

Initial Disclosure and Legal Documents

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Disclosure Essentials

WHO?

- Issuer
- Borrowers
- Obligated Persons

WHAT?

To provide all information **material** to investors in making a decision to purchase or sell in the District's debt

WHY?

Investors in municipal securities have rights under federal securities laws

WHEN?

Whenever the District “speaks to the market” those communications are subject to federal disclosure rules

- Preliminary Official Statement
- Final Official Statement
- Press Releases
- Voluntary Disclosures
- Annual Reports

WHERE?

- EMMA

Disclosure Framework

- Securities Act of 1933 - “Truth in Securities Law”
 - ❖ Requires investors receive financial and other significant information for securities prior to sale
 - ❖ Prohibits deceit, misrepresentations, and fraud in sale of securities.
 - ❖ Section 17(a)
- Exchange Act of 1934 – Created the SEC; conferred broad authority to the SEC to register, regulate, and oversee securities transactions and participants; and require periodic filings
 - ❖ Section 10(b)
 - Rule 10b-5
- Rule 15c2-12

Securities Act of 1933

Section 17(a) – “Antifraud Rule”

- Prohibits fraud in the offer or sale of securities – “It shall be unlawful for any person in the offer or sale of any securities by the use of any means . . . of . . . communication in interstate commerce or by the use of the mail, directly or indirectly
- To employ any device, scheme or artifice to **defraud**, or
- To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or
- To engage in any transaction, practice, or course of business which operates or would operate as a **fraud** or deceit upon the purchaser”

Exchange Act of 1934

Section 10(b)(i)

- Section 10(b)(i) – “It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality or interstate commerce, or of the mails or of any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”

Rule 10b-5

- Makes it “*unlawful* for any person, directly or indirectly, by the use of any means . . . of interstate commerce, or of the mails . . .
 - ❖ To employ any device, scheme, or **artifice** to **defraud**
 - ❖ To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - ❖ To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, *in connection with the purchase or sale of any security*”

Exchange Act of 1934

Application of Rule 10b-5

- Whatever you do say the disclosure must be accurate
- Don't omit any material information
- Whenever the issuer “speaks to the market,” including:
 - ❖ Disclosure in offering documents - the District's document distributed to investors
 - ❖ Continuing disclosure filed under Rule 15c2-12
 - ❖ Voluntary filings
 - ❖ Investor Communications
 - ❖ Press releases and speeches
- In its August 2010 Order against State of New Jersey the SEC repeated its long-stated position that Rule 10b-5 also applies to “[continuing] disclosure and to any other statements to the market”

Exchange Act of 1934

Materiality Defined

- A statement or omission is material if:
 - ❖ “there is a **substantial** likelihood that a **reasonable** investor would consider it **important** in making the decision to purchase or sell the securities”
 - ❖ “there is substantial likelihood that having the information would have been viewed by the reasonable investor as having significantly altered the total mix of information available”
- Determined in the context of all relevant facts and circumstances, and upon the incurrence of each financial obligation
- No set checklist

Exchange Act of 1934

Elements of Materiality

- Unusual, Alarming, Worrisome
- Red Flags
- Probability and Magnitude
- In any SEC enforcement action or other securities law proceeding the determination of what is “*material*” is made in hindsight and in light of any “*bad*” things which happened/developed after the original disclosure

Rule 15c2-12

Adopted in 1982 to prevent fraudulent, deceptive or manipulative acts or practices by participating underwriters of municipal bonds and improve timeliness of disclosures

- Requires participating underwriters to:
 - ❖ Obtain and review an official statement deemed final by the issuer as of its date

Exchange Act of 1934

Rule 15c2-12 (continued)

- ❖ Obtain a written agreement (a continuing disclosure undertaking or CDU) of the **issuer** to file:
 - **Annual Reports** disclosing financial and operating information specified in a written continuing disclosure undertaking (CDU), including audited financial statements
 - **Notices of the occurrence of Specified Events** within 10 business days following occurrence

Monterey County Profile

- Monterey County is located near the midpoint of California's Pacific Coast; approximately 130 miles south of San Francisco and 240 miles north of Los Angeles
- Population of approximately 433,716 as of January 1, 2022 as estimated by the California Department of Finance
- 3,711 square miles and includes 12 incorporated cities and 16 unincorporated areas
- County seat is located in Salinas



Monterey County Profile

Employment and Industry

➤ Agriculture

- ❖ Monterey County is one of the nation's top agricultural producers in the State
- ❖ The 2020 Crop and Livestock report produced by Monterey County reported a production value of over \$3.9 billion in crop farming
- ❖ Monterey's agriculture contributes a total of \$11.7 billion in economic output
- ❖ Monterey County farmers grow more than 150 crops with the top two crops being strawberries and leaf lettuce

➤ Tourism

- ❖ Monterey County attracts nearly 4.8 million visitors annually
- ❖ Tourism spending in Fiscal Year 2019-20 was \$3.2 billion supporting 27,120 jobs in the County and generating \$153 million in local tax revenue

Monterey County Profile

Income

Per Capita Income and Median household Income Selected Counties and California			
	Per Capita Income	Median Household Income	Persons in Poverty
Monterey County	32,122	76,943	11.6%
San Luis Obispo County	38,686	77,948	10.6%
Santa Barbara County	38,141	78,925	10.5%
Santa Clara County	59,297	130,890	6.6%
California	38,576	78,672	11.5%

Source: U.S. Census Bureau, QuickFacts 2021

Labor Force and Unemployment

Labor Force 2021 Annual Averages	
Labor Force	211,867
Employment	194,325
Unemployment	17,550
Unemployment Rate	8.4%

Source: California Employment Development Department Labor Market Information Division, Unemployment Rate and Labor Force Data March 2022



Basic Legal Documents

- Authorizing Resolution(s)
- Trust Agreement / Indenture of Trust / Indenture
- Loan Agreement
- Preliminary Official Statement (POS) / Official Statement
- Bond Purchase Agreement (BPA) / Bond Purchase Contract
- Continuing Disclosure Undertaking (CDU)
- Tax Certificate
- Closing Certificates, Documents and Opinions

Authorizing Resolution

Parties:

- Issuer
- Borrower

Purpose:

- Authorizes the sale of the bonds by the Issuer and establishes the parameters for the issuance of the bonds, authorizes the execution and delivery of each of the financing documents, directs staff to take other actions necessary to complete the transactions, delegates officers to approve revisions to financing documents consistent with the parameters

Key Provisions:

- Maximum principal amount of bonds to be issued
- Maximum interest rate
- Maximum Underwriter's discount
- Maximum term
- Approves forms of the issuing documents, POS, BPA, and CDU
- Estimate of financing costs
- For refundings, the minimum savings to be achieved
- Delegation of Authority to Officers



Indenture of Trust / Trust Agreement / Bond Resolution / Bond Ordinance

Parties:

- Issuer
- Trustee
- For Ordinances and Resolutions, only the Issuer

Purpose:

- Evidences the contract between the Issuer and the Trustee for the benefit of the bondholders
- Establishes the rights, duties, responsibilities, and remedies of the Issuer and the Trustee
- Authorized the Trustee to administer the funds and property established as security for the bonds
- Specifies the security for repayment of the bonds

Indenture of Trust / Trust Agreement / Bond Resolution / Bond Ordinance

Key Provisions:

- **Definitions**
- **Permitted Investments**
- **Pledge of Collateral**
- **Reserve Fund**
- **Flow of Funds**
- **Additional Debt**
- Interest Rates
- **Principal and Interest Payment Dates**
- Maturity Dates
- **Redemption / Prepayment**
- **Defeasance Provisions**
- **Representations, Warranties and Covenants of the Issuer**
- **Maintenance of Rates, Fees & Charges**
- **Continuing Disclosure**
- Rights and Responsibilities of the Trustee
- **Events of Default and Remedies**
- **Insurance Provisions**

➤ (Blue text = Indicates provisions that require critical review)

Loan Agreement / Lease Agreement / Project or Facilities Lease / Installment Sale Agreement

Parties:

- Issuer
- Borrower

Purpose:

- Evidences the loan of bond proceeds by the Issuer to finance the project and for user (borrower) of the project to make payments sufficient in time and amount to repay the bonds
- For Installment Sale Agreements and Leases, the title to the project will transfer at the end of the term and maturity of the bonds

Key Provisions:

- Pledge of Revenues
- Lease Payments
- Additional Payments
- Representations & Warranties
- Covenants
- Prepayment Provisions
- Abatement

Preliminary and Final Official Statements

Parties:

- Issuer
- Borrower

Purpose:

- Discloses to investors why the bonds are being issued, including, terms of the bonds, descriptions of project(s) being financed or bonds being refunded, security and sources for repayment, risk factors, issuer financial and operating information, description of obligated parties, outstanding material litigation, and compliance with prior continuing disclosure undertakings
- Discloses all information a “reasonable investor” would consider to be important in making an investment decision to purchase the bonds
- The Preliminary Official Statement is complete as of its date except for pricing information and is used by the Underwriter to presell the bonds
- The Final Official Statement, reflecting pricing information, is dated the date the bonds are sold to the Underwriter

NEW ISSUE – FULL BOOK-ENTRY

RATINGS: Fitch: “AA”
S&P: “AA+”
See “RATINGS”

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Special Counsel, subject, however to certain qualifications described herein, under existing law, the portion of Lease Payments designated as and comprising interest and received by the owners of the Certificates is excluded from gross income for federal income tax purposes, and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. In the further opinion of Special Counsel, such interest is exempt from California personal income taxes. See “TAX MATTERS.”



\$29,005,000
COUNTY OF MONTEREY
2019 Certificates of Participation
(Public Facilities Refinancing)

Dated: Date of Delivery

Due October 1, as shown below

Certificates. The certificates of participation captioned above (the “Certificates”) evidence and represent direct, undivided fractional interests of the Owners thereof in the Lease Payments (which include principal and interest components) to be made by the County of Monterey (the “County”) for the right to the use of certain real property and improvements thereon (the “Leased Property”) within the County pursuant to that certain Lease Agreement, dated as of December 1, 2019 (the “Lease Agreement”), by and between the County, as lessee, and the County of Monterey Public Improvement Corporation (the “Corporation”), as lessor. The Certificates are being executed and delivered to provide funds to (i) refinance the County’s remaining lease payment obligation under a Lease Agreement, dated as of December 1, 2009, between the County and the Corporation, and cause the refunding of all of the outstanding Certificates of Participation (2009 Refinancing Project) of the County (the “2009 Certificates”), (ii) refinance the County’s remaining lease payment obligation under a Lease Agreement, dated as of October 1, 2010, between the County and the Corporation, and cause the refunding of all of the outstanding Certificates of Participation (2010 Refinancing Project) of the County (the “2010 Certificates”), and (iii) to pay certain costs incurred in connection with execution and delivery of the Certificates.

Payment Terms. The Certificates will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”). Purchasers of the Certificates will not receive certificates representing their interests in the Certificates. Payments of the principal and interest on the Certificates will be made to DTC, which is obligated in turn to remit such principal and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the Certificates. Interest on the Certificates is payable on April 1 and October 1, commencing April 1, 2020. See “THE CERTIFICATES – General.”

Prepayment Prior to Maturity. The Certificates are subject to mandatory prepayment from Net Proceeds of Insurance or Eminent Domain (as defined herein). The Certificates are not subject to optional prepayment prior to their maturity. See “THE CERTIFICATES – Prepayment.”

Security for the Certificates. The County has covenanted in the Lease Agreement to make the Lease Payments for the Leased Property as provided for therein, to include all such Lease Payments in each of its budgets and to make the necessary annual appropriations for all such Lease Payments. The Lease Payments, however, are subject to abatement under certain circumstances, as described herein. Neither the Corporation nor the County is establishing a debt service reserve fund for the Certificates.

The Certificates will be initially delivered only in book-entry form, registered to Cede & Co. as nominee of DTC, which will act as securities depository of the Certificates. Interest and principal represented by the Certificates are payable by U.S. Bank, National Association, as Trustee, to DTC, which remits such payments to its Participants for subsequent distribution to the beneficial owners of the Certificates. See “THE CERTIFICATES – Book-Entry Only System” and “– General.”

The obligation of the County to make the Lease Payments does not constitute a debt of the County or the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the County or the State of California is obligated to levy or pledge any form of taxation or for which the County or the State of California has levied or pledged any form of taxation.

MATURITY SCHEDULE (see inside cover)

THIS COVER PAGE CONTAINS INFORMATION FOR GENERAL REFERENCE ONLY. IT IS NOT A SUMMARY OF THE SECURITY OR TERMS OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT, INCLUDING THE SECTION ENTITLED “RISK FACTORS,” FOR A DISCUSSION OF CERTAIN FACTORS WHICH SHOULD BE CONSIDERED, IN ADDITION TO THE OTHER MATTERS SET FORTH IN THIS OFFICIAL STATEMENT, IN CONSIDERING THE INVESTMENT QUALITY OF THE CERTIFICATES. CAPITALIZED TERMS USED ON THIS COVER PAGE AND NOT OTHERWISE DEFINED SHALL HAVE THE MEANINGS SET FORTH IN THE TRUST AGREEMENT AND/OR LEASE AGREEMENT.

The Certificates were sold and awarded pursuant to a competitive bidding process held on November 20, 2019, as set forth in the Official Notice of Sale. The Certificates are offered when, as and if executed and delivered, are, subject to approval as to legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Special Counsel, and are subject to certain other conditions. Jones Hall is also serving as Disclosure Counsel to the County. Certain matters will be passed upon for the County by the Office of County Counsel. It is anticipated that the Certificates, in book entry only form, will be available for delivery through the facilities of DTC on or about December 11, 2019.

The date of this Official Statement is: November 20, 2019.



Preliminary and Final Official Statements

Key Provisions:

- Project Description
- Security for the Bonds and Sources of Payment
- Risk Factors
- Absence of Material Litigation
- Financial and Operating Information
- Continuing Disclosure
- Economic, Demographic, and Statistical Data

Bond Purchase Agreement/ Bond Purchase Contract

Parties:

- Issuer
- Underwriter
- Borrower
- Obligated Party

Purpose:

- Provides for the sale of the bonds by the Issuer to the Underwriter
- Specifies (i) the terms of the bonds; (ii) conditions precedent to the obligation of the Underwriter to purchase of the bonds; (iii) the delivery date of the bonds; (iv) the conditions permitting the Underwriter to withdraw from the agreement (the “Underwriter’s Outs”); (v) representations and warranties of the Issuer and Borrower, including a representation that the Preliminary Official Statement was deemed final by the Issuer as of its date and compliance with past continuing disclosure undertakings; (vi) the documents to be delivered at closing; (vii) the Underwriter's fees; (viii) the expenses to be paid by various parties; (ix) certain SEC requirements to be followed by all parties; and (x) the method for determining the issue price of the bonds
- Executed after the bonds have been priced by the Underwriter

Bond Purchase Agreement/ Bond Purchase Contract

Key Provisions:

- Pricing Information
 - ❖ Representation & Warranties
 - ❖ Underwriter's Outs
 - ❖ Expenses
 - ❖ Closing Conditions
 - ❖ Closing Documents
 - ❖ Form of Opinions
 - ❖ Redemption Provisions
 - ❖ Form of Issue Price Certificate (Tax-Exempt Bonds)

Continuing Disclosure Undertaking

Parties:

- Issuer
- Obligated Party
- Trustee
- Dissemination Agent

Purpose:

- Contains the undertakings of the Issuer (and each Obligated Party) to provide annual updates of specified information (Annual Reports) by a specified date certain and notices of the occurrence of significant events, generally within 10 business days following occurrence, pursuant to Rule 15c2-12
- Remains in effect during the lifetime of the bonds

Continuing Disclosure Undertaking

Key Provisions:

- Content of the Annual Report
 - ❖ Audited Financial Statements
 - ❖ Updates to specified tabular information
- Filing Date for the Annual Report
- List of 16 Significant Events
- Date for Filing Notices of the Occurrence of Significant Events
- Amendment Procedures
- Dissemination Agent Duties

Additional Considerations:

- Rule 10b-5

Tax Certificate / Tax and Non-Arbitrage Certificate

Parties:

- Issuer
- Borrower (Conduit Transaction)

Purpose:

- Sets forth the certifications and covenants of the Issuer (and the Borrower) necessary to maintain the tax-exempt status of the bonds
- Includes rules for investment of the bond proceeds, compliance with arbitrage and rebate requirements

Key Provisions:

- Sources and Uses of Proceeds
- Investment of Proceeds
- Representations and Warranties
- Tax Compliance Program
- Others – depending upon the purpose of the financing

Closing Certificates, Documents & Opinions

Parties:

- All

Purpose:

- *Documents the satisfaction or waiver of the conditions precedent to closing the transaction*
 - ❖ Issuer and Borrower Certificates
 - ❖ Receipts
 - ❖ Requisitions
 - ❖ Documents for Deposit of Funds
 - ❖ Opinions

Private Placement / Direct Lending

Purpose:

- A direct negotiation by the Issuer with a single or limited number of private financial institutions or investors with a high degree of sophistication; essentially a loan; exempt from registration with the SEC and doesn't require many of the disclosure requirements of a public offering

Documents:

- Master Loan Agreement
 - ❖ Similar to an Indenture
- Private Placement Agreement
 - ❖ Similar to the Bond Purchase Agreement, but is an agreement between the Issuer (and the Borrower) and the placement agent
- Continuing Covenant Agreement
 - ❖ Similar to a Continuing Disclosure Certificate, but is an agreement between the Issuer (and the Borrower) and the financial institution purchasing the Bonds
- Investor Letter
 - ❖ Executed by the investors agreeing to certain restrictions on resale and certifying that they have the degree of sophistication necessary to make an investment in the bonds

Other Types of Financing

Refunding Bonds:

- Basic Legal Documents
- Escrow Agreement or Refunding Instructions
- Verification Report

Variable Rate Bonds:

- Basic Legal Documents
- Remarketing Agreement
- Paying Agent Agreement
- Letter of Credit or Standby Bond Purchase Agreement
 - ❖ A Letter of Credit is issued by a bank to the Trustee on behalf of the Issuer to provide sufficient money to pay the principal and accrued interest (the "purchase price") on the bonds when tendered by the bondholders
 - ❖ A Standby Bond Purchase Agreement serves essentially the same purpose as the letter of credit, but instead of automatically paying the purchase price of the bonds when tendered by the bondholders, the bank purchases only those bonds that are not successfully remarketed by the remarketing agent to new purchasers; the remarketing agent then remarkets the bank's bonds

Other Types of Financing

Variable Rate Bonds: (Continued)

- Reimbursement Agreement
 - ❖ An agreement between the Issuer or the Conduit Borrower to reimburse the bank for all draws made on the letter of credit

Competitive Sale:

- Basic Documents, **except** the Bond Purchase Agreement
- Bonds are advertised for sale in an ad published in a financial newspaper (the “Notice Inviting Bids”); the terms for the sale of the bonds, the parameters maturities for the bonds, the procedures for submitting bids; the availability of the Preliminary Official Statement are set forth in the Notice of Sale



Compliance Best Practices

- Adopted Policies and Procedures
- Regular Training
- Develop Compliance Checklists
- Make sure that all the right people are in the room



Additional Resources

- California Debt and Investment Advisory Commission www.treasurer.ca.gov/cdiac
- Government Finance Officers Association www.gfoa.org
- Municipal Securities Rulemaking Board www.msrb.org
- National Association of State Auditors, Comptrollers and Treasurers www.nasact.org
- National Federation of Municipal Analysts www.nfma.org
- Securities Industry and Financial Markets Association www.sifma.org