribution requirement will increase if overall actuarial experience is less favorable than assumed (an actuarial loss). If assumptions are changed, the contribution requirement is adjusted to take into account a change in experience anticipated for all future years.

A summary of the funding method and assumptions utilized in the actuarial study as of June 30, 2021 are described below.

*Funding Method.* The Plan's funding policy provides for periodic District contributions at actuarially determined amounts sufficient to accumulate the necessary assets to pay benefits when due as specified by the ordinance governing the Retirement System. The Entry Age Cost Method is used for this purpose. Under the Entry Age Cost Method, there are two components to the total contributions: (i) the normal cost, which is the amount of contributions required to fund the benefit allocated to the current year of service (associated with active employees only), and (ii) an amortization payment on any unfunded actuarial accrued liability ("UAAL"). The normal cost is calculated on an individual basis where the entry age normal cost is calculated as the sum of the individual normal costs. The UAAL (past service liability) is amortized as a level percentage of payroll on a closed basis over the amortization periods described below. The actuarial accrued liability is calculated on an individual basis and is based on costs allocated as a level percentage of compensation.

*Amortization Periods.* The UAAL is currently being funded using a layered approach. Each layer of the UAAL established prior to July 1, 2011 is being funded over a separate decreasing 30-year period, starting from the date the layer was originally established. On or after July 1, 2011, changes in the UAAL attributable to plan amendments are amortized over separate decreasing 15-year periods; changes in the UAAL attributable to assumption or method changes are amortized over separate decreasing 25-year periods; and changes in the UAAL attributable to actuarial gains/losses (*i.e.*, the extent to which actual overall experience deviates from the assumptions) are amortized over separate decreasing 20-year periods. Under the layered approach, any new UAAL layer that emerges between the prior and the current actuarial valuation (due to deviations between actual and expected actuarial experience, changes in actuarial assumptions used to measure the liabilities or other factors) will be determined and factored into the District's contribution rates so that it will be paid off after its respective amortization period described above.

*Actuarial Value of Assets (Asset Smoothing Method).* Methods used to compute District contribution requirements include a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets (with further adjustments as may be required to keep the smoothed assets within 30% of market value). The impact of this will result in a "smoothed" valuation value of assets (or "Actuarial Value of Assets") that is higher or lower than the market value of the assets depending on whether the amount that is being smoothed is either a net deferred loss or a net deferred gain.

*Actuarial Assumptions.* A number of assumptions are used to calculate the costs of the Plan and to compute contribution requirements for the Plan. The principal assumptions used in preparing the pension plan and HIB funding valuation reports as of June 30, 2021 and the pension plan financial reporting (*i.e.*, GASB 67) valuation report as of June 30, 2021 include:

1. Investment rate of return: 7.00%.
2. Inflation rate: 2.75%.
3. Interest credited to member contributions: 7.00%.
4. Projected salary increases: Ranges from 9.50% to 4.00% based on time from hire (includes inflation at 2.75% plus across the board salary increase of 0.50% plus merit and promotion increases).
5. Cost of living adjustments for pension benefits: 2.75%.

6. Increase in HIB maximum monthly allowance: The Plan does not provide for an automatic increase in the HIB allowance and no such increase is assumed in the valuation.
7. Additional assumptions: Additional assumptions were used regarding rates of termination from active membership, post-retirement mortality, active member mortality, disability rates and rates of retirement.

*Adopted Changes in Actuarial Assumptions.* Under the ordinance governing the Retirement System, the District is required to have an actuarial experience study conducted no less frequently than every four years in order to review the mortality, service and compensation experience of the members, retired members and beneficiaries of the Retirement System, over the study period. The experience study provides the factual information upon which the outside actuary makes recommendations to the District regarding the economic and demographic assumptions that provide the basis for the actuarial valuation of the assets and liabilities of the Retirement System. In November 2020, Segal Consulting completed and presented to the Retirement Board its Analysis of Actuarial Experience During the Period July 1, 2016 through June 30, 2020, for the Retirement System (the “2020 Experience Study”). The 2020 Experience Study utilized demographic data of the Plan’s members and retirees from the last four actuarial valuations and provided recommendations regarding changes to the economic and demographic actuarial assumptions to be used in the June 30, 2020 and later actuarial valuations. Pursuant to the 2020 Experience Study, the actuary recommended changes in a number of the actuarial assumptions used to calculate the costs of the Plan and to compute the future contribution requirements for the Plan, including changes in the assumptions from those used in the actuarial study of the Plan as of June 30, 2019. At its November 19, 2020 meeting, the Retirement Board approved the changes in assumptions recommended by the actuary for the actuarial valuation to be performed as of June 30, 2020.

In the June 30, 2020 valuation, the actuary determined the increase in the actuarial accrued liability for the pension plan (not including the HIB) due to the assumption changes to be \$104.8 million.

***Contribution History.*** The schedule of District contributions for each of the pension plan and the HIB plan for the last five Fiscal Years are shown in Table 20:

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**Table 20**  
**RETIREMENT SYSTEM**  
**History of Contributions**  
**Five Fiscal Years Ended June 30, 2021**  
**(Dollar Amounts in Thousands)**

**Pension Plan:**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Contributions as a Percentage of Covered Payroll<sup>(1)</sup></b></i>	<i><b>Actuarially Determined Contribution</b></i>	<i><b>Actual Contribution</b></i>	<i><b>Percentage Contributed</b></i>
2017	36.86% <sup>(2)</sup>	\$67,096	\$67,096	100%
2018	36.77	71,221	71,221	100
2019	36.37 <sup>(3)</sup>	74,033	74,033	100
2020	36.10 <sup>(4)</sup>	77,645	77,645	100
2021	35.73 <sup>(5)</sup>	79,252	79,252	100

**Health Insurance Benefit:**

<i><b>Fiscal Year Ended June 30:</b></i>	<i><b>Contributions as a Percentage of Covered Payroll<sup>(1)</sup></b></i>	<i><b>Actuarially Determined Contribution</b></i>	<i><b>Actual Contribution</b></i>	<i><b>Percentage Contributed</b></i>
2017	5.36% <sup>(2)</sup>	\$ 9,764	\$ 9,764	100%
2018	5.10	9,875	9,875	100
2019	5.17	10,518	10,518	100
2020	5.16	11,089	11,089	100
2021	5.11	11,372	11,372	100

<sup>(1)</sup> This rate represents the aggregate rate for the 1955/1980 Plan and the 2013 Tier, based on the District's actual contributions expressed as a percentage of the actual pensionable payroll amounts reported by the Retirement System.

<sup>(2)</sup> Based on the higher contribution rates adopted by the Retirement Board carried over from the June 30, 2014 valuation, rather than the actuarially determined contribution rates from the June 30, 2015 valuation

<sup>(3)</sup> The Retirement Board decided to carry over unchanged for Fiscal Year 2019 the higher total employer contribution rates previously adopted by the Board for Fiscal Year 2018, as determined in the June 30, 2016 valuation. The Health Insurance Benefit contribution rate was the actuarially determined rate from the June 30, 2017 valuation; however, the Pension Plan contribution rate was the difference between the higher total employer rate carried over from the June 30, 2016 valuation and the actuarially determined Health Insurance Benefit rate from the June 30, 2017 valuation.

<sup>(4)</sup> Based on the higher contribution rates adopted by the Retirement Board carried over from the June 30, 2017 valuation, rather than the actuarially determined contribution rates from the June 30, 2018 valuation.

<sup>(5)</sup> Based on the higher contribution rates adopted by the Retirement Board carried over from the June 30, 2017 valuation, rather than the actuarially determined contribution rates from the June 30, 2019 valuation.

*Source:* Segal GAS 67 Actuarial Valuation for the Pension Plan as of June 30, 2021 and GAS 74 Actuarial Valuation for the Health Insurance Benefit Plan as of June 30, 2021.

As reflected in the funding actuarial study and shown (rounded to the nearest thousand dollars) in Table 26, the combined Actuarial Accrued Liability for pension and HIB benefits at June 30, 2021 was \$2,728,640,918 and the Actuarial Value of Assets was \$2,097,712,454, resulting in an Unfunded Actuarial Accrued Liability of \$630,928,464 and a funded ratio of the Plan under the Entry Age Cost Method of 76.9%. As described above, the Actuarial Value of Assets has been calculated using a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets. The valuation was performed in accordance with generally accepted actuarial principles and practices and the District's funding policy that was last reviewed with the Board in 2015. The assumptions and methods used for funding purposes meet the parameters set by Actuarial Standards of Practice (ASOPs).

Table 21 sets forth the Actuarial Accrued Liability, Actuarial Value and Market Value of Assets, the Unfunded Actuarial Accrued Liability, and Funded Ratios as of June 30 of each of the Fiscal Years 2017 through 2021.

**Table 21**  
**RETIREMENT SYSTEM**  
**(Pension Plan and HIB Combined)**  
**Actuarial Accrued Liability, Actuarial Value and Market Value of Assets,**  
**Unfunded Actuarial Accrued Liability and Funded Ratios**  
**Five Fiscal Years Ended June 30, 2021<sup>(1)</sup>**  
**(Dollar Amounts in Thousands)**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Actuarial Accrued Liability (AAL)</b></i>	<i><b>Actuarial Value of Assets</b></i>	<i><b>Market Value of Assets</b></i>	<i><b>Unfunded Actuarial Accrued Liability (UAAL)<sup>(2)</sup></b></i>	<i><b>Funded Ratio on Actuarial Value</b></i>	<i><b>Funded Ratio on Market Value</b></i>
2017	\$2,185,674	\$1,580,665	\$1,612,644	\$605,009	72.3%	73.8%
2018	2,342,014	1,714,364	1,753,240	627,650	73.2	74.9
2019	2,463,526	1,817,563	1,832,965	645,963	73.8	74.4
2020	2,661,452	1,914,278	1,857,609	747,174	71.9	69.8
2021	2,728,641 <sup>(3)</sup>	2,097,712	2,328,722	630,928	76.9	85.3

<sup>(1)</sup> Dollars rounded to nearest thousand.

<sup>(2)</sup> The District estimates that approximately 85% of the UAAL is attributable to the Water System and approximately 15% is attributable to the Wastewater System. The UAAL is determined based on the Actuarial Value of Assets.

<sup>(3)</sup> Of this amount, \$123,027 is attributable to the HIB liabilities.

Source: Segal.

As of June 30, 2021, the market value of the combined pension and HIB plan's assets was \$2,328,722,000 and the projected benefit obligation ("PBO") was \$2,675,737,000, resulting in a funded ratio of the plan under the PBO basis of 87.0%. Under the plan provisions, determination of the funded ratio on a PBO basis is required and certain cost of living adjustments for pension benefits are granted when the funded ratio of the plan is 85% or higher as calculated on the PBO basis.

**Schedule of Funding Progress.** The District reports the schedule of funding progress for each of the pension plan and the post-employment healthcare plan (HIB), based on the results of the funding valuations. The schedule of funding progress presents multi-year trend information that shows whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

The schedule of funding progress for the pension plan is set forth in Table 22.

**Table 22**  
**PENSION PLAN**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<i>Actuarial Valuation Date June 30</i>	<i>Actuarial Value of Assets</i>	<i>Actuarial Accrued Liability (AAL)</i>	<i>Unfunded AAL (UAAL)</i>	<i>Funded Ratio</i>	<i>Covered Payroll<sup>(1)</sup></i>	<i>UAAL as a Percentage of Covered Payroll</i>
2017	\$1,549,213	\$2,068,015	\$518,802	74.9%	\$184,859	280.6%
2018	1,678,417	2,220,977	542,560	75.6	202,995	267.3
2019	1,777,065	2,340,773	563,708	75.9	212,351	265.5
2020	1,868,917	2,535,238	666,321	73.7	224,412	296.9
2021	2,045,503	2,605,614	560,111	78.5	224,392	249.6

<sup>(1)</sup> Projected payroll based on valuation results.

Source: Segal Consulting's Actuarial Valuation and Review of Pension Plan as of June 30, 2021.

The schedule of funding progress for the post-employment healthcare plan is set forth in Table 23.

The retiree health liabilities reported in the actuarial funding study as of June 30, 2021 (and shown in Table 23 below) will not match those required to be used for GASB reporting purposes as shown in Table 25. The retiree health liabilities as reflected in the funding study have not been adjusted to include the implicit retiree rate subsidy as required under GASB reporting requirements. (Note that when premiums for active employees are determined on a pooled basis with premiums for retirees under age 65, a significant accounting obligation may exist even though the retiree under age 65 contributes most or all of the blended premium cost of the plan. The average costs for retirees if determined on a stand-alone basis is likely to exceed the average cost for the whole group, leading to an implicit subsidy for these retirees. The GASB accounting standard requires the employer to identify and account for this implicit subsidy as well as any explicit subsidies the employer may provide.) In addition, the liabilities for GASB reporting purposes for the HIB portion of the obligations shown in Table 25 were determined based upon a lower discount rate (*i.e.*, 3.99% for June 30, 2021 and 4.40% for June 30, 2020) than the 7.00% investment rate of return used in Segal prefunding studies. The liabilities calculated for GASB reporting purposes shown in Table 25 are therefore higher than those reflected in the actuarial studies as of June 30, 2021 and June 30, 2020 and described above.

**Table 23**  
**POST-EMPLOYMENT HEALTH INSURANCE BENEFIT (HIB)**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<i>Actuarial Valuation Date June 30</i>	<i>Actuarial Value of Assets</i>	<i>Actuarial Accrued Liability (AAL)</i>	<i>Unfunded AAL (UAAL)</i>	<i>Funded Ratio</i>	<i>Covered Payroll<sup>(1)</sup></i>	<i>UAAL as a Percentage of Covered Payroll</i>
2017	\$31,452	\$117,659	\$86,207	26.7%	\$184,859	46.6%
2018	35,947	121,037	85,090	29.7	202,995	41.9
2019	40,498	122,753	82,256	33.0	212,351	38.7
2020	45,361	126,214	80,853	35.9	224,412	36.0
2021	52,209	123,027	70,818	42.4	224,392	31.6

<sup>(1)</sup> Projected payroll based on valuation results.

Source: Segal Consulting's Actuarial Valuations and Review of Other Postemployment Benefits (OPEB) as of June 30, 2017 through 2021.

**Net Pension Liability.** Under GASB 67, the pension plan is required to disclose the Net Pension Liability for financial reporting purposes. When measuring pension liability, GASB uses the same actuarial cost method (Entry Age Cost Method) and the same type of discount rate (expected return on assets) as the District uses for funding. This means that the Total Pension Liability (“TPL”) measure for financial reporting is determined on the same basis as the District’s AAL measure for funding. The Net Pension Liability (“NPL”) is equal to the difference between the TPL and the Plan Fiduciary Net Position. The Plan Fiduciary Net Position is equal to the market value of assets and therefore, the NPL measure is the same as the UAAL calculated on a market value basis. The Net Pension Liability as of June 30, 2021 and June 30, 2020 is set forth in Table 24.

**Table 24**  
**PENSION PLAN**  
**Net Pension Liability**  
**(Dollar Amounts in Thousands)**

	<u>June 30, 2021</u>	<u>June 30, 2020</u>
Total Pension Liability	\$ 2,605,614	\$ 2,535,238
Plan’s Fiduciary Net Position	<u>(2,270,763)</u>	<u>(1,813,591)</u>
Net Pension Liability	\$ 334,851	\$ 721,647
Plan’s Fiduciary Net Position as a % of the Total Pension Liability	87.15%	71.54%

*Source:* Segal Consulting.

The NPL was measured as of June 30, 2021 and 2020. The Plan’s Fiduciary Net Position (plan assets) was valued as of the measurement date, while the Total Pension Liability was determined based upon the results of the funding actuarial valuations as of June 30, 2021 and 2020, respectively. It should be noted that for GASB 68 purposes, the NPL for the reporting date of June 30, 2021 is based upon results as of the June 30, 2020 measurement date and those results are not adjusted or rolled forward. Therefore, the information as of June 30, 2020 set forth above is the same as that reported in the District’s audited financial statements as of June 30, 2021.

The discount rate used to determine the Total Pension Liability was 7.00% as of June 30, 2021 and June 30, 2020, following the same assumptions used by the Retirement System in the pension funding valuations as of June 30, 2021 and June 30, 2020, respectively. It should be noted that, according to GASB, the discount rate used for financial reporting purposes should be based on the long-term expected rate of return on a retirement system’s investments, just as it is for funding. However, GASB requires that this assumption should be net of investment expenses but not net of administrative expenses (*i.e.*, without reduction for administrative expenses). Currently, the District’s investment return assumption used for the annual funding valuation is developed net of both investment and administrative expenses.

**Net OPEB Liability.** Under GASB 74, the OPEB plan is required to disclose the Net OPEB Liability for financial reporting purposes. When measuring OPEB liability, GASB uses the same actuarial cost method (Entry Age Cost Method) and the same expected return on plan assets as the District uses for funding. This means that the Total OPEB Liability (“TOL”) measure for financial reporting is determined on the same basis as the District’s AAL measure for funding, with the exception discussed above for the implicit subsidy. The Net OPEB Liability (“NOL”) is equal to the difference between the TOL and the OPEB Plan’s Fiduciary Net Position. The OPEB Plan’s Fiduciary Net Position is equal to the market value of assets. The NOL reflects all investment gains and losses as of the measurement date. The Net OPEB Liability as of June 30, 2021 and June 30, 2020 is set forth in Table 25.

**Table 25**  
**HEALTH INSURANCE BENEFIT PLAN**  
**Net OPEB Liability**  
**(Dollar Amounts in Thousands)**

	<u>June 30, 2021</u>	<u>June 30, 2020</u>
Total OPEB Liability	\$201,135	\$195,853
Plan's Fiduciary Net Position	<u>(57,959)</u>	<u>(44,018)</u>
Net OPEB Liability	\$143,176	\$151,835
Plan's Fiduciary Net Position as a % of the Total OPEB Liability	28.82%	22.48%

*Source:* Segal Consulting.

The NOL was measured as of June 30, 2021 and 2020. The Plan's Fiduciary Net Position (plan assets) was valued as of the measurement date, while the Total OPEB Liability was determined based upon the results of the actuarial valuations as of June 30, 2021 and 2020, respectively, with the exception on the discount rate noted below. In addition, the implicit subsidy benefit payments are valued based on the age-based costs. It should be noted that for GASB 75 purposes, the NOL for the reporting date of June 30, 2021 is based upon results as of the June 30, 2020 measurement date and those results are not adjusted or rolled forward. Therefore, the information as of June 30, 2020 set forth above is the same as that reported in the District's audited financial statements as of June 30, 2021.

The discount rate used to determine the TOL and NOL was 3.99% as of June 30, 2021 and 4.40% as of June 30, 2020. It should be noted that, according to GASB, the discount rate used for financial reporting purposes as of June 30, 2021 is a blend of the assumed investment return on plan assets (*i.e.*, 7.00% for the June 30, 2021 valuation) and the rate for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher (*i.e.*, 2.16% as of June 30, 2021). Projected benefit payments are discounted by the plan investment return assumption of 7.00% until June 30, 2045. Benefit payments after June 30, 2045 are then discounted by the municipal bond rate of 2.16%. The 3.99% discount rate used in this valuation is the blended discount rate reflecting benefits discounted by the plan investment return assumption rate and the bond rate.

Additional information concerning the Retirement System may be found in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2021 AND 2020."

**APPENDIX B**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
AUDITED FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2021 AND 2020**

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Official Statement have the respective meanings set forth in the Indenture.*

*There are no senior Wastewater Bonds outstanding, and the District has covenanted in the Indenture not to issue any senior Wastewater Bonds in the future. Therefore, all references hereto to “Wastewater Bonds” may be disregarded.*

#### **Certain Definitions**

**“Accreted Value”** means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified in the Indenture.

**“Act”** means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**“Annual Debt Service”** means, for any Fiscal Year, the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Assumed Debt Service”** means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

**“Bond Obligation”** means, as of any given date of calculation, (1) with respect to any Outstanding Bond or Wastewater Bond which is Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Outstanding Bond or Wastewater Bond which is Capital Appreciation Indebtedness, the Accreted Value thereof.

**“Bonds”** means the bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**“Business Day”** means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions related to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the

issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

**“Capital Appreciation Indebtedness”** means Wastewater Bonds, Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

**“Code”** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, as amended from time to time.

**“Current Interest Indebtedness”** means the Wastewater Bonds, Bonds and Parity Debt on which interest is paid at least annually.

**“Debt Service”** means, the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt provided, however, for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Wastewater Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Wastewater Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such

Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest rate on such Wastewater Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest on such Wastewater Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Wastewater Revenues on parity with the lien of the Wastewater Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Wastewater Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Wastewater Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Wastewater Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Wastewater Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

**“Excluded Principal Payments”** means each payment of principal (or the principal component of lease or installment purchase payments) of Wastewater Bonds, Bonds or Parity Debt which the District determines on a date not later than the date of issuance thereof that the District intends to pay with moneys which are not Wastewater Revenues or Subordinated Wastewater Revenues but from the proceeds of future debt obligations of the District and the Trustee may rely conclusively on such determination of the District.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official fiscal year period of the District, which designation shall be provided to the Trustee in a certificate of the District.

**“Indenture”** means the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the Trustee and the District, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions thereof.

**“Investment Securities”** means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies and Federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or their obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the

payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than

their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) a guaranteed investment contract with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than five years' experience investing in such securities and obligations and with assets under management in excess of \$500,000,000; and

(xiv) any investment approved by the Board for which confirmation is received from each rating agency then rating any of the Bonds that such investment will not adversely affect such agency's rating on such Bonds.

**"Mandatory Sinking Account Payment"** means the amount required to be deposited by the District in a sinking account for the payment of term Bonds.

**“Maximum Annual Debt Service”** means, the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Opinion of Bond Counsel”** means a written opinion of a law firm of national standing in the field of public finance selected by the District and not objected to by the Trustee.

**“Outstanding,”** when used at any particular time with reference to Bonds, means (subject to the provisions relating to disqualified bonds) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged under the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**“Owner” or “Bondholder” or “Bondowner,”** whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**“Parity Debt”** means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Wastewater Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**“Person”** means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means with respect to any Bond (or portion thereof) the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

**“Revenue Fund”** means the fund held in trust by the District to which the Subordinated Wastewater Revenues are required to be deposited.

**“Series”** whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.

**“SIFMA Municipal Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

**“Standard & Poor’s”** means Standard & Poor’s Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Subordinated Wastewater Revenues”** for any fiscal period means the sum of (a) the Wastewater Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund created in the Wastewater Bond Resolution for treatment as Wastewater Revenues for such fiscal period, less the sum of (c) all Wastewater Operation and Maintenance Costs for such fiscal period, (d) the amounts, if any, withdrawn by the District from Wastewater Revenues for such fiscal period for deposit in such Rate Stabilization Fund, and (e) all amounts required to be paid under the Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds as the same become due and payable.

**“Variable Rate Indebtedness”** means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

**“Wastewater Bond Resolution”** means Resolution No. 30051 of the District, adopted on January 26, 1982, as amended and supplemented from time to time. All obligations of the District under the Wastewater Bond Resolution have ceased and been discharged; provided, however, that the Rate Stabilization Fund created thereunder shall continue.

**“Wastewater Bonds”** means all bonds and other obligations of the District issued pursuant to the Wastewater Bond Resolution.

**“Wastewater Operation and Maintenance Costs”** means the reasonable and necessary costs of maintaining and operating the Wastewater System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

**“Wastewater Revenues”** means, all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any moneys in any fund or account established under the Wastewater Bond Resolution or the Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program.

**“Wastewater System”** means the entire sewage disposal system of Special District No. 1 of the District and all of the facilities thereof, including all facilities for the disposal of sewage, sewage

treatment works, wastewater disposal facilities, sludge treatment facilities, intercepting and outfall sewers, power generation facilities, and other facilities necessary or convenient for the collection, treatment or disposition of sewage and wastewater for Special District No. 1 of the District, together with all additions, betterments, extensions and improvements to said system or any part thereof.

### **Pledge of Revenues**

The Bonds are revenue obligations of the District and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Subordinated Wastewater Revenues and other amounts held by the Trustee (except for amounts held in the Rebate Fund). The Subordinated Wastewater Revenues are pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other. Said pledge constitutes a first lien on the Subordinated Wastewater Revenues and such other amounts referred to in this paragraph.

### **Allocation of Subordinated Wastewater Revenues**

The District is to transfer the moneys in the Revenue Fund, into the following respective funds, in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinated Wastewater Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

(1) Interest Fund. The District shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds which are Current Interest Indebtedness (excluding any interest for which there are moneys on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) Principal Fund; Sinking Accounts. The District shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the Business Day prior to each principal or Sinking Account payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the Mandatory Sinking Account Payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in a bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) Bond Reserve Funds. Upon the occurrence of any deficiency in any Bond Reserve Fund established under the Indenture for any Series of Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such Bond Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund until there is on deposit in such Bond Reserve Fund an amount equal to the respective reserve requirement.

Any Subordinated Wastewater Revenues remaining after the foregoing transfers shall be held free and clear of the Indenture by the District and it may use and apply such Subordinated Wastewater Revenues for any lawful purpose of the District, including the redemption and purchase of Bonds.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein are insufficient to make such payments, the Trustee shall immediately notify the District of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District covenants and agrees to transfer to the Trustee from any Subordinated Wastewater Revenues in its possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

## **Investments**

All moneys in any of the funds and accounts held by the Trustee shall be invested, as directed by the District, solely in Investment Securities.

The District may and the Trustee shall, upon the Request of the District, enter into a financial futures or financial option contract with an entity the debt securities of which are rated in their respective highest short-term Rating Categories by Moody's and Standard & Poor's.

The District may and the Trustee shall, upon the Request of the District, and provided that the Trustee is supplied with an Opinion of Bond Counsel to the effect that such action is permitted under the laws of the State of California, enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such a swap agreement may be applied to the deposits required hereunder; in which case, the entity with which the District or the Trustee may contract for an interest rate swap is limited to entities the debt securities of which are rated in their respective highest short-term debt Rating Categories by Moody's and Standard & Poor's. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Wastewater Revenues and other assets pledged hereunder to the Bonds on a parity basis therewith and, in such event, the District shall pay to the Trustee for deposit in the Interest Fund, at the times and in the manner provided in the Indenture, the amounts to be paid under such interest rate swap agreement, as if such amounts were additional interest due on the Bonds to which such interest rate swap agreement relates, and the Trustee shall pay to the other party to the interest rate swap agreement, to the extent required thereunder, amounts deposited in the Interest Fund for the payment of interest on the Bonds with respect to which such agreement was entered into.

## **Additional Bonds; Parity Debt**

The issuance of additional Wastewater Bonds was not initially limited by the Indenture. *However, the District has covenanted pursuant to the Twelfth Supplemental Indenture that it will not issue any senior Wastewater Bonds in the future.*

The District may issue Bonds and Parity Debt payable from Subordinated Wastewater Revenues and secured equally and ratably with Bonds previously issued, subject to the following specific conditions precedent to the issuance of any such additional Bonds or Parity Debt:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Bonds or Parity Debt shall not exceed any limitation imposed by law or by any Supplemental Indenture.
- (c) The District shall have placed on file with the Trustee a Certificate of the District certifying that the sum of: (1) the Subordinated Wastewater Revenues plus all amounts required

to be paid under the Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Wastewater Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Wastewater Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Bonds due to improvements to the Wastewater System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Bonds, shall (4) have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt then Outstanding and the additional Bonds or Parity Debt then proposed to be issued.

### **Refunding Bonds**

Refunding Bonds may be authorized and issued by the District without compliance with the provisions described above under “Additional Bonds; Parity Debt,” provided that Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding following the issuance of such refunding Bonds is less than or equal to Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding prior to the issuance of such refunding Bonds.

### **Covenants**

Among other covenants the District has agreed as follows:

The District will not create any pledge, lien or charge upon any of the Subordinated Wastewater Revenues having priority over or having parity with the lien of the Bonds except only as described above. The District will not amend or change the Wastewater Bond Resolution in any manner which would permit the issuance of additional Wastewater Bonds in a greater principal amount than would have been permitted thereunder prior to such amendment or change or reduce the debt service percentage or coverage requirements contained therein. The District will not issue Wastewater Bonds pursuant to the Wastewater Bond Resolution in such amount as would cause the District to fail to be in compliance with the rate covenant described in the second succeeding paragraph hereof.

The District will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code, if applicable. The District will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District, or take or omit to take any action that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code, if applicable. To that end, the District will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds.

The District will, at all times while any of the Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year plus all amounts required to be paid under the Wastewater Bond Resolution for such year for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding for such Fiscal Year.

The District will maintain and preserve the Wastewater System in good repair and working order at all times, and will operate the Wastewater System in an efficient and economical manner. Subject in each case to the condition that insurance is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District, the District will procure and maintain at all times: (a) insurance on the Wastewater System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities, and (b) public liability insurance in such amounts as the District deems prudent taking into account insurance coverage for similar utilities.

### **Events of Default; Remedies**

The following events are Events of Default under the Indenture:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in the Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the District has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(e) if any default shall exist under the Wastewater Bond Resolution and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(f) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or Federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; and

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Subordinated Wastewater Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

If an Event of Default shall occur and be continuing, the District is to immediately transfer to the Trustee all Subordinated Wastewater Revenues held by it and received thereafter and the Trustee shall apply all Subordinated Wastewater Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the District, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the District shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, by written notice to the District and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

The Trustee is appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) to represent the Owners in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon any default or other occasion, giving rise to a right in the Trustee to represent the Bondholders, the Trustee may take such action as may seem appropriate and, upon the request in writing of Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Owners by such appropriate actions as it shall deem most effectual to protect and enforce any such right.

No remedy conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

### **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bonds then Outstanding. No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Subordinated Wastewater Revenues and other assets pledged under the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Subordinated Wastewater Revenues and other assets, without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture may also be modified or amended at any time with the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, rated not lower than the respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) or Standard & Poor's (if Standard & Poor's is then rating the Bonds).

The Indenture and the rights and obligations of the District, of the Trustee and the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the District or to surrender any right or power reserved to or conferred upon the District;
- (2) to make such provisions for the purpose of curing any omission or ambiguity, or of curing or correcting any defective provision contained in the Indenture, or in regard to

questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(3) to modify the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statutes and which shall not materially and adversely affect the interests of the Owners of the Bonds;

(4) to make modifications or adjustments necessary or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt, with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture;

(5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that such provisions shall not materially and adversely affect the interest of the Owners of the Bonds;

(6) if the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture; and

(8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

## **Defeasance**

Bonds may be paid by the District in any of the following ways:

(a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem such Outstanding Bonds; or

(c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payments.

The District may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities described in clauses (i), (ii) or (v) of the definition thereof, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as required by the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

## APPENDIX D

### PROPOSED FORM OF CO-BOND COUNSEL OPINIONS

*Upon the delivery of the Series 2022 Bonds, Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, propose to render their final approving opinions with respect to the Series 2022 Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

#### **EAST BAY MUNICIPAL UTILITY DISTRICT (Alameda and Contra Costa Counties, California)**

\$ \_\_\_\_\_  
**Wastewater System Revenue Bonds,  
Series 2022A (Green Bonds)**

\$ \_\_\_\_\_  
**Wastewater System Revenue  
Refunding Bonds, Series 2022B**

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance of its \$ \_\_\_\_\_ aggregate principal amount of Wastewater System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”) and \$ \_\_\_\_\_ aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series 2022B (the “Series 2022B Bonds”) and, collectively with the Series 2022A Bonds, the “Series 2022 Bonds”). The Series 2022 Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and with respect to the Series 2022B Bonds, Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”), and a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a Twentieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Series 2022 Bonds (collectively, the “Indenture”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In our capacity as co-bond counsel, we have reviewed the Act, the Indenture, the Tax Certificate executed and delivered by the District in connection with the issuance and delivery of the Series 2022 Bonds (the “Tax Certificate”), certifications of the District, the Trustee, and others, opinions of counsel to the District and the Trustee, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions referred to in the second paragraph hereof. Furthermore, we have assumed

compliance with all covenants and agreements in the Indenture and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause the interest (and original issue discount) on the Series 2022 Bonds to be included in gross income for federal income tax purposes. With respect to the opinions expressed herein, we call attention to the fact that the rights and obligations under the Series 2022 Bonds and the Indenture are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. Furthermore, the imposition of certain fees and charges by the District relating to the Wastewater System is subject to the provisions of Articles XIII C and XIII D of the California Constitution.

By delivering this letter, we are not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the Series 2022 Bonds or the Indenture, nor are we expressing any opinion with respect to the state or quality of title to or interest in any assets described in or as subject to the lien of the Indenture or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on any assets thereunder.

Based upon the foregoing and subject to the limitations and qualifications herein specified, as of the date hereof, we are of the opinion, under existing law, that:

1. The Series 2022 Bonds constitute the valid and binding special limited obligations of the District.
2. The Indenture has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the District. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Series 2022 Bonds, of the Subordinated Wastewater Revenues of the District, and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.
3. The Series 2022 Bonds are special limited obligations of the District and are payable exclusively from and are secured by a pledge of Subordinated Wastewater Revenues of the District and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein. The general fund of the District is not liable, and neither the credit nor taxing power of the District is pledged, for the payment of the Series 2022 Bonds or the interest thereon.
4. Other bonds and parity debt of the District have been and may from time to time hereafter be issued under the Indenture which are payable from Subordinated Wastewater Revenues on a parity basis with the Series 2022 Bonds.
5. Under existing statutes, regulations, rulings and judicial decisions, the interest (and original issue discount) on the Series 2022 Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals.

6. The interest (and original issue discount) on the Series 2022 Bonds is exempt from State of California personal income tax.

7. The difference between the issue price of a Series 2022 Bond (the first price at which a substantial amount of the Series 2022 Bonds of a maturity are to be sold to the public) and the stated redemption price at maturity with respect to such Series 2022 Bond constitutes original issue discount. Original issue discount accrues under a constant yield method, and original issue discount will accrue to a Series 2022 Bond owner before receipt of cash attributable to such excludable income. The amount of original issue discount deemed received by a Series 2022 Bond owner will increase the Series 2022 Bond owner's basis in the applicable Series 2022 Bond. Original issue discount that accrues for the Series 2022 Bond owner is excluded from the gross income of such Series 2022 Bond owner for federal income tax purposes, is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals (as described in paragraph 5 above) and is exempt from State of California personal income tax.

8. The amount by which a Series 2022 Bond owner's original basis for determining loss on sale or exchange in the applicable Series 2022 Bonds (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier call date) constitutes amortizable bond premium, which must be amortized under Section 171 of the Internal Revenue Code of 1986, as amended (the "Code"); such amortizable bond premium reduces the Series 2022 Bond owner's basis in the applicable Series 2022 Bonds (and the amount of tax-exempt interest received), and is not deductible for federal income tax purposes. The basis reduction as a result of the amortization of bond premium may result in a Series 2022 Bond owner realizing a taxable gain when a Series 2022 Bond is sold by the owner for an amount equal to or less (under certain circumstances) than the original cost of the Series 2022 Bond to the owner.

The opinions expressed herein as to the exclusion from gross income of interest (and original issue discount) on the Series 2022 Bonds are based upon certain representations of fact and certifications made by the District and others and are subject to the condition that the District complies with all requirements of the Code, that must be satisfied subsequent to the issuance of the Series 2022 Bonds to assure that such interest (and original issue discount) will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause the interest (and original issue discount) to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2022 Bonds. The District has covenanted to comply with all such requirements.

The opinions expressed herein may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate permit certain actions to be taken or to be omitted if a favorable opinion of bond counsel is provided with respect thereto. No opinion is expressed herein as to the effect on the exclusion from gross income of interest (or original issue discount) for federal income tax purposes with respect to any Series 2022 Bonds if any such action is taken or omitted based upon the opinion or advice of counsel other than ourselves. Other provisions of the Code may give rise to adverse federal income tax consequences to particular Series 2022 Bond owners. Other than expressly stated herein, we express no other opinion regarding tax consequences with respect to the Series 2022 Bonds.

The opinions expressed and the statements made herein are based on an analysis of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such opinions and statements may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person,

whether such actions are taken or such events occur, and we have no obligation to update this letter in light of such actions or events or for any other reason.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the official statement relating to the Series 2022 Bonds or other offering material relating to the Series 2022 Bonds and we expressly disclaim any duty to advise the owners of the Series 2022 Bonds with respect to matters contained in such official statement or other offering material.

This opinion is limited to the laws of the State of California and the federal laws of the United States. We assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction.

Respectfully submitted,

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E concerning The Depository Trust Company, New York, New York (“DTC”), and DTC’s book-entry system has been obtained from DTC and the District and the Trustee take no responsibility for the completeness or accuracy thereof. The District and the Trustee cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Series 2022 Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Series 2022 Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series 2022 Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The District and the Trustee are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Series 2022 Bonds or an error or delay relating thereto. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC’s Direct and Indirect Participants are on file with DTC.

DTC will act as securities depository for the Series 2022 Bonds. The Series 2022 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of each Series of the Series 2022 Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of Series 2022 Bonds under the DTC book-entry system must be made by or through Direct Participants, which will receive a credit for the Series 2022 Bonds on DTC’s records. The

ownership interest of each actual purchaser of each Series 2022 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2022 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2022 Bonds, except in the event that use of the book-entry system for the Series 2022 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2022 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2022 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2022 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2022 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2022 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2022 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2022 Bond documents. For example, Beneficial Owners of the Series 2022 Bonds may wish to ascertain that the nominee holding the Series 2022 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2022 Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2022 Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series 2022 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Series 2022 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the District or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Series 2022 Bonds to Cede & Co. (or such other nominee as may be requested by an authorized

representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2022 Bonds at any time by giving notice to the Trustee and the District. Under certain circumstances, in the event that a successor depository is not obtained, Series 2022 Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers for the Series 2022 Bonds through DTC (or a successor securities depository). In that event, Series 2022 Bond certificates will be printed and delivered as provided in the Indenture. In addition, the following provisions would apply: the principal or redemption price of the Series 2022 Bonds will be payable upon presentation thereof, at the principal corporate trust office of the Trustee, in San Francisco, California; interest on the Series 2022 Bonds will be payable by check mailed on each interest payment date to the registered owners thereof as shown on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the calendar month immediately preceding the applicable interest payment date (the “record date”), except that in the case of an owner of \$1,000,000 or more in aggregate principal amount of Series 2022 Bonds, upon written request of such owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date; and the Series 2022 Bonds will be transferable and exchangeable on the terms and conditions provided in the Indenture.

The information in this Appendix E concerning DTC and DTC’s book-entry system has been obtained from sources the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.

## **APPENDIX F**

### **FORM OF CONTINUING DISCLOSURE AGREEMENT**

## APPENDIX G

### THE DISTRICT'S GREEN BOND GUIDANCE AND EXPECTED SERIES 2022A GREEN BOND PROJECTS

The District anticipates funding or reimbursing CIP expenditures for the Wastewater System projects identified in the table below using proceeds of the Series 2022A Bonds. These projects were selected using the District's Guidance for Issuing Green Bonds, which was last approved by the District's Board on March 22, 2022. A complete copy of the District's Green Bond Guidance as approved by the District Board on March 22, 2022 is attached hereto.

The District's criteria are presented below in a numbered list for easier reference in the table below.

1. Maintain water quality
2. Improve water use efficiency, including conservation through reduced water loss
3. Improve biodiversity and ecosystem quality
4. Protect against flooding
5. Reduce pollution
6. Improve resilience (adaptation) to climate change
7. Reduce the combustion of fossil fuels
8. Reduce greenhouse gas emissions
9. Implement "reduce, reuse, recycle" practices in preference to raw materials
10. Adhere to sustainable purchasing guidelines

#### East Bay Municipal Utility District Expected Series 2022A Green Bond Projects

Project Name	Short Description	EBMUD Green Bond Criteria	Amount Funded
Digesters	Maintain and upgrade the digestion process at the Main Wastewater Treatment Plant ("MWWTP") to convert sludge from primary and secondary treatment, as well as high strength waste, into biogas and biosolids for beneficial use.	5, 6, 7, 8, 9	\$8.6 million
Power Generation and Biogas	The Power Generation Station and biogas system provides a means to utilize biogas produced in the digesters to generate renewable electricity and produce heat for the digesters. Maintaining these aging facilities provides a source of renewable electricity and reduces the need to flare biogas.	5, 6, 7, 8, 9	\$1.7 million
Hypochlorite Piping Replacement	Rehabilitate and improve utility systems at the MWWTP, including a multi-phase project to improve and replace hypochlorite piping around the plant. For context, as the final stage of liquid-stream treatment at the MWWTP, treated wastewater is dosed with sodium hypochlorite (or chlorine) and conveyed through the 9,000-	1, 5	\$5.4 million

	foot-long land section of the effluent outfall pipe to the Dechlorination Facility.		
Secondary Treatment – Oxygen Reactors	<p>To rehabilitate and upgrade structures associated with Secondary Treatment, all of which were constructed in the 1970s and are showing their advanced age and evidence of deterioration. The facilities include the Oxygen Production Plant where liquid oxygen is produced, the Oxygen Reactors where oxygen is mixed with the wastewater, and the Secondary Clarifiers.</p> <p>Rehabilitation of the Oxygen Reactors includes concrete resurfacing of interior walls and columns, coating of the roof slabs, strengthening the interior support columns, recoating or replacing sections of piping, and refurbishing the aerator gear boxes.</p>	1, 3, 5	\$2.9 million
Secondary Treatment – Secondary Clarifiers	<p>This project is the rehabilitation of the Secondary Clarifiers associated with Secondary Treatment, which includes concrete work, replacement of the clarifier mechanisms, resurfacing or replacing other mechanical components, and replacing the baffles to improve performance.</p>	1, 3, 5	\$1.9 million
<b>Total<sup>(1)</sup></b>			<b>\$20.4 million</b>

<sup>(1)</sup> Totals may exceed the expected project fund deposit and may not add due to rounding.  
Source: The District.

The proceeds of the Series 2022A Bonds (exclusive of amounts applied to pay costs of issuance and other costs related to the issuance of the Series 2022 Bonds and refunding of the Refunded Series 2012A Bonds) are to be allocated to costs of the projects identified above. Because proceeds of the Series 2022A Bonds will be applied to reimburse the District for prior expenditures made in connection with the projects identified above, the District does not intend to undertake any further tracking of and reporting on the use of the proceeds of the Series 2022A Bonds. See also “PLAN OF FINANCE” and “ESTIMATED SOURCES AND USES OF FUNDS” in the front part of this Official Statement and “THE WASTEWATER SYSTEM – Capital Improvement Program” in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” to this Official Statement.

The District’s Green Bond Guidance as most recently approved by the Board follows on the next page.

[Remainder of page intentionally left blank.]

[INSERT DISTRICT GREEN BOND GUIDANCE DOCUMENT]

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TWENTIETH SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
as Successor Trustee

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Dated as of June 1, 2022

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

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Twentieth Supplemental Indenture  
(Supplemental to the Wastewater System  
Subordinated Revenue Bond Indenture dated  
as of April 1, 1990)  
Authorizing the Issuance of

\$ \_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Wastewater System Revenue Bonds,  
Series 2022A (Green Bonds)

and  
\$ \_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds,  
Series 2022B

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This Twentieth Supplemental Indenture, dated as of June 1, 2022 (the “Twentieth Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”);

W I T N E S S E T H :

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

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

WHEREAS, the District has previously authorized the issuance of up to \$200,000,000 of wastewater system revenue bonds, pursuant to Resolution No. 33871-10 adopted by the Board on September 14, 2010, and, as of the date hereof, \$13,975,000 of wastewater system revenue bonds have been issued under the authority of Resolution No. 33871-10;

WHEREAS, in accordance with the Indenture there has been issued, among other Bonds, (i) \$20,000,000 aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series 2012A (the “Series 2012A Bonds”), pursuant to the Sixteenth Supplemental Indenture, dated as of October 1, 2012, between the District and the Trustee, of which \$20,000,000 principal amount is Outstanding as of the date hereof;

WHEREAS, the District has determined to issue its Wastewater System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”) in the aggregate principal amount of \$ \_\_\_\_\_ pursuant to this Twentieth Supplemental Indenture for the purpose of providing moneys to finance and/or reimburse the District for certain costs of various capital improvements

to the Wastewater System of the District and to pay the Costs of Issuance related to the Series 2022A Bonds, all of which is being issued under and pursuant to the authority of Resolution No. 33871-10;

WHEREAS, the District has determined to issue its Wastewater System Revenue Refunding Bonds, Series 2022B (the “Series 2022B Bonds”) in the aggregate principal amount of \$\_\_\_\_\_ pursuant to this Twentieth Supplemental Indenture and Section 53580 *et. seq.* of the Government Code of the State of California (the “Refunding Act”) for the purpose of providing moneys to refund all [a portion] of the Outstanding Series 2012A Bonds and to pay the Costs of Issuance related to the Series 2022B Bonds; and

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

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

#### ARTICLE XXXVI

#### SERIES 2022 BONDS

SECTION 36.01 Definitions. The terms defined in this Section shall, for all purposes of this Twentieth Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2022 Bond (including any Person holding a Series 2022 Bond through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2022 Bond for federal income tax purposes.

“Book-Entry System” means the system maintained by the Securities Depository and described in Section 36.03 hereof.

“Closing Date” means the date of delivery of the Series 2022 Bonds to the Underwriter, against payment therefor, such date being \_\_\_\_\_, 2022.

“Continuing Disclosure Agreement” means any continuing disclosure agreement entered into by the District and Digital Assurance Certification, LLC, as dissemination agent, in connection with the Series 2022 Bonds in order to comply with the continuing disclosure requirements promulgated under Securities Exchange Commission Rule 15c2-12.

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

“Representation Letter” means the Letter of Representations from the District to DTC relating to the Book-Entry System for the Series 2022 Bonds.

“Securities Depository” means DTC or, if applicable, any successor securities depository appointed pursuant to Section 36.03 hereof.

“Securities Depository Participant” means any broker-dealer, bank or other financial institution for which a Securities Depository holds Series 2022 Bonds as Securities Depository from time to time.

“Series 2012A Bonds” means the District’s Wastewater System Revenue Refunding Bonds, Series 2012A, currently outstanding in \$20,000,000 aggregate principal amount.

“Series 2012A Bonds Redemption Account” means the account by that name established pursuant to Section 36.15 hereof.

“Series 2022 Bonds” means the Series 2022A Bonds and the Series 2022B Bonds, as described in Section 36.02.

“Series 2022A (Green Bonds) Wastewater System Fund” means the fund by that name established pursuant to Section 36.13 hereof.

“Series 2022A Bonds” means the East Bay Municipal Utility District Wastewater System Revenue Bonds, Series 2022A (Green Bonds).

“Series 2022AB Costs of Issuance Fund” means the fund by that name established pursuant to Section 36.14 hereof.

“Series 2022B Bonds” means the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2022B.

“Underwriter” means Siebert Williams Shank & Co., LLC, as the Underwriter of the Series 2022 Bonds.

#### SECTION 36.02      Authorization.

(A)    Designation of Bonds. A twenty-fourth and twenty-fifth Series of Bonds to be issued under the Indenture is hereby created. These Series of Bonds shall be known as: (i) the “East Bay Municipal Utility District Wastewater System Revenue Bonds, Series 2022A (Green Bonds)” (herein referred to as the “Series 2022A Bonds”); and (ii) the “East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2022B” (herein referred to as the “Series 2022B Bonds”). The Series 2022A Bonds shall be issued in the aggregate principal amount of \$ \_\_\_\_\_. The Series 2022B Bonds shall be issued in the aggregate principal amount of \$ \_\_\_\_\_.

The Series 2022 Bonds shall be issued in accordance with the Act and pursuant to Resolution No. \_\_\_\_\_ adopted by the Board on \_\_\_\_\_, 2022, and this Twentieth Supplemental Indenture. The Series 2022A Bonds shall be issued for the purpose of (i) financing certain costs (including by reimbursement of such costs to the District) of various capital

improvements to the Wastewater System of the District, and (ii) paying Costs of Issuance related to the Series 2022A Bonds. The Series 2022B Bonds shall be issued for the purpose of providing moneys, together with certain other funds to be made available upon the delivery thereof, to (i) refund all [or a portion] of the Outstanding Series 2012A Bonds; and (ii) pay Costs of Issuance related to the Series 2022B Bonds.

The Series 2022 Bonds shall be Current Interest Indebtedness.

(B) Registered Form. Each Series of the 2022 Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.,” as nominee of DTC in accordance with Section 36.03 hereof. The Series 2022 Bonds of each Series shall be evidenced by one bond maturing on each maturity date of the Series 2022 Bonds of such Series as set forth in Section 36.02(C) hereof. The Series 2022 Bond of each Series may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series 2022 Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 36.03 hereof.

(C) Maturities; Interest Rates; Denominations.

(1) Series 2022A Bonds. The Series 2022A Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum, and shall mature on June 1 in the following years in the following amounts:

Series 2022A Bonds

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

(2) Series 2022B Bonds. The Series 2022B Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rate per annum, and shall mature on June 1 in the following year in the following amounts:

Series 2022B Bonds

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

Interest on the Series 2022 Bonds of each Series shall be payable semiannually on June 1 and December 1 of each year, commencing on December 1, 2022, by check mailed by first-class mail on each interest payment date to the Owners thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date (each, a

“record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of Series 2022 Bonds of a Series, upon written request of such Owner to the Trustee received at least ten (10) days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. Interest on the Series 2022 Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series 2022 Bonds are payable when due upon presentation thereof at the corporate trust office of the Trustee in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

So long as the Series 2022 Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer in accordance with mutually satisfactory arrangements between the Trustee and the Securities Depository.

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

**SECTION 36.03      Book Entry System.** The Series 2022 Bonds shall be initially issued registered in the name of “Cede & Co.,” as nominee for DTC and registered Owner thereof, and held in the custody of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for the maturity of the Series 2022 Bonds of each Series, and the Beneficial Owners will not receive physical delivery of bond certificates for the Series 2022 Bonds except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series 2022 Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series 2022 Bonds will receive, hold or deliver any Series 2022 Bond certificate.

At the written direction of the District, with notice to the Trustee, but without the consent of the Owners of the Series 2022 Bonds or the Trustee, the District, may appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book-Entry System for the Series 2022 Bonds not inconsistent with the provisions of the Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The District and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Securities Depository Participants in the Book-Entry System with respect to the Series 2022 Bonds and (ii) a certificate of any such Securities Depository Participant as to the identity of, and the respective principal amount of the Series 2022 Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series 2022 Bonds, the beneficial ownership thereof is determined by a book-entry at the Securities Depository, the requirements in the Indenture of

holding, delivering or transferring the Series 2022 Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Series 2022 Bonds shall, while the Series 2022 Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in the Indenture and the Series 2022 Bonds with respect to the rights of Securities Depository Participants and Beneficial Owners, when a Book-Entry System is in effect, the District and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series 2022 Bonds registered in its name for the purposes of payment of the principal of and interest on the Series 2022 Bonds or portion thereof to be redeemed or purchased, and of giving any notice permitted or required to be given to the Owners of Series 2022 Bonds under the Indenture, and neither the District nor the Trustee shall be affected by any notice to the contrary. Neither the District nor the Trustee will have any responsibility or obligation to the Securities Depository, any Securities Depository Participant, any Beneficial Owner or any other Person which is not shown on the registration books required to be maintained by the Trustee, with respect to: (i) the accuracy of any records maintained by the Securities Depository or any Securities Depository Participant; (ii) the payment by the Securities Depository or by any Securities Depository Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or purchase price (if applicable) of, or interest on, any Series 2022 Bonds; (iii) the delivery of any notice by the Securities Depository or any Securities Depository Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series 2022 Bonds; or (v) any other action taken by the Securities Depository or any Securities Depository Participant. The Trustee shall pay all principal of and interest on the Series 2022 Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository, and all such payments shall be valid and effective to fully satisfy and discharge the District’s obligations with respect to the principal of and interest on such Series 2022 Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the District, at the direction and expense of the District, and the District and the Trustee will cause the delivery of Series 2022 Bond certificates to such Beneficial Owners of the Series 2022 Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(i) The Securities Depository determines to discontinue providing its service with respect to the Series 2022 Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving thirty (30) days’ notice to the District and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

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

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

So long as any Series 2022 Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Series 2022 Bond and all notices with respect to such Series 2022 Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

In the event of a redemption or any other transaction necessitating a reduction in aggregate principal amount of any Series 2022 Bond Outstanding, DTC in its discretion: (a) may request the District and the Trustee to issue and authenticate a new Series 2022 Bond certificate; or (b) shall make an appropriate notation on the Series 2022 Bond certificate indicating the date and amounts of such reduction in principal, except in the case of final maturity, in which case the certificate must be presented to the Trustee prior to payment.

Prior to any transfer of the Bonds outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

#### SECTION 36.04      Redemption of Series 2022 Bonds.

##### (A)      Series 2022A Bonds.

(1)      Optional Redemption. The Series 2022A Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2022A Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_ at a redemption price equal to the principal amount of Series 2022A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(2)      Mandatory Sinking Account Redemption. The Series 2022A Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section 36.09(A), commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

##### (B)      Series 2022B Bonds.

(1)      Optional Redemption. The Series 2022B Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2022B Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022B Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(2) Mandatory Sinking Account Redemption. The Series 2022B Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section 36.09(B), commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

SECTION 36.05 Selection of Series 2022 Bonds for Redemption. Whenever provision is made in this Twentieth Supplemental Indenture for the redemption of less than all of the Series 2022 Bonds of a Series, the maturities of the Series 2022 Bonds of such Series to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series 2022 Bonds of a Series of any maturity, the Trustee shall select the Series 2022 Bonds of such Series of such maturity to be redeemed, from all Series 2022 Bonds of the respective Series not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion shall deem appropriate and fair. The Trustee shall promptly notify the District in writing of the Series 2022 Bonds so selected for redemption.

SECTION 36.06 Notice of Redemption of Series 2022 Bonds. The District shall notify the Trustee at least twenty-five (25) days prior to the redemption date for any Series 2022 Bonds pursuant to Section 36.04(A) (1) and Section 36.04(B) (1) (or such shorter time as may be agreed to by the Trustee). Notice of redemption shall be given by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series 2022 Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first-class mail, (ii) to the Securities Depository by electronic means of communication or by first-class mail, and (iii) to the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at [www.emma.msrb.org](http://www.emma.msrb.org), by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Notice of redemption shall be given in the form and otherwise in accordance with the terms of the Indenture and this Twentieth Supplemental Indenture.

In the event of an optional redemption of Series 2022A Bonds or Series 2022B Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of such Series of Series 2022 Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

SECTION 36.07 Partial Redemption of Series 2022 Bonds. Upon surrender of any Series 2022 Bond redeemed in part only, the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Series 2022 Bond of authorized denominations, and of the same Series, maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series 2022 Bond surrendered.

SECTION 36.08 Effect of Redemption of Series 2022 Bonds. If notice of redemption has been duly given pursuant to Section 36.06, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series 2022 Bonds (or portions thereof) so called for redemption is held by the Trustee, on the redemption date designated in such notice, the Series 2022 Bonds (or portions thereof) so called for redemption shall become due and

payable at the Redemption Price specified in such notice together with interest accrued thereon to the date fixed for redemption, interest on the Series 2022 Bonds so called for redemption shall cease to accrue, the Series 2022 Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of the Series 2022 Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price and accrued interest.

All Series 2022 Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

#### SECTION 36.09      Series 2022 Sinking Accounts.

(A) Series 2022A Sinking Account. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series 2022A Sinking Account.” On each Business Day prior to the following payment dates, from amounts transferred by the District to the Trustee for deposit in the Principal Fund, the Trustee shall set aside in the Series 2022A Sinking Account therein an amount equal to the Mandatory Sinking Account Payment due on such date as set forth below:

#### **Series 2022A Term Bonds Due June 1, 20\_\_**

Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments
<hr/>	<hr/>
_____	_____
_____	_____
_____	_____
_____†	_____
_____	_____
<hr/>	
† Final Maturity.	

Upon an optional redemption of a portion of any Series 2022A Term Bonds pursuant to Section 36.04(A)(1), the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments which shall provide for a reduction in the amount of one or more of the Mandatory Sinking Account Payments coming due on such Series 2022A Term Bond after such redemption as specified by the District in such schedule to reflect such redeemed portion.

Moneys in the Series 2022A Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

(B) Series 2022B Sinking Account. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series 2022B Sinking Account.” On each Business Day prior to the following payment dates, from amounts transferred by the District to the Trustee for deposit in the Principal Fund, the Trustee shall set aside in the Series 2022B Sinking Account therein an amount equal to the Mandatory Sinking Account Payment due on such date as set forth below:



(i) \$\_\_\_\_\_ of net proceeds from the sale of the Series 2022A Bonds shall be transferred to the District for deposit in the Series 2022A (Green Bonds) Wastewater System Fund to be used in accordance with Section 36.13(A); and

(ii) The remaining proceeds from the sale of the Series 2022A Bonds in the amount of \$\_\_\_\_\_ shall be deposited in the Series 2022AB Costs of Issuance Fund to be applied to pay Cost of Issuance of the Series 2022A Bonds in accordance with Section 36.14.

(B) Series 2022B Bonds. The net proceeds of the sale of the Series 2022B Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series 2022B Bonds plus \$\_\_\_\_\_ [net] original issue premium, less \$\_\_\_\_\_ of Underwriter's discount), together with \$\_\_\_\_\_ contributed by the District, or a total of \$\_\_\_\_\_, shall be applied by the Trustee as follows:

(i) \$\_\_\_\_\_ of the net proceeds from the sale of the Series 2022B Bonds, [together with \$\_\_\_\_\_ contributed by the District,] or a total of \$\_\_\_\_\_, shall be deposited by the Trustee into the Series 2012A Bonds Redemption Account to be applied in accordance with Section 36.15; and

(ii) The remaining proceeds from the sale of the Series 2022B Bonds in the amount of \$\_\_\_\_\_ shall be deposited in the Series 2022AB Costs of Issuance Fund to be applied to pay Costs of Issuance of the 2022 Series B Bonds in accordance with Section 36.14.

SECTION 36.13      Establishment and Application of Series 2022A (Green Bonds) Wastewater System Fund.

(A) The District shall establish, maintain and hold in trust a separate fund designated as the "Series 2022A (Green Bonds) Wastewater System Fund." The moneys on deposit in the Series 2022A (Green Bonds) Wastewater System Fund shall be used and withdrawn by the District to pay (or to reimburse the District for the payment of) costs of construction, reconstruction, replacement, acquisition or improvement of any facility or facilities necessary or convenient for the storage, transmission or distribution of wastewater; or incidental to, or in connection with, the operation of the Wastewater System which the District has determined to be a project appropriate for "green bond" funding, or to pay or reimburse the District for interest on the Series 2022A Bonds during the respective construction periods for the improvements to the Wastewater System funded by the Series 2022A Bonds.

(B) Moneys on deposit in the Series 2022A (Green Bonds) Wastewater System Fund may be invested in (i) Investment Securities, (ii) investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt of the guarantor of which, or, in the case of a monoline financial guaranty insurance company, the claims paying ability of which, is rated on the date of execution of such investment agreement not lower than "Aa2" by Moody's (if Moody's is then rating any of the District's Outstanding Bonds) and "AA" by Standard & Poor's (if Standard & Poor's is then rating any of the District's Outstanding Bonds), or (iii) the Local Agency Investment Fund (as that term is defined in Section 16429.1 of the

California Government Code, as such section may be amended or recodified from time to time), and with a term so as to provide moneys when needed for payments to be made therefrom. Interest, profit or other income derived from the investment of moneys held in the Series 2022A (Green Bonds) Wastewater System Fund shall be credited to such Fund. Interest, profit or other income derived from the investment of moneys held in the Series 2022A (Green Bonds) Wastewater System Fund may also be transferred to the Trustee for deposit in the Rebate Fund in an amount determined by the District to be required.

**SECTION 36.14**      Establish and Application of the Series 2022AB Costs of Issuance Fund. The Trustee shall establish and maintain in trust a separate fund designated as the “Series 2022AB Costs of Issuance Fund.” Moneys deposited in said fund as provided in Section 36.12 hereof shall be used to pay costs of issuance of the Series 2022 Bonds and the expenses and obligations payable by the District in connection therewith, upon receipt by the Trustee of a Requisition of the District in substantially the form set forth as Exhibit B heretostating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. At the end of one hundred and eighty (180) days from the date of initial delivery of the Series 2022 Bonds (i.e. \_\_\_\_\_, 2022), or upon earlier Request of the District stating that amounts in said fund are no longer required for the payment of such costs, expenses and obligations, said fund shall be terminated and any amounts then remaining in said fund shall be transferred by the Trustee to the Interest Fund to be applied to pay interest on the Series 2022 Bonds.

**SECTION 36.15**      Establishment and Application of the Redemption Account. An Account is hereby established within the Redemption Fund created by Section 5.05 of the Indenture to be held in trust by the Trustee and designated the “Series 2012A Bonds Redemption Account.” The moneys deposited in the Series 2012A Bonds Redemption Account shall be applied by the Trustee on the Closing Date to pay the Redemption Price (*i.e.*, 100% of the principal amount thereof, without premium) of the Outstanding Series 2012A Bonds to be redeemed on such date, and accrued interest thereon to such date of redemption.

**SECTION 36.16**      Continuing Disclosure. The District hereby covenants and agrees that it will comply with and carry out all of its respective obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the District to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Series 2022 Bondholder or Beneficial Owner or the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% of the aggregate principal amount of Outstanding Series 2022 Bonds and upon provision of indemnification satisfactory to the Trustee, shall) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District, as the case may be, to comply with its obligations under this Section 36.16.

**SECTION 36.17**      Terms of Series 2022 Bonds Subject to the Indenture. Except as in this Twentieth Supplemental Indenture expressly provided, every term and condition contained in the Indenture shall apply to this Twentieth Supplemental Indenture and to the Series 2022 Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Twentieth Supplemental Indenture.

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

SECTION 36.18      Effective Date of Twentieth Supplemental Indenture.      This Twentieth Supplemental Indenture shall take effect upon its execution and delivery.

SECTION 36.19      Execution in Counterparts. This Twentieth Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

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

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Sophia D. Skoda  
Director of Finance

ATTEST:

By: \_\_\_\_\_  
Rischa S. Cole  
Secretary of the District

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Vice President

EXHIBIT A

(FORM OF SERIES 2022 BOND)

No. \_\_\_\_\_

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

EAST BAY MUNICIPAL UTILITY DISTRICT  
(ALAMEDA AND CONTRA COSTA COUNTIES, CALIFORNIA)  
WASTEWATER SYSTEM REVENUE [REFUNDING] BOND,  
SERIES 2022[A (GREEN BONDS)][B]

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

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
June 1, 20__	_____, 2022	____%	271012____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Subordinated Wastewater Revenues and funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal amount specified above together with interest thereon from its Dated Date until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on December 1, 2022, and semiannually thereafter on June 1 and December 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first-class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of the hereinafter described Series 2022[A][B] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall

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

This Bond is one of a duly authorized issue (of the series and designation indicated on the face hereof) of Wastewater System Revenue Bonds of the District issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, between the Trustee and the District, providing for the issuance of said bonds (the “Bonds”). Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Wastewater System Subordinated Revenue Bond Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Wastewater System Subordinated Revenue Bond Indenture provided, all issued and to be issued pursuant to the provisions of the Act (as defined in the Wastewater System Subordinated Revenue Bond Indenture). This Bond is issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by a Twentieth Supplemental Indenture, dated as of June 1, 2022, between the Trustee and the District, authorizing the issuance of the series of bonds designated “Wastewater System Revenue [Refunding] Bonds, Series 2022[A (Green Bonds)][B]”, of which this Bond is one, such series being herein referred to as the “Series 2022[A][B] Bonds” (the Wastewater System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by the Twentieth Supplemental Indenture, being herein collectively referred to as the “Indenture”). Reference is hereby made to the Indenture and to the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Subordinated Wastewater Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

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

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

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

The Series 2022[A][B] Bonds are being issued by means of a Book-Entry System with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to each date on which the Series 2022[A][B] Bonds are stated to mature, registered in the name of the Cede & Co, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The Book-Entry System will evidence positions held in the Series 2022[A][B] Bonds by the Securities Depository Participants, beneficial ownership of the Series 2022[A][B] Bonds in authorized denominations being evidenced in the records of such Securities Depository Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Securities Depository Participants pursuant to rules and procedures established by the Securities Depository and its Securities Depository Participants. The District and the Trustee will recognize Cede & Co., while the registered owner of this Series 2022[A][B] Bond, as the owner of this Series 2022[A][B] Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on this Series 2022[A][B] Bond and (ii) notices. Transfer of principal, interest and any redemption premium payments to Securities Depository Participants, and transfer of principal, interest and any redemption premium payments to Beneficial Owners of the Series 2022[A][B] Bonds by Securities Depository Participants will be the responsibility of such Securities Depository Participants and other nominees of such Beneficial Owners. The District will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, Cede & Co., its Securities Depository Participants or persons acting through such Securities Depository Participants. While Cede & Co. is the registered owner of this Series 2022[A][B] Bond, notwithstanding any other provision hereof, payments of principal of, redemption premium, if any, and interest on this Series 2022[A][B] Bond shall be made in accordance with existing arrangements between the Trustee or its successors under the Indenture and the Securities Depository.

*{To be included in Series 2022A Bonds}* [The Series 2022A Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022A Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series 2022A Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

*{To be included in Series 2022B Bonds}* [The Series 2022B Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of

the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after June 1, 20\_\_, at a redemption price equal to the principal amount of Series 2022B Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series 2022B Bonds maturing on June 1, 20\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, 20\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate trust office of the Trustee in San Francisco, California, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange hereof.

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

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

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

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

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

IN WITNESS WHEREOF, EAST BAY MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the President of the Board of Directors and attested by its Secretary, and this Bond to be dated as of the \_\_th day of \_\_\_\_\_, 2022.

EAST BAY MUNICIPAL UTILITY DISTRICT

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

Attested:

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

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

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

Dated: \_\_\_\_\_, 2022

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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

[FORM OF ASSIGNMENT]

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

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

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

Signature Guaranteed by:

---

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

EXHIBIT B  
(FORM OF REQUISITION)

REQUISITION NO. \_\_\_\_

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)

\$ \_\_\_\_\_  
Wastewater System Revenue Bonds,  
Series 2022A (Green Bonds)

\$ \_\_\_\_\_  
Wastewater System Revenue  
Refunding Bonds, Series 2022B

**Series 2022AB Costs of Issuance Fund**

Dated: \_\_\_\_\_, 2022

TO: U.S. Bank Trust Company, National Association, as Trustee

The undersigned hereby certifies as follows:

1. I am the [Director of Finance][Treasury Manager] of the East Bay Municipal Utility District, a municipal utility district duly organized and existing under and by virtue of the laws of the State of California (the "District").
2. I am a duly authorized representative of the District under the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, including as amended and supplemented by the Twentieth Supplemental Indenture, dated as of June 1, 2022 (the "Twentieth Supplemental Indenture" and as so amended and supplemented, the "Indenture"), by and between the District and U.S. Bank Trust Company, National Association, as successor trustee (the "Trustee"), and I am delivering this Requisition on behalf of the District.
3. The undersigned hereby authorizes payment of the amounts specified in Attachment 1 hereto to the persons identified in Attachment 1, such amounts to be paid from the Series 2022AB Costs of Issuance Fund pursuant to Section 36.14 of the Twentieth Supplemental Indenture.
4. The undersigned hereby certifies that: (i) obligations in the amounts stated in Attachment 1 have been incurred by the District and are presently due and payable; (ii) each item is a proper charge against the Series 2022AB Costs of Issuance Fund for the general classification indicated in Attachment 1 therefor; and (iii) each item has not been previously paid from the Series 2022AB Costs of Issuance Fund.

Dated as of the date first written above.

EAST BAY MUNICIPAL UTILITY DISTRICT

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

[Signature Page to Requisition No. \_\_, Series 2022AB Costs of Issuance Fund]

**ATTACHMENT 1**

**Series 2022AB Costs of Issuance Fund**

**Payee**

**Amount**

**Purpose**

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “Disclosure Agreement”), dated \_\_\_\_\_, 2022, is executed and delivered by the East Bay Municipal Utility District (the “District”) and Digital Assurance Certification, LLC (the “Dissemination Agent”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Wastewater System Revenue Bonds, Series 2022A (Green Bonds) and \$\_\_\_\_\_ aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series 2022B (together, the “Bonds”). The Bonds are being issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and U.S. Bank Trust Company, National Association as successor trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the Twentieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Bonds (collectively, the “Indenture”). In connection therewith, the District and the Trustee covenant and agree as follows:

Section 1. Purpose of this Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the District and the Dissemination Agent for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter (as defined herein) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Director of Finance or the Treasury Manager of the District or a designee of the Director of Finance, or such other officer or employee as the District shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean Digital Assurance Certification, LLC, or any successor dissemination agent designated in writing by the District and which has filed a written acceptance of such designation.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Holder” shall mean either the registered owners of the Bonds or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the Official Statement for the Bonds dated \_\_\_\_\_, 2022, as it may be updated prior to the delivery of the Bonds.

“Participating Underwriter” shall mean the underwriters of the Bonds listed on the cover page of the Official Statement required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than December 31 of each year in which the Bonds are outstanding, commencing with the Annual Report for the 2021-22 Fiscal Year (which is due not later than December 31, 2022), provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that if the audited financial statements of the District are not available by the date required above for the filing of the Annual Report, the District shall submit the audited financial statements as soon thereafter as available. If the District’s Fiscal Year changes, the District shall give notice of such change in the same manner as for a Listed Event under Section 5(c) and the Annual Reports shall be provided to the MSRB no later than six months after the end of such Fiscal Year.

(b) If the District is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the District shall send to the MSRB, in a timely manner, on or before such date a notice in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

- (i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and
- (ii) file a report with the District and (if the Dissemination Agent is not the Trustee, the Trustee) certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement, and stating the date it was provided.

Section 4. Content of Annual Reports. The District’s Annual Report shall contain or include by reference the following categories or similar categories of information updated to incorporate information for the most recent fiscal or calendar year, as applicable (the tables referred to below are those appearing in the Official Statement relating to the Bonds):

(a) The audited financial statements of the District for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles, as promulgated, to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;

(b) A table showing Wastewater System sources of funds;

(c) A table showing Wastewater System rates and charges for the preceding Fiscal Year;

(d) A table showing average daily Wastewater flows of the Wastewater System for the preceding Fiscal Year;

(e) A table showing Outstanding Wastewater System debt as of the preceding Fiscal Year; and

(f) A table showing Wastewater System revenues, operating and maintenance expenses, debt service on Wastewater System revenue bonds and debt service coverage for the Wastewater System revenue bonds for the most recent Fiscal Year.

Financial and operating information relating to the District referenced in items 3(b)-(f) above may be updated from time to time, and such updates may involve displaying data in a different format or table or eliminating data that is no longer material.

Any or all of the items listed above may also be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the MSRB or the SEC. If any document included by reference is a final official statement, it must be available from the MSRB. The District shall clearly identify each such other document so included by reference.

#### Section 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this section, upon the occurrence of any of the following events (in each case to the extent applicable) with respect to the Bonds, the District shall give, or cause to be given by so notifying the Dissemination Agent in writing and instructing the Dissemination Agent to give, notice of the occurrence of such event, in each case, pursuant to Section 5(c) hereof:

1. principal or interest payment delinquencies;
2. non-payment related defaults, if material;
3. modifications to the rights of the Bondholders, if material;
4. optional, contingent or unscheduled calls, if material, and tender offers;
5. defeasances;
6. rating changes;

7. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
8. unscheduled draws on the debt service reserves reflecting financial difficulties;
9. unscheduled draws on the credit enhancements reflecting financial difficulties;
10. substitution of the credit or liquidity providers or their failure to perform;
11. release, substitution or sale of property securing repayment of the Bonds, if material;
12. bankruptcy, insolvency, receivership or similar proceedings of the District, which shall occur as described below;
13. appointment of a successor or additional trustee or the change of name of a trustee, if material;
14. the consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the Wastewater System of the District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
15. incurrence of a Financial Obligation of the District with respect to the Wastewater System, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the District with respect to the Wastewater System, any of which affects Holders of the Bonds, if material; or
16. default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the District with respect to the Wastewater System, any of which reflect financial difficulties.

For these purposes, (i) any event described in item 12 of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District; and (ii) the District intends to comply with the provisions hereof for the Listed Events described in subparagraphs (15) and (16) of this Section 5(a), and the definition of the “Financial Obligation” in Section 2, with reference to the Rule, any other applicable federal securities laws and guidance provided by the SEC in its Release No. 34-83885 dated August 20, 2018 (the “2018 Release”), any further amendments or written guidance provided by the SEC or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) Upon receipt of notice from the District and instruction by the District to report the occurrence of any Listed Event, the Dissemination Agent shall provide notice thereof to the MSRB in accordance with Section 5(c) hereof. In the event the Dissemination Agent shall obtain actual knowledge of the occurrence of any of the Listed Events, the Dissemination Agent shall, immediately after obtaining such knowledge, contact the Disclosure Representative, inform such person of the event, and request that the District promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to Section 5(c). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Event shall mean actual knowledge by the Dissemination Agent. The Dissemination Agent shall have no responsibility to determine the materiality, if applicable, of any of the Listed Events.

(c) The District, or the Dissemination Agent, if the Dissemination Agent has been instructed by the District to report the occurrence of a Listed Event, shall file a notice of such occurrence with the MSRB in a timely manner not more than ten (10) business days after the occurrence of the event.

Section 6. Termination of Reporting Obligation. The District’s obligations under this Disclosure Agreement shall terminate with respect to all Bonds upon the maturity, defeasance, prior redemption, acceleration or payment in full of all of the Bonds and with respect to any Bonds upon the maturity, defeasance, prior redemption or payment in full of such Bonds.

Section 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee, upon notice from the District, shall be the Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this Disclosure Agreement. The Dissemination Agent shall receive compensation for the services provided pursuant to this Disclosure Agreement.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the District and the Dissemination Agent may amend this Disclosure Agreement (and, to the extent that any such amendment does not materially change or increase its obligations hereunder, the Dissemination Agent shall agree to any amendment so requested by the District), and any provision of this Disclosure Agreement may be waived; *provided*, that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Section 3(a), Section 4 or Section 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Filings with the MSRB. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds and upon provision of indemnification satisfactory to the Trustee, shall), or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the District or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance hereunder.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the District agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding any loss, expense and liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 13. Notices. Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the District:

East Bay Municipal Utility District  
375 Eleventh Street, MS 801  
Oakland, California 94607-4240  
Attention: Treasury Manager  
Phone: 510-287-0248  
Fax: 510-287-0555

To the Dissemination Agent:

Digital Assurance Certification, LLC  
315 E. Robinson Street, Suite 300  
Orlando, Florida 32801  
Attention: Shelley Rodgers, Client Service  
Manager  
Phone: 404-515-1082

Section 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the District, the Dissemination Agent, the Participating Underwriter and the Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Disclosure Agreement has been executed on behalf of the District and the Dissemination Agent by their duly authorized representatives.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Sophia D. Skoda  
Director of Finance

DIGITAL ASSURANCE CERTIFICATION, LLC,  
as Dissemination Agent

By: \_\_\_\_\_  
Diana O'Brien  
Senior Vice President

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: EAST BAY MUNICIPAL UTILITY DISTRICT

Name of Bond Issue: \$ \_\_\_\_\_  
Wastewater System Revenue Bonds, Series 2022A (Green Bonds)

\$ \_\_\_\_\_  
Wastewater System Revenue Refunding Bonds, Series 2022B

Date of Issuance: \_\_\_\_\_, 2022

NOTICE IS HEREBY GIVEN that the East Bay Municipal Utility District (the “District”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 3(a) of the Continuing Disclosure Agreement, dated \_\_\_\_\_, 2022, by and between the District and Digital Assurance Certification, LLC, and in accordance with Section 36.16 of the Twentieth Supplemental Indenture, dated as of June 1, 2022, by and between the District and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”), supplementing the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented and amended, by and between the District and the Trustee, providing for the issuance of the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

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

DIGITAL ASSURANCE CERTIFICATION, LLC, as  
Dissemination Agent on behalf of the District

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

cc: East Bay Municipal Utility District

§ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2022B

PURCHASE CONTRACT

May \_\_, 2022

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

Ladies and Gentlemen:

The undersigned Siebert Williams Shank & Co., LLC, (the “Underwriter”), hereby offers to enter into this Purchase Contract (the “Purchase Contract”) with you, the East Bay Municipal Utility District (the “District”), which, upon the District’s acceptance of this offer, will be binding upon the District and the Underwriter. This offer is made subject to acceptance by you prior to 5:00 p.m., California time, on the date hereof. If this offer is not so accepted, this offer will be subject to withdrawal by the Underwriter upon notice delivered to you at any time prior to acceptance. Upon acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the District and the Underwriter. All capitalized terms used herein not otherwise defined herein shall have the respective meanings ascribed thereto in the Official Statement (as hereinafter defined).

The District acknowledges and agrees that (i) the purchase and sale of the Series 2022AB Bonds (defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the District and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as principal and is not acting as financial advisor or municipal advisor to or fiduciary of the District, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the District with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the District on other matters), (iv) the Underwriter has financial and other interests that differ from those of the District, and (v) the District has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

1. Purchase, Sale and Delivery of the Series 2022AB Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase and the District agrees to sell and deliver to the Underwriter all (but not less than all) of the East Bay Municipal Utility District Wastewater System Revenue Bonds, Series 2022A (Green Bonds) (the “Series 2022A Bonds”), in the aggregate principal amount of \$\_\_\_\_\_, and the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2022B, in the aggregate principal amount of \$\_\_\_\_\_ (the “Series 2022B Bonds” and, together with the Series 2022A Bonds, the “Series 2022AB Bonds”).

(b) The Series 2022AB Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”) and the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by an Twentieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Series 2022AB Bonds (collectively, the “Indenture”). The Series 2022AB Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series 2022AB Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series 2022AB Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Wastewater Revenues of the District. The Series 2022AB Bonds shall be dated the Closing Date (defined below), shall bear interest payable June 1 and December 1 of each year, commencing on December 1, 2022, and shall mature on June 1 in each of the years, as set forth in Schedule I.

The Series 2022A Bonds are being issued for the purposes of (i) providing moneys to finance and/or reimburse the District for certain costs of improvements to the Wastewater System of the District and (ii) paying costs of issuance of the Series 2022A Bonds.

The Series 2022B Bonds are being issued for the purposes of (i) refunding \$\_\_\_\_\_ aggregate principal amount of the District’s Wastewater System Revenue Refunding Bonds, Series 2012A, and (ii) paying costs of issuance of the Series 2022B Bonds.

(c) The aggregate purchase price for the Series 2022AB Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series 2022AB Bonds in the amount of \$\_\_\_\_\_, plus [net] original issue premium of \$\_\_\_\_\_, less \$\_\_\_\_\_ of Underwriter’s discount).

(d) In the event that the Underwriter fails (other than for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the Series 2022AB Bonds on the Closing Date as herein provided, the Underwriter shall pay to the District \$\_\_\_\_\_, which shall constitute full liquidated damages for such failure and for any and all defaults hereunder on

the part of the Underwriter, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriter with respect to such failure.

(e) At 8:00 a.m., California time, on June \_\_, 2022, or at such other time or on such other date as the District and the Underwriter mutually agree upon (the "Closing Date"), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriter, the Series 2022AB Bonds, in fully registered book-entry eligible form, by Fast Automated Securities Transfer (FAST) through the facilities of The Depository Trust Company ("DTC") in New York, New York, duly executed, and at such other place or by electronic means as shall have been mutually agreed upon by the District and the Underwriter, the other documents mentioned herein. The Underwriter will accept such delivery and pay the purchase price of the Series 2022AB Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the "Closing") to the order of the Trustee in an amount equal to the purchase price.

## 2. Use and Preparation of Official Statement.

The District hereby ratifies, confirms and approves of the distribution and use by the Underwriter prior to the date hereof of the preliminary official statement dated May \_\_, 2022 relating to the Series 2022AB Bonds (the "Preliminary Official Statement") and the making available of the Preliminary Official Statement to investors prior to the date hereof on the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriter, within seven (7) business days of the date hereof and, in any case, one business day prior to the Closing Date in order to permit the Underwriter to comply with Rule 15c2-12 and the applicable rules of the MSRB, with respect to the distribution of the Official Statement, copies of the final Official Statement relating to the Series 2022AB Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the District and the Underwriter (including the appendices thereto and any subsequent amendments or supplements as have been approved by the District and the Underwriter, the "Official Statement"), in such quantity as the Underwriter shall reasonably request. The District hereby approves of the distribution and use by the Underwriter of the Official Statement in connection with the offer and sale of the Series 2022AB Bonds. The Underwriter hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.

## 3. Establishment of Issue Price.

(a) The Underwriter agrees to make a bona fide public offering of the Series 2022AB Bonds at the prices set forth in Schedule I, which prices may be changed from time to time by the Underwriter after such initial public offering.

(b) The Underwriter, agree to assist the District in establishing the issue price of the Series 2022AB Bonds and shall execute and deliver to the District at Closing an "issue price" or

similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the District and Co-Bond Counsel (as hereinafter defined), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2022AB Bonds. If such certificate is insufficient to assist the District in establishing the issue price of the Series 2022AB Bonds, the Underwriter shall, at the request of the District, execute and deliver to the District at Closing a certificate substantially in the form of Attachment C to Exhibit A to the extent necessary to assist the District in establishing the issue price of the Series 2022AB Bonds.

(c) With respect to Series 2022AB Bonds of those maturities as to which at least 10% of the Series 2022AB Bonds of the maturity has been sold to the public (defined in subsection (g) below) at a single price (the “10% test”), based on reporting by the Underwriter to the District on the date hereof and prior to the execution of this Purchase Contract, which maturities are indicated in Schedule I attached hereto, the District will treat the first price at which 10% of each such maturity of the Series 2022AB Bonds was sold to the public as the issue price of that maturity. With respect to Series 2022AB Bonds of those maturities as to which the 10% test has not been satisfied, if any, based on reporting by the Underwriter to the District on the date hereof and prior to the execution of this Purchase Contract, which maturities are indicated in Schedule I attached hereto, the Underwriter and the District agree that the rules in subsection (d) below shall apply. For purposes of this Section, for Series 2022AB Bonds maturing on the same date but having different interest rates, each separate CUSIP number for such Series 2022AB Bonds is subject to the 10% test or subsection (d) below, as the case may be, as if such separate CUSIP number were a separate maturity.

(d) The Underwriter confirms that the Underwriter has offered the Series 2022AB Bonds to the public on or before the date of this Purchase Contract at the respective offering price or prices (the “initial offering price”), or at the corresponding respective yield or yields, set forth in Schedule I attached hereto. Schedule I also sets forth, as of the date of this Purchase Contract, the maturities, if any, of the Series 2022AB Bonds for which the 10% test has not been satisfied at the time this Purchase Contract is executed and for which the District and the Underwriter agrees that the restrictions set forth in the next sentence shall apply, which will allow the District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2022AB Bonds, the Underwriter will neither offer nor sell unsold Series 2022AB Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5th) business day after the sale date; or
- (2) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2022AB Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the District promptly after the close of the fifth (5th) business day after the sale date whether it has sold 10% of that maturity of the Series 2022AB Bonds to the public at a price that is no higher than the initial offering price to the public.

(e) The Underwriter confirms that:

(1) any agreement among Underwriter, any selling group agreement and each third-party distribution agreement (to which the Underwriter is a party) relating to the initial sale of the Series 2022AB Bonds to the public, together with the related pricing wires, contains or will contain language obligating the Underwriter, each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A) (i) to report the prices at which it sells to the public the unsold Series 2022AB Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2022AB Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Series 2022AB Bonds of that maturity, and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter and as set forth in the related pricing wires, and

(B) to promptly notify the Underwriter of any sales of Series 2022AB Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Series 2022AB Bonds to the public (each such term being used as defined below),

(C) to acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Underwriter shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public.

(2) any agreement among Underwriter or selling group agreement relating to the initial sale of the Series 2022AB Bonds to the public, together with the related pricing wires, contains or will contain language obligating the Underwriter or dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Series 2022AB Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2022AB Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2022AB Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or such dealer that the 10% test has been satisfied as to the Series 2022AB Bonds of that maturity, and (B) comply with the hold-the-offering-price rule, if applicable to a particular maturity of the Series 2022AB Bonds, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(f) The District acknowledges that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Series 2022AB Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing

issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a dealer who is a member of the selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Series 2022AB Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The District further acknowledges that the Underwriter shall be solely liable for its failure to comply with its agreement regarding the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds, and that no Underwriter shall be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2022AB Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2022AB Bonds.

(g) The Underwriter acknowledges that sales of any Series 2022AB Bonds to any person that is a related party to an underwriter participating in the initial sale of the Series 2022AB Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2022AB Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2022AB Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2022AB Bonds to the public),

(3) a purchaser of any of the Series 2022AB Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Purchase Contract by all parties

4. Representations, Warranties and Agreements of the District.

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

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State of California with full legal right, power and authority to issue the Series 2022AB Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract and the Continuing Disclosure Agreement, dated June \_\_, 2022, between the District and the Digital Assurance Certification, LLC (the “Disclosure Agreement” and together with the Indenture and this Purchase Contract, the “District Documents”);

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

(c) Except as otherwise disclosed in writing by the District to the Underwriter on or prior to the date hereof, the District is not in Material Breach or Default under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series 2022AB Bonds, the execution and delivery of the District Documents and the Official Statement, and compliance with the provisions on the District’s part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term “Material Breach or Default” means

any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Wastewater System);

(d) Except as disclosed in the Preliminary Official Statement and the Official Statement or otherwise disclosed in writing by the District to the Underwriter on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series 2022AB Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series 2022AB Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series 2022AB Bonds; or (vi) contesting the status of the interest on the Series 2022ABA Bonds as excludable from federal gross income as described in the Preliminary Official Statement and in the Official Statement; or (vii) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) wherein an unfavorable ruling or finding would result in any material adverse change in the business operations or financial condition of the District or the Wastewater System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series 2022AB Bonds;

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

(g) The Series 2022AB Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriter as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series 2022AB Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Wastewater Revenues (as defined in the Indenture) and the funds

and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series 2022AB Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Official Statement;

(i) The financial statements of the District contained in the Official Statement fairly present the financial position and results of operations of the District as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Wastewater System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Series 2022AB Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine the eligibility of the Series 2022AB Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series 2022AB Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject;

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

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined below) for the Series 2022AB Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series 2022AB Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under

which it was presented, not misleading, the District will notify the Underwriter, and, if in the opinion of the District, the Underwriter or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriter (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter and its counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series 2022AB Bonds, the District will furnish such information with respect to itself as the Underwriter may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series 2022AB Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series 2022AB Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Underwriter on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series 2022AB Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series 2022AB Bonds the date specified as such in a notice from the Underwriter stating the date which is the End of the Underwriting Period;

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

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Underwriter (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District will apply, or cause the application of, the proceeds of the Series 2022AB Bonds in accordance with the Indenture;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriter in connection with the execution and delivery of the Series 2022AB Bonds, shall be deemed a representation and warranty by the District to the Underwriter as to the statements made therein; and

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

5. Conditions to the Obligations of the Underwriter.

The Underwriter hereby enters into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriter's obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Series 2022AB Bonds shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

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

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

(c) At the Closing, the District Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the District, all in substantially the forms heretofore submitted to the Underwriter, with only such changes as shall have been agreed to in writing by the Underwriter (which consent shall not be unreasonably withheld), and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the Board of Directors of the District as, in the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California ("Co-Bond Counsel"), and Orrick, Herrington & Sutcliffe LLP, San Francisco, California,

counsel to the Underwriter (hereinafter, “Underwriter’s Counsel”), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering prices set forth in the Official Statement, of the Series 2022AB Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriter (evidenced by a written notice to the District terminating the obligation of the Underwriter to accept delivery of and make any payment for the Series 2022AB Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Underwriter, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series 2022AB Bonds which, in the reasonable judgment of the Underwriter, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series 2022AB Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series 2022AB Bonds, or the Series 2022AB Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

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

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

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series 2022AB Bonds or obligations of the general character of the Series 2022AB Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series 2022AB Bonds, or the issuance, offering or sale of the Series 2022AB Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series 2022AB Bonds or the underlying rating of any of the District's Wastewater System Revenue Bonds by a national rating agency then rating the Series 2022AB Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriter, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriter, to materially adversely affect the market for the Series 2022AB Bonds or the sale of the Series 2022AB Bonds, at the contemplated offering prices (or yields).

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

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

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

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

(4) Opinions of Strandling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, and Curls Bartling P.C., Oakland, California (“Co-Disclosure Counsel”), each dated the Closing Date and addressed to the Underwriter in substantially the form attached hereto as Exhibit C;

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

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

(7) The opinion of Underwriter’s Counsel, dated the Closing Date and addressed to the Underwriter, to the effect that (a) the Series 2022AB Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriter, nothing has come to their attention which would cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through G thereto, and information regarding DTC and its book-entry only system;

(8) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriter, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official’s knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 2021, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Wastewater System, in any

such case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series 2022AB Bonds; and (d) the projected operating results and debt service coverage contained in Table [18] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

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

(10) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Indenture;

(11) a copy of the Preliminary Official Statement;

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

(13) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series 2022AB Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

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

(15) A copy of the Blue Sky Memorandum with respect to the Series 2022AB Bonds, prepared by Underwriter' Counsel;

(16) A Tax Certificate signed by the District relating to the Series 2022AB Bonds, in form and substance satisfactory to Co-Bond Counsel;

(17) A copy of the Blanket Letter of Representations to DTC relating to the Series 2022AB Bonds signed by the District; and

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

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

6. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series 2022AB Bonds to the Underwriter, including the costs of printing of the Series 2022AB Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series 2022AB Bonds and the fees and expenses of Co Bond Counsel shall be paid either from the proceeds of the Series 2022AB Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriter's discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract, including, but not limited to, meals, transportation and lodging, of those employees. In the event that the Series 2022AB Bonds for any reason are not executed and delivered, or to the extent proceeds of the Series 2022AB Bonds are insufficient or unavailable therefor, any such fees, costs and expenses owed by the District, which otherwise would have been paid from the proceeds of the Series 2022AB Bonds, shall be paid by the District. The District shall pay the reasonable out-of-pocket expenses of the Underwriter (included in the expense component of the Underwriter's discount), including the fees and expenses of Underwriter's Counsel, travel and other expenses and the California Debt and Investment Advisory Commission fee. In the event that the Underwriter incur or advance the cost of any expense for which the District is responsible hereunder, the District shall reimburse the Underwriter at or prior to Closing; if at Closing, reimbursement may be included in the expense component of the Underwriter's discount. To the extent that the Underwriter has incurred expenses on behalf of the District which are to be reimbursed to the Underwriter or included as a component of the Underwriter's discount, the Underwriter agree to provide the District, with a detailed itemization of any such expenses prior to the Closing Date.

7. Notices.

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

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

Underwriter: Siebert Williams Shank & Co., LLC  
1999 Harrison St., Suite 2720  
Oakland, California 94612  
Attention: Gary Hall

8. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriter and regardless of delivery of and payment for the Series 2022AB Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriter; (ii) delivery of and payment for the Series 2022AB Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

9. Effectiveness and Counterpart Signatures.

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

10. Parties in Interest.

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

11. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriter with respect to the purchase of the Series 2022AB Bonds.

12. Headings.

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

13. Governing Law.

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

Very truly yours,

SIEBERT WILLIAMS SHANK & CO., LLC,

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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

SCHEDULE 1

[To come]

EXHIBIT A

**FORM OF ISSUE PRICE CERTIFICATE**

\$[\_\_\_\_\_]

**EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WASTEWATER REVENUE REFUNDING BONDS,  
SERIES 2022B**

The undersigned, as the duly authorized representative of Siebert Williams Shank & Co., LLC (the “Underwriter”), contract with respect to the East Bay Municipal Utility District Wastewater Revenue Bonds Series 2022A (Green Bonds) and East Bay Utility District Wastewater Revenue Refunding Bonds, Series 2022B (collectively, the “Bonds issued by the East Bay Municipal Utility District (the “Issuer”) in the principal amount of \$[\_\_\_\_], hereby certifies, based on its records and information, as follows:

1. ***Sale of the General Rule Maturities.*** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities.***

(a) The Underwriter offered the Hold-the-Offering Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the Purchase Contract, the Underwriter has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, the Underwriter would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. No information has come to the attention of the Underwriter that any underwriter has offered or sold any unsold Bonds of any Maturity of the Bonds at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms.***

(a) “General Rule Maturities” means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”

(b) “Hold-the-Offering-Price” Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”

(c) “Holding Period” means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Syndicate has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) Maturity means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(e) Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an underwriter or a related party to an underwriter. The term “related party” for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(f) Sale Date means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is May \_\_, 2022.

(g) underwriter means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Representative’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., Co-Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds. Notwithstanding anything set forth herein, the Underwriter is not engaged in the practice of law and makes no representation as to the legal sufficiency of the factual matters set forth herein.

EXECUTED and DELIVERED as of this \_\_\_\_ day of June, 2022.

SIEBERT WILLIAMS SHANK & CO., LLC

By: \_\_\_\_\_  
[Name]  
[Title]

## **SCHEDULE A**

### **SALE PRICES OF THE GENERAL RULE MATURITIES AND INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES**

**SCHEDULE B**  
**PRICING WIRE OR EQUIVALENT COMMUNICATION**

ATTACHMENT C TO  
ISSUE PRICE CERTIFICATE

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)

and

WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2022AB

FORM OF UNDERWRITER CERTIFICATE

The undersigned, on behalf of [UNDERWRITER (“UW”) FULL NAME] (“[UW DEFINED NAME]”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. *Initial Offering Price of the Hold-the-Offering-Price Maturities.*

(a) [UW DEFINED NAME] and any broker-dealer that is participating in the initial sale of the Bonds as a party to a retail or other third-party distribution agreement with [UW DEFINED NAME] (if any) offered certain Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) to the Issue Price Certificate of Seibert Williams Shank & Co., LLC, to which this certificate is attached as Attachment C on or before the Sale Date. Those Hold-the-Offering Price Maturities that have been offered to the Public by [UW DEFINED NAME] and any broker-dealer that is participating in the initial sale of the Bonds as a party to a retail or other third-party distribution agreement with [UW DEFINED NAME] (if any) are set forth in Schedule A-1 hereto.

(b) Neither [UW DEFINED NAME] nor any broker-dealer that is participating in the initial sale of the Bonds as a party to a retail or other third-party distribution agreement with [UW DEFINED NAME] (if any) has offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities allocated to [UW DEFINED NAME] identified in Schedule A-1 attached hereto at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period. [UW DEFINED NAME] has not entered into a retail or other third-party distribution agreement, directly or indirectly, to participate in the initial sale of any of the Bonds to the Public [other than] [NAME OF ANY FIRM WITH WHICH [UW DEFINED NAME] HAS A RETAIL OR OTHER THIRD-PARTY DISTRIBUTION AGREEMENT].

2. *Defined Terms.*

(a) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds where issue price was established under Section § 1.148-1(f)(2)(ii) of the Treasury Regulations, as which Maturities are set forth in Schedule A-1 hereto.

ATTACH C-1

(b) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(c) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates or CUSIP identification numbers, are treated as separate maturities.

(d) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(e) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, 2022.

(f) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Authority (or with the Representative or lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail or other third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the [UW DEFINED NAME]’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by East Bay Municipal Utility District (the “Issuer”) with respect to certain of the representations set forth in the Tax Certificate with respect to the Bonds and with respect to compliance with the federal income tax rules affecting the Bonds, and by Stradling, Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C. bond counsel with respect to the Bonds, in connection with rendering its opinion that the interest, on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

[UW FULL NAME], as Underwriter

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 2022

SCHEDULE A-1

HOLD-THE-OFFERING-PRICE MATURITIES  
ALLOCABLE TO [UW DEFINED NAME]

[Insert any HTOP Maturities for which this UW has an allocation]

EXHIBIT B  
FORM OF SUPPLEMENTAL OPINION OF  
CO-BOND COUNSEL  
[CLOSING DATE]

Siebert Williams Shank & Co., LLC,  
Oakland, California

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance, sale and delivery of the District’s Wastewater System Revenue Bonds, Series 2022A (Green Bonds), in the aggregate principal amount of \$\_\_\_\_\_, and the District’s Wastewater System Revenue Refunding Bonds, Series 2022B, in the aggregate principal amount of \$\_\_\_\_\_ (collectively, the “Bonds”), issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee, as amended and supplemented, including as amended and supplemented by an Twentieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Bonds (collectively, the “Indenture”).

The Bonds are being sold on the date hereof by the District to Siebert Williams Shank & Co., LLC, as Underwriter, pursuant to a Purchase Contract, dated May \_\_, 2022 (the “Purchase Contract”).

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated May \_\_, 2022, relating to the Bonds (the “Official Statement”).

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

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

1. The statements contained in the Preliminary Official Statement, dated May \_\_, 2022, relating to the Bonds (the “Preliminary Official Statement”) and in the Official Statement on the cover and under the captions “INTRODUCTION,” “THE SERIES 2022AB BONDS,” and “SECURITY FOR THE SERIES 2022AB BONDS,” and in “APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE,” and “APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT” (excluding the statements under each such caption relating to The Depository Trust Company (“DTC”), Cede & Co. and the book-entry system, and any statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the laws of any jurisdiction, as to all of which we express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Wastewater Interest Rate Swap Agreements and the Extendable Municipal Commercial Paper Notes (Wastewater Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

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

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

4. The issuance of the Bonds, the execution and delivery of the Twentieth Supplemental Indenture, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or Resolution No. 33705-09 of the District, adopted on March 10, 2009, authorizing the District’s extendable commercial paper program.

The opinions and conclusions expressed herein are limited to matters under and governed by the laws of the State of California and the federal securities law of the United States, and we

assume no responsibility with respect to the applicability or effect of the laws of any other jurisdiction.

This letter is furnished by us as co-bond counsel to the District. No attorney client relationship has existed or exists between our firm and yourselves in connection with the Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you as the representative of the Underwriter of the Bonds, is solely for the benefit of the Underwriter in connection with your purchase of the Bonds, and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to be relied upon by owners of the Bonds.

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF CO-DISCLOSURE COUNSEL

[CLOSING DATE]

East Bay Municipal Utility District  
Oakland, California

Siebert Williams Shank & Co., LLC,  
Oakland, California

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B

Ladies and Gentlemen:

We have acted as co-disclosure counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance, sale and delivery of the District’s Wastewater System Revenue Bonds, Series 2022A (Green Bonds), in the aggregate principal amount of \$ \_\_\_\_\_ and Wastewater System Revenue Refunding Bonds, Series 2022B, in the aggregate principal amount of \$ \_\_\_\_\_, (collectively, the “Bonds”). The Bonds are being issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee, as amended and supplemented, including as amended and supplemented by a Twentieth Supplemental Indenture, dated as of June 1, 2022, providing for the issuance of the Bonds (collectively, the “Indenture”). The Bonds were sold by the District to Siebert Williams Shank & Co., LLC, as underwriter (the “Underwriter”), pursuant to a Purchase Contract, dated May \_\_, 2022 (the “Purchase Contract”), between the District and the Underwriter.

We have reviewed the Preliminary Official Statement of the District dated May \_\_, 2022 with respect to the Bonds (the “Preliminary Official Statement”) and the Official Statement of the District dated May \_\_, 2022 with respect to the Bonds (the “Official Statement”), the letters, certificates and opinions delivered pursuant to Section 5(e) of the Purchase Contract and otherwise in connection with the Bonds on the date hereof, and such other records, opinions and documents, and we have made such investigations of law and fact, as we have deemed appropriate as a basis for the conclusions hereinafter expressed. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Preliminary Official Statement and the Official Statement.

We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine, and that all documents submitted to us are authentic and were duly and properly executed by the parties thereto. We have also assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof.

The conclusions that are expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such conclusions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform you or any other person, whether any such actions are taken or omitted or whether such events do occur or any other matters come to our attention after the date hereof.

In our capacity as co-disclosure counsel, we have rendered certain legal advice and assistance to the District in connection with the preparation of the Preliminary Official Statement and the Official Statement. Rendering such legal advice and assistance involved, among other things, discussions and inquiries concerning various legal matters, review of certain records, documents and proceedings, and participation in conferences with, among others, representatives of the District, the District's General Counsel, Montague DeRose and Associates, LLC, as municipal advisor to the District, the Underwriter, Orrick, Herrington & Sutcliffe LLP, as counsel to the Underwriter, and others, during which conferences the contents of the Preliminary Official Statement and the Official Statement and related matters were discussed. On the basis of the information made available to us in the course of the foregoing (but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement), as of the date hereof no facts have come to the attention of the personnel in our firm directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement and the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of the Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, underwriter's discount, ratings and CUSIP numbers, or (b) the Official Statement as of its date or as of the date hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and

operation of any projects of the District, and the status thereof, the description of any litigation, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view). We advise you that, other than reviewing the various certificates and opinions required by Section 5(e) of the Purchase Contract regarding the Preliminary Official Statement and the Official Statement, we have not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Preliminary Official Statement or the Official Statement as of the date hereof.

By acceptance of this letter you acknowledge that: (i) the preceding paragraph is neither a legal opinion nor a guarantee regarding the contents of the Preliminary Official Statement or the Official Statement but rather merely a statement of negative assurance regarding the absence of factual information that came to the attention of the attorneys in our firm during the limited activities we performed as co-disclosure counsel to the District on this matter; (ii) the scope of the activities performed by such attorneys in our role as co-disclosure counsel was inherently limited and does not purport to encompass all activities that the District may be responsible to undertake in preparing the Preliminary Official Statement and Official Statement; (iii) the activities performed by us relied substantially in part on representations, warranties, certifications and opinions made by the District and others, and are otherwise subject to the matters set forth in this letter; and (iv) while statements of negative assurance are customarily given to underwriters of municipal bonds to assist them in discharging their responsibilities under federal securities laws, the responsibilities of the District under those laws may differ from those of underwriters in material respects, and the preceding paragraph may not serve the same purpose or provide the same utility to them as it would to the underwriters.

The conclusions expressed in this letter are limited to matters governed by the federal securities law of the United States, and we assume no responsibility with respect to the applicability or effect of the laws of any other jurisdiction.

We are furnishing this letter as co-disclosure counsel to the District, and not as counsel to the Underwriter. No attorney-client relationship has existed or exists between our firm and the Underwriter in connection with the Bonds or by virtue of this letter. We note that the Underwriter is represented by separate counsel retained by them in connection with the sale of the Bonds. This letter is delivered in connection with such transaction, and may not be used, circulated, quoted or otherwise referred to or relied upon by, any other person, firm, corporation or other entity, or filed with any governmental or other administrative agency for any purpose, without our prior written consent. Our engagement with respect to this matter terminates upon the delivery of this letter to you on the date hereof, and we have no obligation to update this letter.

Respectfully submitted,

EXHIBIT D

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

Siebert Williams Shank & Co., LLC,  
Oakland, California

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the “District”), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 4(e)(4) of the Purchase Contract (the “Purchase Contract”) dated May \_\_, 2022 between the District and Siebert Williams Shank & Co., LLC, the (“Underwriter”) relating to the sale of \$\_\_\_\_\_ aggregate principal amount of the District’s Wastewater System Revenue Bonds, Series 2022A (the “Series 2022ABonds”) and \$\_\_\_\_\_ aggregate principal amount of the District’s Wastewater System Revenue Refunding Bonds, Series 2022B (collectively with the Series 2022A Bonds, the “Series 2022AB Bonds”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract or if not defined therein, in the Official Statement dated May \_\_, 2022, relating to the Series 2022AB Bonds (the “Official Statement”).

In rendering this opinion, I have examined the following documents: (i) the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the Twentieth Supplemental Indenture dated as of June 1, 2022 by and between the District and the Trustee (collectively, the “Indenture”); (ii) the Continuing Disclosure Agreement, dated June \_\_, 2022, by and between the District and the Digital Assurance Certification, LLC; (iii) the Preliminary Official Statement, dated May \_\_, 2022, relating to the Series 2022AB Bonds (the “Preliminary Official Statement”) and the Official Statement; (iv) the Series 2022AB Bonds; and (v) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement and the Purchase Contract are collectively referred to herein as the “District Documents.” In addition, I call attention to the fact

that the rights and obligations under the District Documents, the Series 2022AB Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.

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

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

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series 2022AB Bonds, the District Documents and the Official Statement (the "Resolutions") were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Preliminary Official Statement and the Official Statement or otherwise disclosed in writing by the District to the Underwriter on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my actual knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series 2022AB Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series 2022AB Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series 2022AB Bonds or the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series 2022AB Bonds; or (vi) contesting the status of the interest on the Series 2022ABA Bonds as excludable from federal gross income as described in the Preliminary Official Statement and in the Official Statement; or (vii) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) wherein an unfavorable ruling or finding would result in any material adverse change in the business operations or financial condition of the District or the Wastewater System.

(4) The issuance of the Series 2022AB Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate, to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default

under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Preliminary Official Statement and the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to me during the preparation of the Preliminary Official Statement and the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that (i) the information contained in the Preliminary Official Statement under the captions “THE DISTRICT,” “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A—“THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” (excluding therefrom forecasts, projections, estimates, assumptions and the financial and statistical data included in the Preliminary Official Statement, as to which no opinion is expressed), as of the date of the Purchase Contract, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (ii) the information contained in the Official Statement under the captions “THE DISTRICT,” “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A—“THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” (excluding therefrom forecasts, projections, estimates, assumptions and the financial and statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System and is not presently subject to the regulatory jurisdiction of any state,

regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series 2022AB Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

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

Very truly yours,

Derek T. McDonald  
General Counsel

EXHIBIT E

FORM OF TRUSTEE COUNSEL’S OPINION

[CLOSING DATE]

Siebert Williams Shank & Co., LLC,  
Oakland, California

EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE BONDS,  
SERIES 2022A (GREEN BONDS)  
and  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS  
SERIES 2022B

Ladies and Gentlemen:

I have acted as special counsel to U.S. Bank Trust Company, National Association, as successor trustee (“USB”), in connection with the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the “District”) and USB, as amended and supplemented, including as amended and supplemented by an Twentieth Supplemental Indenture, dated as of June 1, 2022 (the “Twentieth Supplemental Indenture” and collectively, the “Indenture”), in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Wastewater System Revenue Bonds, Series 2022A (Green Bonds), and \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2022B (collectively, the “Bonds”). This opinion is rendered pursuant to Section 5(e)(5) of the Purchase Contract, dated May \_\_, 2022 (the “Purchase Contract”), between the District and Siebert Williams Shank & Co., LLC. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In my capacity as counsel to USB, I have examined originals or copies identified to my satisfaction of: (i) the Articles of Association and By-Laws of USB, (ii) the Indenture, and (iii) such other records, certificates and documents as I have considered necessary or appropriate for the purpose of the opinion hereinafter rendered.

In rendering this opinion, I have relied upon the facts and information obtained from the records of USB, officers of USB, and other sources believed by me to be reliable, and have not undertaken to independently verify the accuracy of the factual matters represented, warranted, or certified in such documents. I have assumed the genuineness of all signatures other than USB’s, the authenticity of documents, certificates and records submitted to me as originals, the conformity to the originals of all documents, certificates and records submitted to me as copies, the legal capacity of all natural persons executing documents other than USB’s, and the completeness and accuracy as of the date of this opinion letter of the information contained in

such documents, certificates and records, which assumptions I have not independently verified. The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions.

Based upon and subject to the foregoing and subject to the qualifications set forth below, I am of the opinion that:

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

2. USB has taken all corporate action necessary to assume the duties and obligations of trustee under the Indenture and to authorize in such capacity the execution and delivery of the Twentieth Supplemental Indenture and the acceptance of the duties of USB under the foregoing does not and will not contravene any law or governmental regulation or order presently binding on USB or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which USB is a party or by which USB is or may be bound.

3. USB has duly executed and delivered the Twentieth Supplemental Indenture and the Indenture, assuming due authorization, execution and delivery by the District, constitutes the legal, valid and binding obligation of USB, enforceable in accordance with its terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, and other similar laws affecting the rights and remedies of creditors generally, and by the effect of general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, whether considered in a proceeding at law or in equity.

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

I express no opinion as to any matter other than as expressly set forth above, and, in conjunction therewith, I specifically express no opinion as to the status of the Bonds or the interest thereon under any federal securities laws, including but not limited to the Securities Act of 1933, as amended, and the Trust Indenture Act of 1939, as amended, or any state securities or "Blue Sky" law, or any federal, state or local tax law.

This opinion is as of the date hereof, and I have undertaken no, and hereby disclaim any, obligation to advise you of any change in any matter set forth herein even though the changes may affect a legal analysis or conclusion in this opinion letter. Further, this opinion neither implies, nor should it be viewed to imply, an approval or recommendation of any investment in any Bond.

I express no opinion as to the effect of any law other than the law of California and the federal laws of the United States of America on the matters referred to herein, in each case as they exist on the date hereof. I express no opinion with respect to the laws, regulations, or ordinances of any county, municipal or other local governmental agency.

This opinion is furnished by me solely for your benefit. This opinion letter may be relied upon by you only in connection with the transaction described in the initial paragraph of this opinion letter and may not be used or relied upon by you for any other purpose or by any other person for any purpose whatsoever without, in each instance, my prior written consent.

Respectfully submitted,

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

AUTHORIZE AND APPROVE THE ISSUANCE OF NOT TO EXCEED \$45 MILLION AGGREGATE PRINCIPAL AMOUNT OF EAST BAY MUNICIPAL UTILITY DISTRICT WASTEWATER SYSTEM REVENUE BONDS, SERIES 2022A AND WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2022B; APPROVE THE FORM AND AUTHORIZE THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND APPROVE CERTAIN ACTIONS RELATING THERETO

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the “District”) is authorized by Section 12850 *et seq.* of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California (the “Act”), to issue revenue bonds; and

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

WHEREAS, pursuant to authority granted under the Act, the District has entered into a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990 (the “Bond Indenture”), by and between the District and First Interstate Bank of California, which has been succeeded by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as amended and supplemented; and

WHEREAS, the Bond Indenture provides that the District may issue additional wastewater system revenue bonds as well as refunding bonds thereunder (any such bonds referred to herein as “Bonds”) from time to time as authorized by a supplemental indenture; and

WHEREAS, pursuant to Resolution No. 33987-12 adopted by the Board of Directors (the “Board”) of the District on September 25, 2012, the District has heretofore authorized and issued its Wastewater System Revenue Refunding Bonds, Series 2012A (the “Series 2012A Bonds”), in the aggregate principal amount of \$20,000,000, pursuant to a Sixteenth Supplemental Indenture, dated as of October 1, 2012, supplementing the Bond Indenture, of which \$20,000,000 aggregate principal amount is outstanding as of the date hereof; and

WHEREAS, pursuant to Resolution No. 33871-10 adopted by the Board on September 14, 2010, the Board declared its intention to authorize the issuance of up to \$200,000,000 principal amount of wastewater system revenue bonds; and, as of the date hereof, \$13,975,000 principal amount of such wastewater system revenue bonds have been issued under the authority of Resolution No. 33871-10; and

WHEREAS, pursuant to the Act and the Bond Indenture, and under the authority of Resolution No. 33871-10, the Board has determined to authorize the issuance of one or more series of revenue Bonds to be designated “East Bay Municipal Utility District Wastewater System Revenue Bonds, Series 2022A,” with such further or other designation, as may be determined appropriate at the

time of the sale of such Bonds, if any, to further identify such Bonds, including, if so determined, to provide for the designation and sale of such Bonds as “green bonds” (herein called the “Series 2022A Bonds”); and

WHEREAS, pursuant to the Act, the Refunding Act and the Bond Indenture, the Board has further determined to authorize the issuance of one or more series of revenue refunding Bonds to be designated “East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2022B,” with such further or other designation as may be determined appropriate at the time of sale of such Bonds, if any, to further identify such Bonds, including, if so determined, to provide for the designation and sale of such Bonds in additional series or subseries (herein called the “Series 2022B Bonds”); and

WHEREAS, the Series 2022 Bonds will be issued in a combined aggregate principal amount not to exceed \$45,000,000, for the purpose of providing moneys (i) to finance and/or reimburse the District for certain costs of improvements to the wastewater collection, treatment and disposal system of the District, (ii) to refund all or a portion of the outstanding Series 2012A Bonds and/or any other series of outstanding Bonds eligible for refunding, subject to the parameters of this Resolution, as determined by the officers of the District in accordance with Section 7 of this Resolution (such Bonds to be refunded, the “Refunded Bonds”), and (iii) to pay costs of issuance related to the Series 2022 Bonds; and

WHEREAS, in order to provide for the issuance of the Series 2022 Bonds under the Bond Indenture and the terms thereof, the District intends to enter into a Twentieth Supplemental Indenture (as hereinafter defined) to the Bond Indenture, by and between the District and the Trustee; and

WHEREAS, pursuant to one or more purchase contracts, by and between the District and the Underwriter (as hereinafter defined), the Underwriter will purchase the Series 2022 Bonds and the District will deliver the Series 2022 Bonds to the Underwriter, upon certain conditions as provided therein; and

WHEREAS, in order to provide a continuing disclosure undertaking pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with the Series 2022 Bonds, the District intends to enter into one or more continuing disclosure agreements, by and between the District and Digital Assurance Certification, LLC, as dissemination agent thereunder; and

WHEREAS, the Underwriter will distribute a preliminary and final official statement (including any supplements or amendments thereto) relating to the Series 2022 Bonds to prospective and actual purchasers of the Series 2022 Bonds; and

WHEREAS, California Government Code Section 5852.1 requires that the Board obtain from an underwriter, financial advisor or private lender and disclose, prior to authorization of the issuance of bonds with a term of greater than 13 months, good faith estimates of the following information in a meeting open to the public: (a) the true interest cost of the bonds, (b) the sum of all fees and charges paid to third parties with respect to the bonds, (c) the amount of proceeds of the bonds expected to be received net of the fees and charges paid to third parties and any reserves or

capitalized interest paid or funded with proceeds of the bonds, and (d) the sum total of all debt service payments on the bonds calculated to the final maturity of the bonds plus the fees and charges paid to third parties not paid with the proceeds of the bonds; and

WHEREAS, in compliance with Government Code Section 5852.1, the Board has obtained from Montague DeRose and Associates, LLC, the District's Municipal Advisor in connection with the Series 2022 Bonds, the required good faith estimates and such estimates are disclosed and set forth on Exhibit A attached hereto; and

WHEREAS, it is desirable that the Board provide for the issuance, securing and sale of the Series 2022 Bonds at this time; and

WHEREAS, there has been presented to this Board meeting proposed forms of certain financing documents relating to the Series 2022 Bonds and the issuance, sale and delivery thereof;

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

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

Section 2. Authorization of Series 2022 Bonds. The issuance of the Series 2022 Bonds in one or more series or subseries (with such additional or other identifying designations, including the applicable alphabetical letter or numbering sequence designation for a series or subseries) as may be determined by the General Manager, the Director of Finance or the Treasury Manager, on the terms and conditions set forth in, and subject to the limitations specified in, the Twentieth Supplemental Indenture is hereby authorized and approved. The Series 2022 Bonds will be dated, will bear interest at the rates, will mature on the dates, will be issued in the form, will be subject to redemption (if applicable), and will be as otherwise provided in the Twentieth Supplemental Indenture as the same is completed as provided in this Resolution. The proposed form of the Series 2022 Bonds, as set forth in the Twentieth Supplemental Indenture, is hereby approved and the President of the Board of Directors of the District is hereby authorized and directed to execute (by manual or facsimile signature) for and on behalf of the District the Series 2022 Bonds in substantially such form and the Secretary of the District is authorized and directed to attest (by manual or facsimile signature) thereto, and the Trustee is hereby authorized and directed to authenticate and deliver the Series 2022 Bonds to the Underwriter in accordance with the Purchase Contract (as hereinafter defined) and the Twentieth Supplemental Indenture; provided, however, that (i) the combined aggregate principal amount of Series 2022 Bonds shall not exceed \$45,000,000, (ii) the final maturity of any of the Series 2022 Bonds shall not be later than June 1, 2052, and (iii) the true interest cost to the District of the Series 2022 Bonds shall not exceed 5.00% per annum. Further, the issuance and delivery of the Series 2022B Bonds shall be subject to the additional condition that the net present value of the savings to the District from the delivery of any Series 2022B Bonds issued for the purpose of refunding Refunded Bonds shall be not less than three percent (3.00%) of the aggregate par amount of the Refunded Bonds refunded thereby.

Subject to the foregoing limitations, the issuance of the Series 2022A Bonds and Series 2022B Bonds for the purposes as authorized by this Resolution may be effected in one or more

transactions as warranted by market conditions. In the event the Series 2022 Bonds are issued in multiple transactions, the authority granted by this Resolution shall include such additional bond series and one or more of each of the documents the forms of which have been approved by this Resolution with such additional or other series or numerical designations and other changes as necessary or convenient to effect such transactions. Further, the Series 2022 Bonds of any series may be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended, as determined by the Director of Finance of the District, upon the advice of Stradling Yocca Carlson & Rauth, a Professional Corporation, and Curls Bartling P.C., the District's Co-Bond Counsel.

Section 3. Approval of Twentieth Supplemental Indenture. The General Manager, the Director of Finance or the Treasury Manager of the District or the designee of any of such officers (hereinafter, each a "Designated Officer") is hereby authorized and directed to execute for and on behalf of the District, and the Secretary of the District shall attest thereto, one or more supplemental indentures to the Bond Indenture in connection with the issuance of the Series 2022 Bonds (the herein-referenced Twentieth Supplemental Indenture), in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the Series 2022 Bonds) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof). The supplemental indenture, as executed and delivered, is herein referred to as the "Twentieth Supplemental Indenture" and such Twentieth Supplemental Indenture is hereby approved.

Section 4. Selection of Underwriter; Approval of Purchase Contract. The Board hereby approves the engagement of Siebert Williams Shank & Co., LLC (the "Underwriter") in connection with the negotiated sale of the Series 2022 Bonds. Each Designated Officer, acting singly, is hereby authorized and directed to execute for and on behalf of the District one or more purchase contracts for the Series 2022 Bonds, in substantially the form of the purchase contract submitted to this meeting, with such changes, insertions and omissions (and additions thereto to reflect the terms of the sale of the Series 2022 Bonds) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof); provided, however, that the Underwriter's discount with respect to the Series 2022 Bonds may not exceed 0.40 % of the aggregate principal amount of the Series 2022 Bonds purchased thereunder. The purchase contract, as executed and delivered, is hereinafter referred to as the "Purchase Contract" and such Purchase Contract is hereby approved.

Section 5. Approval of Continuing Disclosure Agreement. Each Designated Officer, acting singly, is hereby authorized and directed to execute for and on behalf of the District one or more continuing disclosure agreements for the Series 2022 Bonds, in substantially the form of the continuing disclosure agreement submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel, such approval to be evidenced by the execution and delivery thereof. The continuing disclosure agreement, as executed and delivered, is hereinafter referred to as the "Continuing Disclosure Agreement" and such Continuing Disclosure Agreement is hereby approved.

Section 6. Approval of Preliminary Official Statement and Final Official Statement. The Board hereby approves the form of preliminary official statement of the District relating to the Series 2022 Bonds, in substantially the form as submitted to this meeting, with such additions thereto and changes therein (including such changes and additions to reflect the terms of the Series 2022 Bonds) as are approved by a Designated Officer after consultation with the District's General Counsel and Co-Bond Counsel. The Director of Finance, the Treasury Manager or a designee of either of such officers designated to act on behalf of such officer for such purpose, is hereby authorized to authorize the Underwriter to distribute or cause to be distributed (via printed format and/or through electronic means) in connection with the sale of the Series 2022 Bonds a preliminary official statement to prospective purchasers of the Series 2022 Bonds. The Director of Finance or the Treasury Manager or a designee of either of such officers designated to act on behalf of such officer for such purpose, is hereby authorized to certify that the preliminary official statement is as of its date "deemed final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

The General Manager or the Director of Finance or any designee of the General Manager designated by the General Manager in writing to act on behalf of such officer for such purpose is hereby authorized to cause to be prepared and to execute for and on behalf of the District a final official statement in substantially the form of the preliminary official statement with such changes therein and additions or supplements thereto to reflect the terms of the sale of the Series 2022 Bonds and to comply with applicable federal securities laws as a Designated Officer shall approve after consultation with the District's General Counsel and Co-Bond Counsel, such approval to be evidenced by the execution and delivery by the District of the official statement. The Director of Finance, the Treasury Manager or a designee of either of such officers designated to act on behalf of such officer for such purpose, is hereby authorized to authorize the Underwriter to distribute (via printed format and/or through electronic means) the final official statement (and any supplement thereto) in connection with the sale and delivery of the Series 2022 Bonds.

Section 7. Authorization to Make Certain Determinations in Connection with Refunding. Notwithstanding anything in this Resolution to the contrary but subject to the parameters set forth herein, the Director of Finance is hereby authorized to determine the outstanding Bonds of the District to be refunded in connection with the issuance of the Series 2022 Bonds, which may include all or a portion of the District's other outstanding Bonds in addition to the Series 2012A Bonds, which determination shall be made taking into account the advice of the District's Municipal Advisor, and on the basis of what bond structure in light of the existing market conditions is in the best interest of the District, which determinations shall be conclusively evidenced by the issuance and delivery of the Series 2022 Bonds.

Section 8. Additional Actions. The Designated Officers and all such other proper officers of the District be and they hereby are authorized, individually and collectively, to take all actions and execute any and all documents necessary: to engage U.S. Bank Trust Company, National Association as trustee and paying agent under the Twentieth Supplemental Indenture; to effect the sale and delivery of the Series 2022 Bonds pursuant to the Purchase Contract and the Bond Indenture as supplemented; and to do any and all things and to execute and deliver such other agreements, documents and certificates, including (without limitation) executing and delivering one or more tax certificates relating to the Series 2022 Bonds, any investment agreements relating to the investment of the Series 2022 Bond proceeds, any escrow agreement

relating to the refunding of Refunded Bonds, and taking any and all actions to provide for the giving of written directions and notices, and the securing of any necessary third party approvals or consents in connection with the issuance of the Series 2022 Bonds, and the refunding of the Refunded Bonds, as may be necessary, convenient, or advisable in order to consummate the sale, execution and delivery of the Series 2022 Bonds, and the refunding of the Refunded Bonds, and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Series 2022 Bonds, the Bond Indenture, the Twentieth Supplemental Indenture, the Purchase Contract, the Continuing Disclosure Agreement, the preliminary official statement(s) and the final official statement(s) and the transactions herein authorized. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

ADOPTED this 26<sup>th</sup> day of April, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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President

ATTEST:

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

{00072312;1}

## EXHIBIT A

### GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the East Bay Municipal Utility District Wastewater System Revenue Bonds, Series 2022 (the “Series 2022 Bonds”) in compliance with Section 5852.1 of the California Government Code. Such good faith estimates have been provided to the East Bay Municipal Utility District (the “District”) by Montague DeRose and Associates, LLC, as municipal advisor to the District (the “Municipal Advisor”).

*Principal Amount.* The Municipal Advisor has informed the District that, based on the District’s financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Series 2022 Bonds to be sold is \$35,290,000 (the “Estimated Principal Amount”).

*True Interest Cost of the Series 2022 Bonds.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Series 2022 Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2022 Bonds, is 3.03%.

*Finance Charge of the Series 2022 Bonds.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Series 2022 Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Series 2022 Bonds), is \$416,604.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the District for sale of the Series 2022 Bonds, less the finance charge of the Series 2022 Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Series 2022 Bonds, is \$40,043,801.

*Total Payment Amount.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the District will make to pay debt service on the Series 2022 Bonds, plus the finance charge for the Series 2022 Bonds, as described above, not paid with the proceeds of the Series 2022 Bonds, calculated to the final maturity of the Series 2022 Bonds, is \$54,813,521.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Series 2022 Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series 2022 Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series 2022 Bonds sold being different from the Estimated Principal Amount, (c) the actual

amortization of the Series 2022 Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series 2022 Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the District's financing plan, or a combination of such factors. The actual date of sale of the Series 2022 Bonds and the actual principal amount of Series 2022 Bonds sold will be determined by the District based on the need for project funds and other factors. The actual interest rates borne by the Series 2022 Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series 2022 Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the District. The Board has approved the issuance of the Series 2022 Bonds with a maximum true interest cost of 5.00%.



AGENDA NO. 10.  
MEETING DATE April 26, 2022

**TITLE    2022 WATER SUPPLY AVAILABILITY AND DEFICIENCY REPORT**

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

**RECOMMENDED ACTION**


1. File the 2022 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 deficient for meeting customer demands in 2022.

**SUMMARY**

This report evaluates the adequacy of the current year's (2022) water supply. In low water supply years, this annual report provides the basis for the Board's consideration of possible demand management and/or supplemental supply measures. Calendar year 2022 is the third consecutive dry year in the Mokelumne River watershed. The District's 2022 water supply assessment concludes that projected runoff and water storage require designating "Dry" water year type flows in the lower Mokelumne River under the District's Joint Settlement Agreement (JSA). This determination is based on the California Department of Water Resources' (DWR) April Bulletin 120 forecast with the forecasted runoff on the Mokelumne River at 59 percent of average and projected November 5<sup>th</sup> storage in Pardee and Camanche Reservoirs. The end of September Total System Storage (TSS) is projected to be 465 thousand acre-feet (TAF) under a dry (90 percent exceedance) forecast and 445 TAF under a very dry (99 percent exceedance) forecast, resulting in the District's water supply being insufficient to meet customer demands after all required downstream obligations are met.

**DISCUSSION**

In water shortage years, the 2022 Water Supply Availability and Deficiency Report, combined with the District's Water Shortage Contingency Plan, provides guidance for the Board's consideration of drought response actions. Such actions may include a combination of customer demand reduction measures and implementation of supplemental supply measures. In years when water supply is more than sufficient, this report provides the basis for the Board's determination of additional availability of water for potential use by others.

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Water and Natural Resources	Michael T. Tognolini	 General Manager
Attachment(s): N/A		

## **2022 Water Supply and Demand Assessment**

The District's 2020 Urban Water Management Plan (2020 UWMP) provides a framework for evaluating and addressing water shortages. Water supplies are constantly subject to uncertainties, which directly affect the amount and timing of availability of the sources of water. The Water Shortage Contingency Plan (WSCP), Attachment 1 of the 2020 UWMP, outlines a coordinated response to water shortage situations and guides the District's planning and response based on assessment and management of the water supply. The WSCP defines an orderly process for collecting information on water supply availability, assessing conditions, determining fiscal actions, allocating resources, enforcing regulatory water use restrictions, monitoring customer response, and planning and implementing drought communications. The WSCP describes EBMUD's actions to implement and enforce regulations and restrictions for managing a water shortage when it declares a water shortage emergency under the authority of the Water Code. It also describes EBMUD's planned actions to manage supply and demand before and during a water shortage to ensure a reliable water supply.

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." The amount of total system storage (TSS) projected on September 30 is calculated by first adding projected runoff amounts to existing storage levels; and then deducting anticipated unconstrained customer demand based on the last fiscal year, evaporation, 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 downstream water rights holders, water requirements by other downstream interests, and water releases from terminal reservoirs to maintain reservoir levels within normal operating ranges. Using the Drought Management Program (DMP) guidelines in the WSCP, the resulting projected water supply available at the end of the water year is then compared against thresholds to determine if there is sufficient water to meet demands and all other obligations for the current year or if a water shortage response action is necessary.

Since the start of the water year in October 2021, the District has operated under a "Dry" water year type as defined under the JSA. The current forecasts do not indicate a significant change by the end of spring. The District's Mokelumne basin snow survey reference point at Caples Lake had a snow depth of 9 inches (14 percent of average) as of April 7. The rainfall year total precipitation through April 7 in the Mokelumne watershed was 32.35 inches (77 percent of average) and the total precipitation in the East Bay was 19.2 inches (79 percent of average). The District's median unimpaired runoff projection for Water Year 2022 is 405 TAF, which corresponds to a current median projection for TSS at the end of September of 500 TAF. However, dry or very dry year conditions are expected to persist, and the projected TSS for a 90 percent exceedance (9 of 10 years are wetter) scenario is 465 TAF and for a 99 percent exceedance is 445 TAF. Due to continued overall dry conditions, early-season snowmelt with peak runoff likely occurring in April, and a lack of remaining snowpack, it is more appropriate to use dry (99 percent exceedance) conditions for the TSS projection at the end of September.

### ***Water Flow Obligations in the Lower Mokelumne River***

The JSA governs the District's obligation to release flows for instream uses. The water year type determines the amount of water the District must release to meet JSA requirements. Under the JSA,

the current water year type is classified as “Dry,” based on DWR’s April Bulletin 120 forecast for unimpaired runoff of 440 TAF into Pardee Reservoir and projected November 5<sup>th</sup> storage and Pardee and Camanche Reservoirs. The “Dry” condition will determine the requirements for releases from Camanche Reservoir and flow expected below Woodbridge Dam during April 1, 2022 through September 30, 2022, in accordance with the JSA. The JSA does not require additional releases from Camanche Reservoir in Dry year types.

The District also makes releases to satisfy obligations to certain downstream water users. Based on runoff projections for the remainder of this year, Woodbridge Irrigation District may receive its full base supply of 60,000 AF as provided by the parties’ agreement; Jackson Valley Irrigation District may receive up to its maximum entitlement of 3,850 AF, but direct diversion may not be available in all months; and North San Joaquin Water Conservation District (NSJWCD), a junior water right holder, will not receive any surface water. The JSA provides that the District notify resources agencies when surplus water is available. There will be no surplus water this year based on current projections.

The District will make all required releases to the Lower Mokelumne River in 2022.

### ***Supplemental Supplies***

Under drought conditions, the District meets demands and replenishes its storage by obtaining supplemental water supplies.

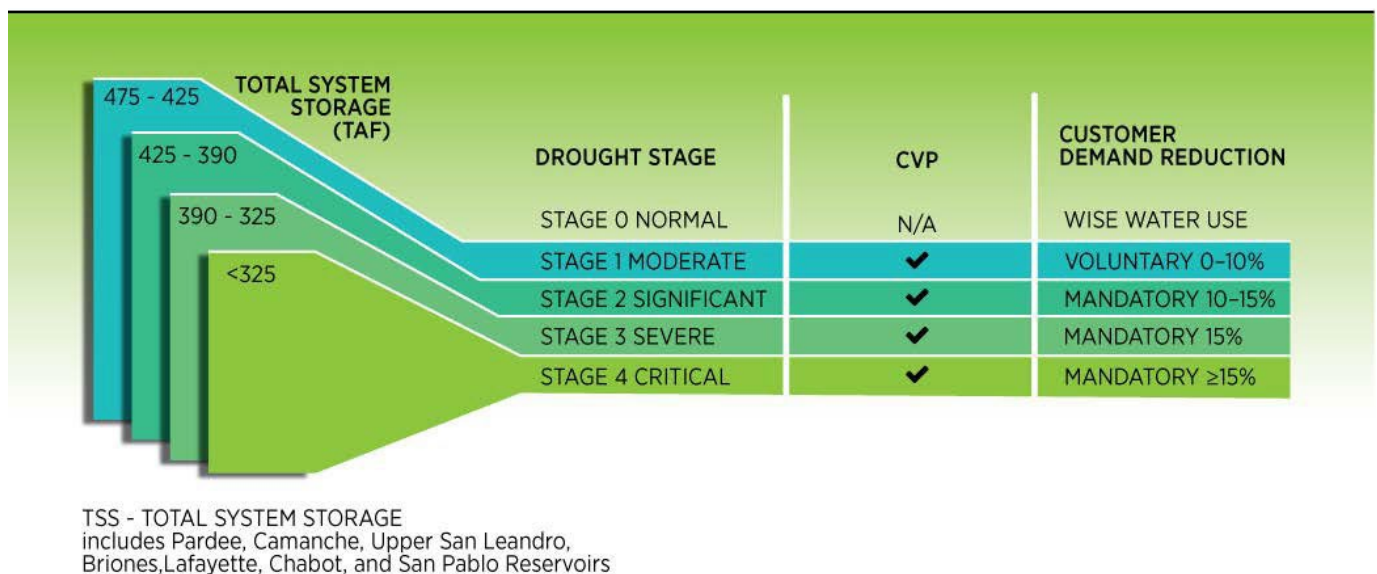
The District’s Central Valley Project (CVP) contract allows for delivery of CVP supplies whenever the District’s projection of its October 1 TSS, as revised through May 1, is less than 500 TAF. However, as discussed below, the District’s 2022 CVP allocation has been reduced to meet public health and safety (PHS) needs. Because the U.S. Bureau of Reclamation’s (Reclamation) Municipal and Industrial (M&I) Water Shortage Policy implementation guidelines provide for a PHS adjustment only if a contractor can demonstrate an “unmet PHS need” which cannot be satisfied with other supplies available to the contractor, the District does not currently anticipate an unmet PHS need in the 2022 contract year based on the water supply and demand conditions applicable to District. Consequently, the District anticipates no CVP supply available for this contract year and has no assurance any CVP supply will be available in the following contract year beginning March 2023.

The District also has been active in pursuing short-term water transfers in 2022. On April 12, 2022, under Board Motion No. 071-22, the Board approved funding for two water transfers from Yuba Water Agency up to 20 TAF, of which 10 TAF may be available in the spring and 10 TAF is available in the summer. In addition, the District is currently negotiating another water transfer in 2022 with Placer County Water Agency (PCWA). On May 10, 2022, staff will present transfer details and ask the Board to consider authorizing up to 20 TAF of transfer water from PCWA. The District attempted to purchase 2022 transfer water from the District’s Sacramento River Settlement Contractor partners, including Glenn-Colusa Irrigation District, Reclamation District 1004, and the Sycamore Mutual Water Company. Due to unprecedented low allocations to the settlement contractors in 2022, Reclamation is not approving any crop-idling transfers from the settlement contractors this year.

### ***Drought Management Program (DMP)***

The District’s DMP, which is part of its Water Shortage Contingency Plan (WSCP), provides guidelines which recommend various response actions during each stage of a drought. The DMP Guidelines are intended to guide, but not constrain, the District’s drought response actions. Figure 1 shows drought stages that may be triggered for various TSS projection thresholds, along with the potential response actions recommended by the DMP Guidelines adopted in 2021. The development of the DMP Guidelines includes assumptions based on contractual agreements and past actions such as anticipated CVP deliveries each year of a multi-year drought. However, the severity of the conditions of 2022 has resulted in CVP allocations for M&I users being reduced to PHS. This has resulted in the District receiving no allocations directly from CVP or indirectly from potential water transfers. Consequently, more aggressive conservation measures and other DMP response actions, such as moving to Drought Stage 2, need to be implemented to prolong the availability of water supply in the event dry conditions persist in future years.

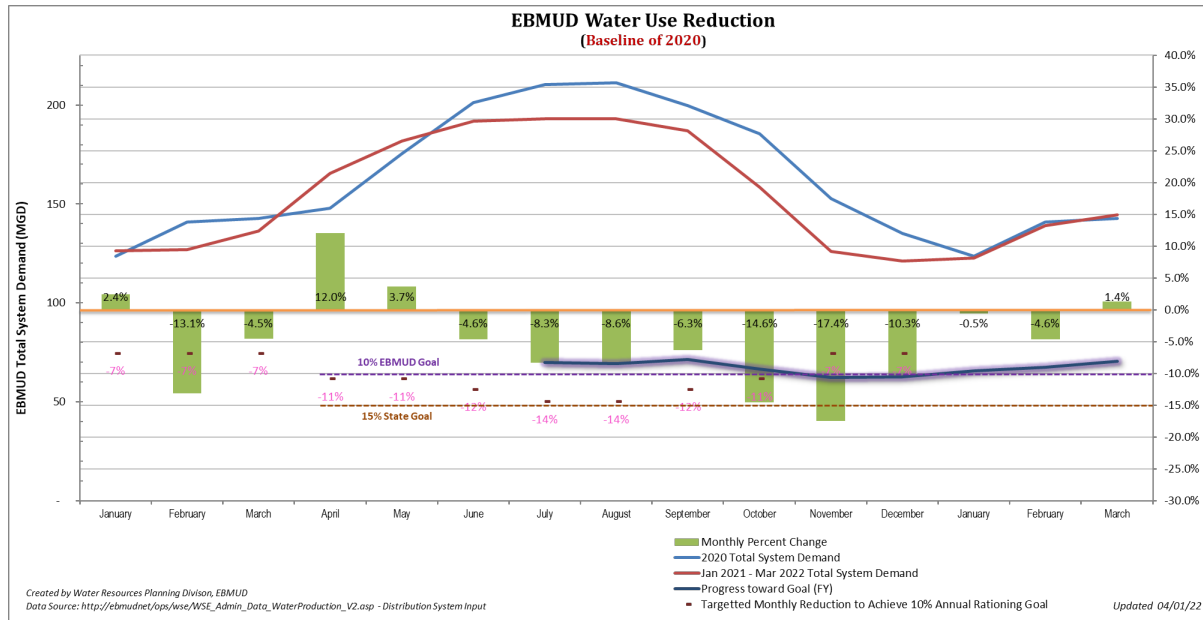
Figure 1. Drought Management Program Guidelines - 2020 WSCP



Water supply projections such as the end-of-September TSS calculation will differ depending on which “exceedance” value is chosen for the projection. A projection based on a 90 or 99 percent exceedance—that is, one that assumes late-season precipitation will be drier than 90 or 99 percent of years in the historic record—will result in a lower projected TSS quantity than a projection based on a 50 percent exceedance. Staff recommends using the 99 percent exceedance TSS projection to determine the sufficiency of supply because the near-term forecast for continued very dry conditions is consistent with that level of expected precipitation. There is no strong evidence to indicate that there will be median or above normal conditions for May and June.

On March 28, 2022, the governor called on local water agencies to implement more aggressive water shortage response measures. On April 27, 2021, the Board declared the District’s water supply to be deficient for meeting customer needs based on local hydrologic conditions and the District’s water supply and demand projections and declared a Stage 1 Drought. In conjunction with the drought declaration, the Board declared a need to augment surface water supplies with supplemental CVP deliveries and short-term water transfers, established a 10 percent voluntary District-wide water use

reduction goal, and directed further measures to promote water conservation. The District's water use met the District's target as well as the statewide target of a 15 percent reduction in the latter months of 2021, as compared to a baseline of 2020. However, due to record dry conditions from January through March 2022, customers did not achieve the district-wide target of 10 percent voluntary reduction, as depicted in the figure below.



### ***Voluntary/Mandatory Rationing and Other Demand Management Measures***

The District is currently in its WSCP Drought Stage 1. Water supplies continue to be deficient. The District has not consistently achieved the current voluntary water use reduction goal of 10 percent. Furthermore, the District may be unable to obtain sufficient supplemental CVP and transfer supplies due to the severity of water supply conditions elsewhere in California. Due to the potential for water supply conditions to worsen, it is appropriate to consider implementing increased measures to help reduce demand and use water more efficiently. An initial suite of recommended response actions appears separately on the April 26 Board agenda for consideration and possible action. The recommended actions include the following:

- (1) declaring a water shortage emergency;
- (2) declaring a Stage 2 Drought;
- (3) establishing a mandatory customer use reduction goal of 15 percent;
- (4) adopting additional emergency water use restrictions through enactment of Section 28 of the District's Regulations Governing Water Service;
- (5) enforcing the provisions of the Excessive Water Use Penalty Ordinance applicable in a Stage 2 Drought; and
- (6) developing a 2022 Water Shortage Emergency Action Plan to authorize implementation of expanded drought response and conservation measures such as Single-Family Residence home reports, commercial and residential landscape water budgets, and expanding outreach and education through advertising, stakeholder engagement, social media and other media platforms.

The Board may consider funding all or part of these response actions through a Drought Surcharge, which will be discussed at the April 26 meeting for possible action at a future meeting. It is also recommended the District continue efforts to pursue available supplemental water supplies from the CVP or willing sellers consistent with established Board policy and direction.

This proposed action supports the District's Long-Term Water Supply Strategic Plan goal.

#### **ALTERNATIVE**

**Declare supplies sufficient.** This alternative is not recommended because a determination that water supply is sufficient is not supported by current conditions.

# ITEM 11

## PUBLIC HEARING

Conduct a public hearing on the proposed actions listed under Item 12\*, including declaration of a water shortage emergency, adoption of Section 28 of the District's Regulations Governing Water Service to Customers, declaration of a Stage 2 Drought and a mandatory District-wide water use reduction goal of 15 percent, affirming immediate implementation of the Excessive Water Use Penalty Ordinance, and directing the preparation of a Water Shortage Emergency Action Plan.

*\* Refer to the staff report for Items 12.1-12.5 for additional information.*

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AGENDA NO. 12.1.-12.5.  
MEETING DATE April 26, 2022

**TITLE DECLARE A WATER SHORTAGE EMERGENCY WITHIN THE DISTRICT SERVICE AREA, DECLARE A STAGE TWO DROUGHT AND ASSOCIATED DROUGHT RESPONSE ACTIONS, AND ADOPT SECTION 28 "WATER USE DURING WATER SHORTAGE EMERGENCY CONDITION"**

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


**RECOMMENDED ACTION**

Conduct a public hearing and adopt a resolution taking certain actions in response to current drought conditions and making necessary findings:

1. Declare a water shortage emergency within the District's service area.
2. Declare a Stage 2 Drought and declare a mandatory District-wide water use reduction goal of 15 percent in accordance with the District's Water Shortage Contingency Plan.
3. Adopt Section 28, "Water Use During Water Shortage Emergency Condition," of the District's Regulations Governing Water Service to Customers, which defines and imposes temporary water use prohibitions and restrictions and enforcement provisions that will be effective April 26, 2022 and remain in effect until Section 28 is either revised based on changed circumstances or rescinded when the water shortage emergency is declared over.
4. Affirm the immediate implementation of the District's Excessive Water Use Penalty Ordinance (Ordinance No. 373-21).
5. Direct staff to develop a Water Shortage Emergency Action Plan for consideration at an upcoming Board meeting.

**SUMMARY**

The forecast for the year indicates that after three consecutive dry winters, water supplies are not sufficient to meet customer demands after meeting the District's obligation to release water to other users downstream of the District's two primary storage reservoirs. January 2022 through March 2022 was the driest such period ever observed.

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Water and Natural Resources	Michael T. Tognolini	 General Manager
Attachment(s): Resolution		

Previous drought response actions include the District's Stage 1 Drought declaration on April 27, 2021, and several escalating State actions, most recently the governor's March 28, 2022 Executive Order requiring the State Water Resources Control Board (SWRCB) to take certain actions to conserve water statewide. In addition, it is unlikely the District will receive the planned volume of supplemental supplies this year. The District may not receive any water this year from the Central Valley Project (CVP) operated by the U.S. Bureau of Reclamation (Reclamation), and fewer sources of transfer water are available than expected. In light of these factors, staff is recommending that the Board, following a public hearing, adopt the resolution (a) declaring a water shortage emergency within the District's service area; (b) declaring a Stage 2 drought and a 15 percent mandatory District-wide water use reduction goal; (c) adopting Section 28 of the District's Regulations Governing Water Service, "Water Use During Water Shortage Emergency Condition," which would temporarily prohibit certain uses of water and subject violations to enforcement; (d) affirming implementation of the District's Excessive Water Use Penalty Ordinance; and (e) directing staff to develop a Water Shortage Emergency Action Plan.

## **DISCUSSION**

### Water Shortage Emergency

Section 350 of the California Water Code authorizes a public water supplier to declare a water shortage emergency "whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection." The current supply and demand situation supports such a finding by the Board.

The District's primary and supplemental sources of supply are constrained. The 2022 Water Supply Availability and Deficiency Report (WSADR) brought to the Board as a preceding separate item today found that the District's water supplies are deficient to meet customer demands for the coming year. The District's primary water supply source, the Mokelumne River watershed, has been tracking exceptionally dry conditions, with only 14 percent of average snow depth and 77 percent of average precipitation as of April 7. Furthermore, there is an ongoing threat of curtailment, which could significantly affect the District's ability to store water under its Mokelumne water rights. In addition, the District is currently experiencing challenges in acquiring supplemental supplies. The District's current CVP allocation is limited to public health and safety, meaning that the District will likely not receive any CVP water this year. The water transfer market has also been less robust than expected as some sellers have insufficient water for transfer. The challenging supplemental supply situation is adversely affecting the District's water supply reliability.

In addition, the District, similar to other water agencies in California, has not been able to consistently achieve its conservation goal during this drought. The Board set a 10 percent voluntary water use reduction goal in April 2021. While customers did achieve this goal in 2021, record-breaking dry conditions in the first part of 2022 have led to increased demand. To date, the District has achieved a 7 percent reduction in water use during Fiscal Year 2022 (FY22) compared to FY20.

These supply and demand challenges point to the need to take action now to ensure the District will have sufficient supplies to meet essential needs as the drought continues. The declaration of a water shortage emergency strengthens the District's authority to regulate water use. Specifically, the water shortage emergency serves as the basis for various actions proposed below, including declaring a mandatory water

use reduction goal and adopting Section 28 of the Regulations Governing Water Service that sets mandatory water use restrictions. A declared water shortage emergency could also support any future response actions the District may implement during this drought.

### Declaration of Stage 2 Drought

The Board declared a Stage 1 Drought on April 27, 2021 and set a District-wide voluntary water use reduction goal of 10 percent. The District purchased 33,916 acre-feet of CVP water to augment its supplies. It also took actions to encourage customer conservation including advertising, stakeholder outreach, media campaigns, articles in the *Customer Pipeline* newsletter, social media posts, multiple webinars, and two new conservation rebate programs.

Since then, dry conditions have persisted statewide, with the beginning of 2022 representing the driest January through March in California history. The 2022 WSADR includes a range of projections for end of water year (September 30) total system storage including a median projection of 500 thousand-acre feet (TAF) and a 99 percent exceedance projection of 445 TAF. However, 8 TAF of water that is dedicated to supplemental flows for fish under the District's Joint Settlement Agreement (gainshare allocation) is not included in the total.

The District's Drought Management Plan (DMP) Guidelines rely on the acquisition of supplemental supply to meet the District's policy of providing 85 percent reliability to its customers. However, Reclamation has indicated that it would only provide water to contractors for public health and safety needs in 2022, meaning the District would likely not receive any allocations this year. The District has arranged for the purchase of 30 TAF to 40 TAF of transfer water in 2022, but additional transfers are not available. If the drought continues into 2023, it is possible that the District would again receive no CVP allocation from Reclamation, and water transfers may prove difficult to obtain or expensive.

Recent State actions underscore the severity of the current drought. On March 28, 2022, the governor issued an Executive Order in response to the worsening drought conditions statewide. The Order tasked the SWRCB with considering emergency regulations that would require urban agencies to implement the shortage response actions of their Water Shortage Contingency Plans that equate to a shortage level of up to 20 percent. The SWRCB must also consider adopting an emergency regulation that bans irrigation of non-functional turf in the commercial, industrial, and institutional sectors.

Based on the District's DMP Guidelines adopted in 2021, the forecasted end of year total system storage would normally correspond with a Stage 1 Drought declaration. However, given the additional gainshare allocation that must come out of that storage, the reduced availability of supplemental supplies in 2022, the potential uncertainty regarding supplemental supplies in 2023 and beyond, coupled with the severity of the drought Statewide, it is prudent to take more aggressive action this year to ensure the District has sufficient water supplies next year. Taking action now will also allow the District to achieve maximum savings this summer from outdoor irrigation, which are easier to achieve than reductions in indoor water use. Staff is therefore recommending that the Board declare a Stage 2 Drought.

The DMP Guidelines recommend that a mandatory customer water use reduction goal of 10 to 15 percent be adopted when a Stage 2 drought is declared. Accordingly, the attached resolution would declare a mandatory District-wide water use reduction goal of 15 percent. This water use reduction goal would not be directly imposed on individual customers. Instead, progress towards the goal would be measured on a

District-wide basis, and the goal would be implemented through both regulatory measures – such as by adopting the mandatory water use restrictions of Section 28 and enforcing the Excessive Water Use Penalty Ordinance – and through outreach efforts. The District successfully employed a similar District-wide approach to mandatory water use reduction during the 2014 to 2016 drought. A 15 percent goal is recommended due to the severity of the drought. Increasing the goal from the current 10 percent to 15 percent also sends a signal to customers that the situation has become more severe.

Declaring a Stage 2 Drought with a mandatory water use reduction will trigger the implementation of the Excessive Water Use Penalty Ordinance's water use prohibitions and penalties. The Board updated the Ordinance on September 28, 2021, such that it takes immediate effect when the Board declares a Stage 2 or higher drought and finds mandatory water use reductions are required. Activating the Ordinance in those circumstances requires no further Board discretionary action. The Ordinance applies only to single-family residential customers. For a Stage 2 Drought, the Ordinance sets a penalty of \$2 per unit for water used above the threshold of 66 units per month (approximately 1,646 gallons per day). Customers would receive a warning letter on their first exceedance of the threshold during a billing period. A repeat exceedance would result in a violation and penalty collected on the subsequent water bill; and the names of violators would be subject to requests under the Public Records Act. Staff is planning proactive outreach to customers with high use to let them know about the Ordinance and provide resources for using water more efficiently.

Lastly, achieving the 15 percent reduction goal will require additional public outreach and engagement, advertising, and conservation programming to help customers reduce their water use. The attached resolution directs staff to prepare a Water Shortage Emergency Action Plan that will be brought to the Board for consideration on May 10, 2022. This plan would include a Drought Communication Plan outlining key messages for different sectors and planned outreach. The Water Shortage Emergency Action Plan could also include measures like advertising and public outreach campaigns, enhancements to existing rebate programs, increased outreach to customers with potential leaks, and plans for responding to increased water waste reports and customer phone calls.

Another key Stage 2 Drought response action described in the WSCP is the continued acquisition of supplemental supplies. Staff would implement approved 2022 water transfers and continue to pursue CVP water (if available) and water transfers for 2023 and beyond.

#### Adoption of Section 28, "Water Use During Water Shortage Emergency Condition"

Section 28 of the District's Regulations Governing Water Service prohibits specified uses of water during water shortage emergencies and authorizes enforcement if the prohibitions are violated. Section 28 was last in force during the previous drought; it was adopted on August 12, 2014 and rescinded on June 30, 2016. Staff is recommending the Board adopt Section 28 in the form enclosed with the proposed resolution. Its text has been updated from its 2016 form based on the current drought.

Section 28 supplements Section 29, "Water Use Restrictions." Unlike Section 29, which is always in effect and prohibits wasteful uses of water, Section 28 is intended for emergency conditions when additional enforceable and temporary water use restrictions are needed to reduce demand.

Many of the restrictions in Section 28 relate to irrigation, as reducing outdoor watering is one of the main tools for achieving short-term conservation savings during a drought. Customers would be prohibited

from irrigating turf and ornamental landscaping more than three times per week and would only be allowed to irrigate before 9:00 a.m. and after 6:00 p.m. Irrigation of ornamental turf on public street medians would be prohibited. Customers would also be prohibited from irrigating in a manner that causes runoff or within 48 hours after measurable rainfall.

Section 28 would also prohibit the use of potable water for filling decorative fountains and ponds that are not recirculating and washing vehicles by hose without shutoff nozzles. Using potable water for street cleaning and construction site preparation would also be prohibited unless no other method is available, and the activity is needed to protect public health and safety. Similarly, potable water would not be allowed for flushing sewers or hydrants except in cases of emergency or for essential operations.

Section 28 would also include restrictions for commercial customers, requiring restaurants, bars, and cafes to only serve tap water upon request. Hotels and motels would be required to offer patrons the option of not washing their towels and linens every day.

On January 4, 2022, the SWRCB adopted emergency regulations which prohibit certain wasteful uses of water. Section 28 aligns with these regulations. The restrictions in Section 28 apply to all District customers and are mandatory and enforceable, but the District's goal would be to encourage customer compliance through outreach and education. Section 28 can be updated as needed, such as if the Board declares a more severe drought stage in the future, or if State actions require the District to prohibit specific uses of water. Section 28 would otherwise remain in effect until the water shortage emergency is declared over and the Board rescinds it.

## **SUSTAINABILITY**

### **Economic**

Costs associated with the implementation of these declarations and adoption of a revised Section 28 are covered under existing FY22/23 budget resources and may be funded in part by a drought surcharge if the Board adopts one. Staff will provide information on a potential drought surcharge as a subsequent item at the April 26, 2022 Board meeting. A proposed drought surcharge incorporating Board input would then be brought for Board consideration at its May 10, 2022 meeting.

### **Social**

The recommended actions would help to ensure that District customers have adequate water for essential purposes even if the drought continues.

### **Environmental**

The California Environmental Quality Act (CEQA) does not apply to the implementation of actions taken pursuant to Water Code section 10632. (Wat. Code, § 10632.) The proposed actions are taken to implement the District's WSCP pursuant to section 10632, including but not limited to shortage response actions described in section 10632(a)(4) and the District's WSCP. The proposed actions are statutorily exempt from CEQA because they are actions to prevent or mitigate an emergency. (Pub. Res. Code, § 21080(b)(4).)

## **ALTERNATIVES**

**Do not declare a water shortage emergency condition.** This alternative is not recommended because the persistent dry hydrology means it may be difficult to meet customer demands if the drought persists.

**Do not declare a Stage 2 drought and remain in a Stage 1 drought.** This alternative is not recommended because of the severity of the drought and the difficulty in obtaining supplemental supplies.

**Do not adopt Section 28, “Water Use During Water Shortage Emergency Condition.”** This alternative is not recommended because the restrictions in Section 28 are necessary to achieve the water use reduction goal.

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

DECLARING A WATER SHORTAGE EMERGENCY AND STAGE 2 DROUGHT,  
ESTABLISHING A DISTRICT-WIDE MANDATORY WATER USE REDUCTION  
GOAL OF FIFTEEN PERCENT, ADOPTING SECTION 28 OF THE DISTRICT'S  
REGULATIONS GOVERNING WATER SERVICE TO CUSTOMERS,  
CONFIRMING AND DIRECTING ADDITIONAL DROUGHT RESPONSE  
MEASURES, AND MAKING NECESSARY FINDINGS

Introduced by Director \_\_\_\_\_ ; Seconded by Director \_\_\_\_\_

WHEREAS, dry conditions have prevailed throughout much of California for three consecutive years, including within the Mokelumne River basin and the East Bay; and

WHEREAS, the 2021-2022 water year has featured below average precipitation in the Mokelumne River basin and in the East Bay, including the driest January through March period on record; and

WHEREAS, in response to the prevailing dry conditions, the Governor issued an escalating series of Executive Orders on April 12, 2021, May 10, 2021, July 8, 2021 and October 9, 2021 which, among other measures, proclaimed a drought emergency to exist in every California county, including those in which the East Bay Municipal Utility District ("District") operates or serves water, and directed the State Water Resources Control Board ("State Water Board") to adopt regulations allowing curtailment of water rights in certain circumstances and prohibiting certain uses of water; and

WHEREAS, in response to the Governor's directives, the State Water Board adopted emergency regulations on August 3, 2021 and January 4, 2022 which, respectively, authorized the curtailment of water rights in the Bay-Delta watershed and prohibited certain uses of water as wasteful and unreasonable; and

WHEREAS, most of the District's water supply derives from its water rights on the Mokelumne River, which is within the Bay-Delta watershed and therefore subject to curtailment; and

WHEREAS, on February 1, 2022, the State Water Board issued an order curtailing diversions under all Mokelumne River water rights with a priority date of 1949 or later, including one of the District's most significant water rights, and although the State Water Board subsequently temporarily suspended the curtailment order as applied to the District's affected water right, there is an ongoing risk that the District's water rights may be curtailed when sufficient water is no longer available for appropriation; and

WHEREAS, on March 17, 2022, the State Water Board sent a warning letter to water rights holders, including the District, which noted the severe and worsening drought conditions prevailing in California, advised water users to prepare for an "earlier curtailment" of water rights in the Bay-Delta watershed, and urged water rights holders to plan for water supply shortages and take action to conserve water and adapt to drought conditions; and

WHEREAS, on March 28, 2022, the Governor issued Executive Order N-7-22, reaffirming the declared state of emergency, calling on Californians to reduce their water use 15 percent from 2020 levels, and initiating a regulatory action which is expected to require urban water suppliers, including the District, to implement a minimum level of shortage response actions consistent with those suppliers' adopted Water Shortage Contingency Plans; and

WHEREAS, the District adopted a Water Shortage Contingency Plan in 2021 which sets forth Drought Management Program Guidelines ("DMP Guidelines"), including a four-stage system of recommended drought response actions to help the District conserve available water supplies and obtain supplemental supplies to continue to meet customer water demand; and

WHEREAS, on April 27, 2021, the District's Board of Directors ("Board") declared that the District's water supply was deficient for meeting customer demands, declared a Stage 1 Drought, established a District-wide voluntary 10 percent customer demand reduction goal, declared a need to purchase up to 58,000 acre-feet of supplemental water supplies from the United States Bureau of Reclamation ("Reclamation"), and directed implementation of additional drought measures described in the District's Water Shortage Contingency Plan; and

WHEREAS, the District's primary source of supplemental supply derives from its contract with Reclamation, under which the District is entitled to purchase water from the Central Valley Project ("CVP") as a supplemental supply during years in which its total system storage is projected to be below a certain contractual threshold; and

WHEREAS, although the District was entitled to purchase CVP water during the 2021-2022 contract year, and despite the District Board's direction to purchase up to 58,000 acre-feet of CVP water, the District received only 33,916 acre-feet of CVP water through March 31, 2022 because Reclamation reduced the District's allocation to 25 percent of the contractual entitlement—a nearly unprecedented event—due to difficult hydrological and water storage conditions; and

WHEREAS, the District's CVP water allocation for the 2022-2023 contract year is currently set at an unprecedentedly low "public health and safety" level and, as a result, the District is unlikely to secure any supplemental supply from the CVP until March 2023 at the earliest; and

WHEREAS, during the previous drought the District successfully purchased transfer water from willing sellers as an additional source of supplemental water supply, and water transfers remain an important component of the District's drought planning and water supply reliability strategy; and

WHEREAS, the water transfer market has been less robust than expected during 2022 because some water users who may otherwise be willing to transfer water to the District do not have a sufficient water supply to permit the sale of water to the District; and

WHEREAS, these concurrent constraints on the ability to secure supplemental supplies mean the District, despite its sustained efforts, may be unable to maintain sufficient water supplies to meet current and anticipated demand for water in its service area without implementing additional measures to reduce water demand, increase water conservation, and thereby extend the available water supply to the fullest extent possible; and

WHEREAS, the District, similar to other water agencies in California, has not been able to consistently achieve its conservation goal during this drought, and while the voluntary efforts of District customers did achieve the District's 10 percent water use reduction goal during 2021, record-breaking dry conditions in the first part of 2022 have led to increased demand; and

WHEREAS, the District measures gross water production on an ongoing basis as a reliable indicator of total customer water use, and the District's average daily gross water production between July 1, 2021 and April 19, 2022 is only six percent less than the same period in 2019-2020, and since January 1, 2022, gross water production has actually increased by one percent compared with the same period in 2020; and

WHEREAS, since October 2021 the District has operated under a "dry" water year type under the District's Joint Settlement Agreement, and the District's 2022 water supply assessment concludes that the upcoming year in the Mokelumne River watershed will also be classified as a "dry" year based on California Department of Water Resources' April 12, 2022 Bulletin 120 forecast, which forecasts runoff on the Mokelumne River at 56 percent of average; and

WHEREAS, through April 19, 2022, the District's Mokelumne basin snow survey reference point at Caples Lake had a snow depth of 9 inches (16 percent of average), while the total precipitation during the current rainfall year in the Mokelumne watershed was 80 percent of average (35.17") and the total precipitation in the East Bay was 80 percent of average (20.2"); and

WHEREAS, precipitation to date during April 2022 within the Mokelumne River watershed has been near the historical median for the forecasted period, and the current short-term weather forecast predicts near-median precipitation; however the recent and forecasted precipitation is insufficient to substantially reduce the accumulated precipitation deficit, and long-term precipitation forecasting models do not currently predict a likelihood of above-normal precipitation during the remainder of the Spring; and

WHEREAS, in accordance with the District's Water Shortage Contingency Plan and District Policy 9.03, the District assesses the sufficiency of its water supply and selects drought response actions based in part by projecting the total volume of water expected to be stored in the District's reservoirs at the end of September given assumed levels of runoff and demand ("Total System Storage Projection"); and

WHEREAS, it is reasonable and prudent to base the Total System Storage Projection on an assumption that conditions in the Mokelumne watershed will remain dry relative to the historical median for the remainder of the precipitation season, as reflected by the "90 percent exceedance" projection, because precipitation has consistently trended well below the historical median for an extended time, because an imminent and sustained reversion to mean-or-above hydrology is historically unlikely, because early-season snowmelt has reduced the snowpack and runoff is expected to peak in late April 2022, because concern is growing statewide regarding the ongoing dry conditions, and because it is important to use appropriately conservative water supply projections to ensure sufficient water will be available for customers while making required releases to downstream water users and for environmental needs; and

WHEREAS, the District's Water Supply Availability and Deficiency Report dated April 26, 2022 reported that the District's most recent Total System Storage Projection is 465,000 acre-feet based on a 90 percent exceedance and concluded the District's water supply is insufficient to meet customer demands after all downstream obligations are met; and

WHEREAS, on April 26, 2022, the Board declared for the second consecutive year that the District's water supply will be deficient for meeting customer demands, having considered the information in the Water Supply Availability and Deficiency Report; and

WHEREAS, the District has undertaken substantial investments in comprehensive water conservation programs, water recycling projects, and dry year supplemental water supply projects to help reduce the severity of water rationing that may be required in multi-year droughts, and will continue doing so; and

WHEREAS, the District achieved approximately 46 million gallons per day in customer conservation savings between 1994 and 2018 and is working to achieve 70 million gallons per day of conservation savings by 2050; and

WHEREAS, the District provided recycled water customers with over 6 million gallons per day of recycled water for nonpotable uses in 2021 and continues to pursue further expansions of its recycled water program; and

WHEREAS, despite the District's long-running, aggressive water conservation program and its utilization of recycled water supplies, the current dry conditions and the District's deficient water supplies require consideration of additional drought response measures including customer water use reductions; and

WHEREAS, the DMP Guidelines recommend that a Stage 1 Drought be declared if the Total System Storage Projection falls between 425,000 acre-feet and 475,000 acre-feet, and that a Stage 2 Drought be declared if the Total System Storage Projection falls between 390,000 acre-feet and 425,000 acre-feet; and

WHEREAS, the DMP Guidelines recommend establishing a voluntary water use reduction goal of up to 10 percent during a Stage 1 Drought, a mandatory water use reduction goal of 10 to 15 percent during a Stage 2 Drought, and additional actions to promote water conservation in both stages; and

WHEREAS, the DMP Guidelines are intended to guide, but not constrain, District drought response actions; and

WHEREAS, declaring a Stage 2 Drought now will increase the likelihood that District customers will achieve significant conservation savings during the Summer when conservation is most readily achieved due to relative flexibility in summertime outdoor water use; and

WHEREAS, the positive conservation trend initially observed after the Stage 1 Drought declaration has reversed in recent months even as the drought has continued and grown more severe, and declaring a Stage 2 Drought and adopting mandatory conservation measures is likely to contribute to restoring a positive water conservation trend; and

WHEREAS, the State, which has previously established a 15 percent water conservation goal, has recently publicly conveyed an expectation for water providers to take additional measures to promote water conservation at this time, highlighted by the March 28, 2022 Executive Order and pending State Water Board emergency regulation, and it is appropriate for the District to take additional steps now to align with emerging statewide policy trends; and

WHEREAS, the DMP Guidelines' Drought Stage thresholds were originally selected based on an assumption that the District could and would acquire a specific assumed quantity of supplemental water at each stage of a drought, and while those assumptions were reasonable at the time they were made based on the information available, they did not contemplate a supply constraint as severe as the District has experienced the last two years; and

WHEREAS, the recent unexpected difficulty of supplementing the District's water supply has increased the importance of providing greater conservation incentives earlier in the drought than previously planned, in order to reduce demand; and

WHEREAS, the Total System Storage Projection, like all hydrological projections, is subject to a degree of unavoidable statistical uncertainty which justifies a conservative approach given the importance of sound water supply planning; and

WHEREAS, urban water suppliers are expressly authorized by Water Code section 10632.2 to implement reasonable alternative actions beyond those specified in a Water Shortage Contingency Plan without the need to amend the Plan; and

WHEREAS, for the reasons set forth above, it is necessary and appropriate to declare a Stage 2 Drought and establish a District-wide mandatory water use reduction goal at this time, notwithstanding the fact that the Total System Storage Projection is currently somewhat higher than the previously understood threshold for declaring a Stage 2 Drought as reflected in the DMP Guidelines; and

WHEREAS, the District has enacted an Excessive Water Use Penalty Ordinance, Ordinance No. 373-21 ("Ordinance") which, under the authority of Water Code section 365, *et seq.*, establishes thresholds for excessive water usage and subjects violators to a penalty, and the Ordinance applies to single-family residential customers, without need for further discretionary Board action, whenever the Board has declared a Stage 2 or greater drought and determined that mandatory reductions in water use are required; and

WHEREAS, the Ordinance was amended on October 29, 2021 to bring it into conformance with SB 814 (Hill) by making the Ordinance applicable during a Stage 2 Drought when mandatory water use reductions are in effect, and the DMP Guidelines have not yet been updated to reflect the amended Ordinance's Stage 2 applicability; and

WHEREAS, although the Ordinance becomes enforceable under its own terms upon the Board's declaration of a Stage 2 Drought or greater and its determination that mandatory water use reductions are required, the Board nevertheless wishes to express its intention that the Ordinance be fully implemented henceforth in accordance with its provisions in order to further the purposes of this Resolution; and

WHEREAS, Water Code sections 350 and 353 authorize the Board to declare a water shortage emergency condition to prevail within the District's service area, after holding a noticed public hearing and making appropriate findings, and having so declared, to adopt such regulations and restrictions on the delivery and consumption of water within the service area as will, in the Board's sound discretion, conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection; and

WHEREAS, a water shortage emergency condition within the meaning of Water Code section 350 includes both an immediate emergency, in which the District is presently unable to meet its customers' needs, and a threatened water shortage, in which the District is empowered to anticipate a future water shortage and to impose appropriate regulations and restrictions where, lacking such control, its water supply will become depleted and it will be unable to meet the needs of its consumers; and

WHEREAS, Water Code section 375 authorizes the Board to adopt and enforce a water conservation program, after holding a noticed public hearing and making appropriate findings, in order to reduce the quantity of water used by District customers for the purpose of conserving the District's water supplies; and

WHEREAS, it has been a longstanding practice of the District during prior water shortage emergency conditions to temporarily adopt Section 28 of its Regulations Governing Water Service to Customers, entitled "Water Use During Water Shortage Emergency Condition," ("Section 28") which prohibits certain water uses during the pendency of the emergency and provides for enforcement; and

WHEREAS, although the DMP Guidelines recommend that Section 28 be adopted when a Stage 3 or greater Drought is declared, it is appropriate to adopt Section 28 at this time in conjunction with a mandatory water use reduction goal, because achieving that goal depends in significant part on adopting and enforcing the restrictions on water use contained in Section 28, and because the water uses which Section 28 will prohibit are substantially aligned with the State's existing emergency regulation prohibiting wasteful and unreasonable water uses codified in Section 995 of title 23 of the California Code of Regulations; and

WHEREAS, it is the intention of the Board that Section 28 be adopted as a water shortage emergency regulation under the authority of Water Code section 350, *et seq.*, and as a separate and independent legal basis, as an enforceable water conservation program under the authority of Water Code section 375, *et seq.*; and

WHEREAS, a public hearing was conducted by the Board on April 26, 2022, at which time all interested persons were afforded an opportunity to be heard to protest or support the proposed declaration of a water shortage emergency, the proposed adoption of Section 28, and/or any other action to be taken by this Resolution, and to present their respective needs to the Board; and

WHEREAS, in accordance with Water Code sections 352 and 376, a notice of the time and place of this public hearing was published in compliance with Government Code section 6061 at least seven days prior to the hearing; and

WHEREAS, in accordance with Water Code section 376, a certified copy of the full text of this Resolution and of Section 28, which is Exhibit A hereto, was posted in the office of the District at least five days prior to the Board's meeting at which this Resolution was considered for adoption; and

WHEREAS, the Board has considered all the oral and written information presented to it during and prior to the public hearing regarding the proposed declaration of a water shortage emergency, adoption of Section 28, and the other actions to be directed or implemented through this Resolution; and

WHEREAS, costs associated with the implementation of this Resolution are covered under existing FY22 budget resources, and if the Board adopts a drought surcharge by separate action, may be funded in part by any such surcharge; and

WHEREAS, the declaration of a Stage 2 Drought, establishment of a mandatory 15 percent customer demand reduction goal and other measures to promote water conservation will enable the District to continue meeting the water supply needs of its customers;

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

Section 1. Authority. This Resolution is adopted pursuant to Water Code sections 350, *et seq.*, 365, *et seq.*, 375, *et seq.*, 10632.2 and 10643, Public Utilities Code section 11885, and District Ordinance No. 373-21.

Section 2. Recitals. The Board hereby finds and determines that the above recitals are true and correct and incorporates them herein.

Section 3. Water Shortage Emergency. The Board hereby finds and determines that the ordinary demands and requirements of the District's customers cannot be satisfied without depleting the District's water supply to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. The Board hereby declares a water shortage emergency condition to prevail within the service area of the District.

Section 4. Stage 2 Drought. The Board hereby finds and determines that a significant water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage of fifteen (15) percent. The Board hereby declares a Stage 2 Drought pursuant to the District's approved Water Shortage Contingency Plan.

Section 5. Mandatory Water Use Reduction Goal. The Board hereby establishes a District-wide mandatory fifteen (15) percent water use reduction goal. It is the present intention of the Board that progress towards this goal be measured on a District-wide basis, and that the mandate should be implemented through the adoption of drought response measures including those set forth in this Resolution.

Section 6. Section 28. The Board hereby adopts Section 28 of the Regulations Governing Water Service to Customers effective April 26, 2022, which is attached hereto as Exhibit A and incorporated herein by reference. Section 28 may be amended as appropriate

during the water shortage emergency and will be rescinded when the water shortage emergency is declared over. The Board finds and determines that the water uses prohibited by Section 28 are unreasonable and wasteful in this drought period, and that the enforcement measures are appropriate and reasonable and may be used by the District to control water use.

Section 7. Additional Findings. With respect to the actions taken in Section 5 and Section 6 above, the Board hereby additionally finds and determines: (i) that the restrictions on water use set forth therein will, in the sound discretion of the Board, conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation and fire protection, and (ii) that it is necessary to adopt and enforce the restrictions set forth therein as a water conservation program to reduce the quantity of water used by District customers for the purpose of conserving the District's water supplies.

Section 8. Water Shortage Emergency Action Plan. The Board hereby directs District staff to prepare a Water Shortage Emergency Action Plan for Board consideration. The plan should propose a suite of drought response measures for implementation which are appropriate for current drought conditions. The plan shall be developed with reference to the recommended Stage 2 Drought response actions described in the District's approved Water Shortage Contingency Plan. The plan may propose measures to promote water conservation, communication and outreach strategies, an enforcement approach, and other response actions.

Section 9. Excessive Water Use Penalty Ordinance. The Board hereby expresses its intention for the provisions of the District's Excessive Water Use Penalty Ordinance (Ordinance No. 373-21) applicable during a Stage 2 Drought to be implemented forthwith, including without limitation its applicable mandatory water use restrictions and associated penalties.

Section 10. Supplemental Water Supplies. The Board reaffirms its prior direction to staff to continue efforts to pursue supplemental water supplies from the Central Valley Project or, consistent with established District policy, from other willing sellers.

Section 11. Delegation. All officers of the District are hereby authorized to perform such duties as may be required to implement the actions taken in this Resolution.

Section 12. Severability. If any provision, section, subsection, sentence, clause or phrase or sections of this Resolution, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Resolution shall not be affected, it being the intent of the Board in adopting this Resolution that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the invalidity of any other provision hereof, and all provisions of this Resolution are declared to be severable for that purpose.

Section 13. Effective Date. This Resolution shall take effect immediately upon adoption.

BE IT FURTHER RESOLVED that the District Board hereby finds and determines that the actions taken herein are exempt from the requirements of the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(4) and Water Code section 10652 because they are necessary to prevent or mitigate the water shortage emergency and because they are taken to implement the District's Water Shortage Contingency Plan pursuant to Water Code

section 10632, including but not limited to shortage response actions described in section 10632(a)(4) and the District's Water Shortage Contingency Plan. The Secretary of the District is hereby authorized and directed to file a Notice of Exemption in accordance with applicable statutes and regulations with the County Clerks of Alameda and Contra Costa Counties.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby authorized and directed to cause a summary of this Resolution and Exhibit A hereto to be published in one or more newspapers of general circulation within the District's service area in accordance with Water Code section 376(b)(1).

ADOPTED this 26th day of April, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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President

ATTEST:

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Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

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# **REGULATIONS GOVERNING WATER SERVICE TO CUSTOMERS OF THE EAST BAY MUNICIPAL UTILITY DISTRICT**

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PAGE NUMBER:

## **SECTION 28 WATER USE DURING WATER SHORTAGE EMERGENCY CONDITION**

Drought conditions require that all customers reduce individual and collective use of EBMUD water supplies until further notice to ensure availability of the public water supply for critical uses. This regulation specifies the water uses that are prohibited during the drought and provides guidelines on effective water use practices to help customers conserve. It also defines the exceptions and enforcement provisions should customers fail to comply with the prohibitions.

### **A. EMERGENCY REGULATIONS AND RESTRICTIONS ON WATER USE**

During the water shortage emergency condition declared by the Board of Directors, all customers must comply with prohibitions on water uses described below to conserve the public water supply to meet critical needs. In addition, customers are asked to follow the water saving guidelines below.

1. Potable Water Uses Prohibited During the Water Shortage Emergency
  - a. Using potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds is prohibited, with exceptions for those decorative fountains, lakes or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses.
  - b. Washing a motor vehicle with a hose, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use, is prohibited.
  - c. Washing sidewalks, driveways, or hard surfaces with potable water, or applying potable water to any surface or material that results in excessive use and runoff is prohibited.
  - d. The use of potable water for street cleaning or construction site preparation purposes is prohibited unless no other method can be used or as needed to protect the health and safety of the public.
  - e. The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures is prohibited.
  - f. Irrigating turf and ornamental landscape is only permitted no more than three days each week, not on consecutive days, and before 9 a.m. and after 6 p.m., except for potted plants.
  - g. The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of an inch of rain is prohibited.
  - h. Using potable water for irrigating ornamental turf on public street medians is prohibited.



# **REGULATIONS GOVERNING WATER SERVICE TO CUSTOMERS OF THE EAST BAY MUNICIPAL UTILITY DISTRICT**

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PAGE NUMBER:

## **SECTION 28 WATER USE DURING WATER SHORTAGE EMERGENCY CONDITION**

Flushing sewers or hydrants with potable water is prohibited, except in cases of emergency and for essential operations.

- i. The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased is prohibited.
  - j. Operators of hotels and motels are required to offer patrons the option of not having towels and linens washed daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.
  - k. Use of EBMUD hydrant water outside the EBMUD service area is prohibited.
2. Water Savings Guidelines
- a. Conserve water indoors. Efficient residential indoor water use is 45 gallons and super-efficient indoor use is 35 gallons per person daily. Most customers can achieve this by shortening showers and using less bath water, running only full loads of laundry and dishes, and keeping a close eye on faucet use. Additionally, customers are encouraged to reduce use of kitchen garbage disposals through composting or curbside green waste collection and to not use toilets as wastebaskets. Customers also may want to consider upgrading to more water-efficient plumbing fixtures and appliances.
  - b. Promptly repair leaks indoors and outside. Plumbing systems with measurable leaks should not be turned on until repairs have been completed.
  - c. Use covers on swimming pools and home spas (hot tubs) to prevent evaporation. Avoid draining and refilling.
  - d. Encourage gyms, spas, and similar facilities to ask patrons to conserve water while showering and using sinks.
  - e. Encourage all food preparation establishments, such as restaurants and cafeterias, to install and use high-efficiency pre-rinse spray nozzles in kitchens.
  - f. Irrigate less outdoors. Most customers can cut outdoor watering 30% without affecting long-term plant health by irrigating before dawn or at dusk, no more than three days per week.



# **REGULATIONS GOVERNING WATER SERVICE**

## **TO CUSTOMERS OF THE EAST BAY MUNICIPAL UTILITY DISTRICT**

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PAGE NUMBER:

### **SECTION 28**

## **WATER USE DURING WATER SHORTAGE EMERGENCY CONDITION**

### **B. EXCEPTIONS**

1. Written applications for exceptions from the regulations and restrictions on water use set forth in this Section shall be accepted, and may be granted, by the Customer & Community Services Department.
2. Grounds for granting such applications are:
  - a. Failure to do so would cause an unnecessary and undue hardship to the applicant, including, but not limited to, adverse economic impacts, such as loss of production or jobs; or
  - b. Failure to do so would cause a condition affecting the health, sanitation, fire protection or safety of the applicant or the public.
3. Denials of applications may be appealed as set forth in subdivision D, below.

### **C. ENFORCEMENT**

1. The District may, after one written warning, order that a special meter reading or readings be made in order to ascertain whether wasteful use of water is occurring. Charges for such a meter reading or readings or for follow-up visits by District staff are fixed by the Board from time to time and shall be paid by the customer.
2. In the event that the District observes that apparent excessive water use is occurring at a customer's premises, the Director of Customer and Community Services may, after a written warning to the customer, authorize installation of a flow-restricting device on the service line for any customer observed by District staff to be willfully violating any of the regulations and restrictions on water use set forth in this section. Charges for installation of flow-restricting devices may be fixed by the Board from time to time and shall be paid by the customer.
3. In the event that a further willful violation is observed by District staff, the District may discontinue service. Charges for restoring service may be fixed by the Board from time to time and shall be paid by the customer.
4. The District may immediately revoke a permit to use water from an EBMUD hydrant when water is observed being used in violation of the emergency regulations or restrictions on water use.

### **D. APPEALS**

Consideration of written applications for appeals regarding exceptions from the regulations and restrictions on water use set forth in this Section, and regarding application of the enforcement actions set forth in subdivision C, above, shall be as follows:



# **REGULATIONS GOVERNING WATER SERVICE**

## **TO CUSTOMERS OF THE EAST BAY MUNICIPAL UTILITY DISTRICT**

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PAGE NUMBER:

### **SECTION 28**

### **WATER USE DURING WATER SHORTAGE EMERGENCY CONDITION**

1. Written applications for appeals shall be accepted, and may be granted, by the Customer & Community Services Department.
2. Denials of applications may be appealed in writing to the Director of Customer and Community Services.


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**EAST BAY MUNICIPAL UTILITY DISTRICT**

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DATE: April 26, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Sophia D. Skoda, Director of Finance 

SUBJECT: Consideration of Stage 2 Drought Surcharge

**SUMMARY**

At the April 26, 2022 Board meeting, staff will present preliminary estimates for drought costs and a drought contingency budget for Fiscal Year 2023 (FY23). In addition, staff will present proposals for a Stage 2 drought surcharge beginning July 1, 2022 subject to the Board declaration of a Stage 2 Drought.

**DISCUSSION**

After extensive outreach, in 2015 the Board adopted a staged system of drought surcharges designed to recover water-shortage related costs. The drought surcharge is calculated based on projected increased drought costs and decreased revenues as a result of reduced water sales at each stage and is documented in the District's 2015 Cost of Service (COS) study. The drought surcharge was first implemented in FY16 after the Board declared a water shortage emergency and a Stage 4 Drought.

The District's adopted a staged system drought surcharges in 2015 and updated the surcharge in 2017. The development of the surcharge followed the District's COS study for water rates that was developed to meet the COS requirements of Proposition 218 and other applicable laws. In addition, the drought surcharges were included in the Proposition 218 notice for the FY22 and FY23 rate proposals that was sent to District customers and property owners in 2021. As shown in Schedule L – Drought Surcharge Rate Schedule for Water Service (attached), the approved staged system of drought surcharges outlines maximum surcharges assessed on all potable water use during a drought or water shortage emergency. The actual costs associated with the drought stage will depend on the market for available supplemental water supplies and the magnitude of the water use reduction goal adopted by the Board. For the proposal for a Stage 2 drought surcharge, the current estimated costs for supplemental water and other drought costs will be used to update the COS for the drought surcharge and calculate the exact drought surcharge that will be assessed consistent with the maximum percentages in Schedule L. The update ensures that the surcharge does not exceed the costs the District is expected to incur as a result of the drought.

The drought surcharge, along with the use of cash reserves and other sources, provide funds to cover the District's implementation of drought response actions described in its Water Shortage Contingency Plan, including the costs of purchasing and delivering supplemental supplies, increased treatment costs, increased conservation and public outreach messaging, increased customer account management services, and revenue loss due to reduction in water use. The preliminary estimate for the drought costs is between \$30 to \$40 million for supplemental water, public information and customer drought support services with revenue impacts that could approach \$57 million as a result of calls for customer conservation. Detailed drought costs, a funding plan, and COS update for the drought surcharge will be presented at the May 10, 2022 Board meeting. Depending on the drought costs and funding plan, the Stage 2 drought surcharge can be up to 8 percent, with reserves funding any remaining costs that exceed the revenue generated from the drought surcharge. Table 1 shows the approximate revenues for different levels of the Stage 2 drought surcharge.

Possible Drought Surcharge	Estimated FY23 Revenue
2%	\$8 million
4%	\$16 million
6%	\$24 million
8%	\$32 million

The drought costs will require additional expenditure authority for FY23; therefore, a drought contingency budget that specifies the proposed drought spending for supplemental water supplies, public information, and customer outreach and support, as well as other costs compliant with the COS, will be included in the request for the FY23 budget approval at the June 14, 2022 Board meeting.

## **NEXT STEPS**

At the April 26, 2022 Board meeting, staff will review the District's system of drought surcharges and preliminary information about implementing a Stage 2 drought surcharge and seek Board input. A proposal for a Stage 2 drought surcharge will be brought to the Board for consideration at its May 10, 2022 meeting.

CCC:SDS:RL

Attachment: Schedule L



## SCHEDULE L – DROUGHT SURCHARGE RATE SCHEDULE FOR WATER SERVICE

EFFECTIVE 07/12/17

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The rates for the Water Flow Charge shown in Schedule A may be increased up to the following maximum percentages during the specified declared drought stage.

**A TEMPORARY SURCHARGE FOR POTABLE WATER DELIVERED based on one month or two months of meter readings for all water delivered as a percentage of the total Water Flow Charge on customer bills:**

DROUGHT SURCHARGES ON TOTAL WATER FLOW CHARGE FOR WATER DELIVERED				
	Maximum Applicable Drought Surcharge Percentage <sup>1</sup> in 4 Stages			
	Stage 1	Stage 2	Stage 3	Stage 4
All potable water flow charges	0%	8%	20%	25%

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<sup>1</sup> Drought surcharge percentage increase will be applied to the applicable rate of the customer's potable Water Flow Charge from Schedule A – Rate Schedule for Water Service. Prior to implementing the drought surcharges, the District will update drought related costs and develop surcharges based on the updated cost of service. Any surcharges that are imposed will be consistent with the District's staged system of drought surcharges and will not exceed the drought surcharge percentages listed in this Schedule.

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ITEM 14

CORONAVIRUS UPDATE

WILL BE PROVIDED  
AS AN ORAL REPORT

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## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: April 21, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Planning Committee Minutes – April 12, 2022

Chair Marguerite Young called to order the Planning Committee meeting at 9:00 a.m. Director Frank Mellon was present at roll call. Director Lesa R. McIntosh was absent (excused). Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Operations and Maintenance David A. Briggs, Director of Water and Natural Resources Michael T. Tognolini, Manager of Maintenance and Construction/Water Operations Michael R. Ambrose, Manager of Water Quality Susan M. Teefy, Manager of Pipeline Construction and Equipment Laura J. Johnson, Manager of Fisheries and Wildlife Michelle L. Workman, Manager of Watershed and Recreation Scott D. Hill, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

**Public Comment.** None.

**Presentations/Documentation.** 1) Presentation entitled “Water Quality Program Annual Update,” dated April 12, 2022; 2) Presentation entitled “Paving and Other Related Services,” dated April 12, 2022; 3) Presentation entitled “2021 Mokelumne River Salmon Return Update,” dated April 12, 2022; and 4) Presentation entitled “Annual Recreation Report,” dated April 12, 2022.

**Water Quality Program Annual Update – 2021.** Manager of Water Quality Susan M. Teefy presented the update. In 2021, the District met all federal and state drinking water standards and 94 percent of the District’s internal goals (120 of 127 goals were met). As in previous updates, levels of three groups of disinfection byproducts (DBPs) – total trihalomethanes, five haloacetic acids, and N-nitroso-dimethylamine – that are byproducts of the chlorination or chloramination processes, were higher than District goals but continue to be stable. Ms. Teefy reviewed sampling data for the three DBPs and goals for water quality in the District’s distribution system; District goals for treatment plant and distribution system operations that were not met for corrosion control, turbidity, and total dissolved solids; efforts to minimize customer exposure to lead in drinking water through the corrosion control program; and results from the customer lead sampling program. The District is required to sample for lead from customer taps every three years and in 2021, samples from 50 customer taps showed the 90th percentile value was 3.3 parts per billion (ppb), well below the Action Level of 15 ppb. She discussed upcoming regulatory changes for perfluoroalkyl substances and polyfluoroalkyl substances (collectively known as PFAS) monitoring noting new enforceable standards are still being developed. Although the LCR was recently changed, additional revisions will be made. Ms. Teefy responded to Committee questions on how updates to the disinfection process at the Orinda Water Treatment Plant will decrease DBPs; LCR customer lead sampling results; testing for PFAS in various source water; and the District’s current water quality goal setting criteria. The Committee asked that future water quality updates include the number of lead sample results above 5 ppb as part of the customer lead sampling program and the

magnitude of high lead values; a review of the District's current water quality goal setting criteria; an update on testing for lead in schools; and data on PFAs during the next Wastewater Pretreatment and Pollution Prevention Program update. It was moved by Director Mellon, seconded by Director Young and carried (2-0) to accept the report. Director McIntosh was absent (excused).

**Paving and Other Related Services.** Manager of Pipeline Construction and Equipment Laura J. Johnson presented the update. The District performs approximately 3,500 street excavations annually to replace or repair water distribution pipelines and appurtenances. To restore the paving, the District spends approximately \$21 million per year to satisfy city and county permit requirements and has used contractors and joint paving agreements since the early 1990s. Agreements with vendors for paving services are required to meet workload peaks, manage the District's paving backlog, and reimburse cities and counties for joint paving agreements in the service area. Ms. Johnson reviewed the District's paving operations; paving resources and coordination with cities and counties on joint projects; current staffing levels; and factors that have contributed to the current paving backlog. To assist with addressing the backlog and to meet workload peaks, the Board will be asked to consider a one year, \$5,000,000 agreement for paving and other related services at its May 10 meeting. There was considerable discussion by the Committee, and Ms. Johnson and staff responded to questions on how much of the \$5,000,000 agreement would be used for joint projects; the cost of contracting out paving work versus completion by District staff; costs to staff and equip an additional paving crew; the types of paving jobs that are backlogged; and paving permit challenges. Addressing the Committee was 1) Tony Martin, 1st Vice President, AFSCME Local 444, who commented on working with paving crews and asked the Board to consider approving staff for an additional paving crew; and 2) Eric Larsen, President, AFSCME Local 444, asked the Board to consider approving staff for an additional paving crew, and said the union opposes the escalation in the agreement award proposed by staff. The Committee asked staff to provide the cost of contracting out paving work versus completion by District staff; information on future trends related to joint agency paving projects; projections to determine when the paving backlog will stabilize; consider establishing categorical permits with cities and counties in which the District performs paving work; and continue working with the union on this matter.

**2021 Mokelumne Fishery Update.** Manager of Fisheries and Wildlife Michelle L. Workman presented the update. Ms. Workman reviewed historical salmon returns between 1940 and 2021 noting that in 2021, for the second year in a row, the Mokelumne salmon return was 5,043 which was below the long-term average of 5,429. Lower returns this year were also observed for the tributaries from the American River south through the San Joaquin River tributaries. According to data from the California Department of Fish and Wildlife, salmon originating from the Mokelumne River continues to make up a significant portion of the commercial and recreational catch off the coast of California contributing approximately 19 percent of the commercial and 42 percent of the recreational catch respectively in 2021 compared to 13 percent of the commercial and 16 percent of the recreational catch in 2020. She reviewed 2021 Mokelumne return and stray rates; spawning and escapement activities in river basins; and the Mokelumne River steelhead annual hatchery trapping summary from 1965 to date. Actions to support the Mokelumne River Fish Hatchery and other fisheries included conducting pulse flows and adaptive management; habitat restoration with funding from the U.S. Fish and Wildlife Service, \$450,000 in grant funds from the Healthy Rivers Initiative under Proposition 68 and continued in-kind District support; providing cold water refuge for the American River yearling steelhead program; and culturing approximately 500,000 fish at the Mokelumne River Fish Hatchery that would have otherwise succumbed to adverse temperatures in the American River. The project to add a salmon acclimation net

pen release location in or near the Richmond Harbor is moving forward. She reported that no net pen releases at the site have occurred; however, the Department of Fish and Wildlife has an agreement with a private dock owner to perform direct saltwater releases. Ms. Workman responded to questions from the Committee on factors that may have contributed to the 2021 stray rates and about a fish release at Half Moon Bay attended by a Committee member. It was moved by Director Mellon, seconded by Director Young and carried (2-0) to accept the report. Director McIntosh was absent (excused).

**Annual Recreation Report – 2021.** Due to time constraints this item was held over to a future meeting.

**Adjournment.** Chair Young adjourned the meeting at 10:18 a.m.

CCC:RSC

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## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: April 21, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Legislative/Human Resources Committee Minutes – April 12, 2022

Director William B. Patterson called to order the Legislative/Human Resources Committee meeting at 10:36 a.m. in the Boardroom. Director John A. Coleman was present at roll call and participated via webinar. Director Lesa R. McIntosh was absent (excused). Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Special Assistant to the General Manager Derry L. Moten, Senior Human Resources Analyst Laura V. Salangsang, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

**Public Comment.** None.

**Presentations/Documentation.** 1) Presentation entitled “EBMUD and Peralta Cohort Program,” dated April 12, 2022.

**Peralta Community College District Cohort Learning Program.** Senior Human Resources Analyst Laura V. Salangsang provided the presentation. The District and the Peralta Community College District (Peralta) formed a partnership in 2018 to provide an on-site cohort learning program for District employees. Partnership goals include expanding the engagement of District employees through continuing education and mentorship; leveraging the District’s current instructional capacity; providing certification/accreditation of existing District learning programs; and engaging Peralta as a recruitment partner to diversify applicant pools. The overall program meets workforce development and diversity goals in the District’s Strategic Plan and Diversity, Equity and Inclusion Strategic Plan. Participants use the District’s Tuition Reimbursement Program to complete the program on their own time and can earn from 18 to 24 units of transferable college credits through instruction and work experience. Ms. Salangsang reviewed the classifications of previous cohort participants noting 22 of the 43 that graduated have been promoted to higher level positions. She highlighted the experiences of three employees that participated in previous cohorts and introduced two that were in the Boardroom. At its meeting in the afternoon, the Board will be asked to consider an agreement with Peralta for a two academic-year program for a third cohort comprised of 35 employees. Upon approval, an open house will be held in May and preparations will begin in June. The updated curriculum will provide an interdisciplinary approach consisting of courses in general education, business, and construction management. The Committee raised no questions. It was moved by Director Coleman, seconded by Director Patterson, and carried (2-0) to support the staff recommendation. Director McIntosh was absent (excused).

**Adjournment.** Director Patterson adjourned the meeting at 10:52 a.m.

CCC/RSC