

## **MINUTES**

**Tuesday, May 23, 2023  
East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

Vice President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:05 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

Directors John A. Coleman, April Chan, Doug A. Linney (remote), Lesa R. McIntosh, William B. Patterson, and Marguerite Young were present at roll call. President Andy Katz arrived at 11:08 a.m.

Staff participants included General Manager Clifford C. Chan and General Counsel Derek T. McDonald.

### **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Ivette Rivera commented on the Pierce/Bland court case, documents she provided to the Board at the May 9, 2023 Board meeting, comments written on the bulletin boards for the District's 100<sup>th</sup> Anniversary time capsule, and a Public Records Act request she made in 2022; and read an excerpt from the Raul Gutierrez vs. EBMUD case documents; and 2) George Cleveland, Raining Pride Affinity Group President commented on Pride events scheduled at the District during the month of June.

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

President Katz announced the closed session agenda and the Board convened to the Administration Building Conference Room 8 for discussion.

### **Regular Business Meeting**

President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:17 pm. in the Administration Building Boardroom.

### **ROLL CALL**

Directors John A. Coleman, April Chan, Doug A. Linney (remote), Lesa R. McIntosh, William B. Patterson, Marguerite Young and President Andy Katz were present at roll call.

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 Katz led the Pledge of Allegiance.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PRESENTATIONS**

General Manager Clifford C. Chan announced the District turned 100 years old on May 22 and discussed activities developed by staff to connect and educate the community with the work of the District. Activities included Water Wednesday webinars; monthly staff-guided tours of the District's watershed and some facilities; and the Community Fair on Sunday, May 21 at Lake Temescal in Oakland. He expressed thanks to staff from across the District who helped coordinate the centennial activities. President Katz announced today marks the first day of EBMUD's next century of service. He highlighted significant District milestones during the past 100 years and invited elected officials, former Board members, former General Managers, and former General Counsels to provide comment in honor of the District's centennial. Lily Moser, Field Representative for Congresswoman Barbara Lee read excerpts from the Congressional Record in honor of the District's centennial and Orinda Mayor Inga Miller presented a proclamation congratulating the District on its centennial anniversary. The following offered congratulations on the District's centennial and recounted their experience and contributions while serving at the District: Retired General Managers Jerome "Jerry" Gilbert and Alexander Coate; retired General Counsel Robert Helwick; and former Board members Helen Burke, Nancy Nadel, Mary Selkirk, Stuart Flashman, Andy Cohen, and Danny Wan. EBMUD Community Affairs Representative Joseph J. Voelker read excerpts from resolutions received by the District in honor of its centennial and thanked Orinda Mayor Inga Miller and Lily Moser for their support and recognition. Director William B. Patterson provided comments as the Chair of the Centennial Ad Hoc Committee and Special Assistant to the General Manager Kelly A. Zito provided a presentation highlighting commemorative centennial events; social media and earned media; and upcoming projects that will further highlight the District's centennial including: a video that will focus on development of the District's water and wastewater systems and the people who built it, operate it today and into the future; a centennial digital flip book; a new exhibit to be installed in the Administration Building lobby; and employee events upcountry and in Lafayette being organized by the Utility District Employee Association. President Katz concluded by thanking the speakers, staff and Board members for their participation in the celebratory events and read excerpts of the resolution prepared by staff in recognition of the District's centennial.

- Director Chan left the meeting at 2:07 p.m. and returned at 2:16 p.m.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Lonna Coleman commented on the District's 100<sup>th</sup> anniversary and a request to investigate staff's administration of Retirement Ordinance No. 40; 2) Ivette Rivera commented on a Public Records Act request she made in August 2022 for employment records, a request for an itemized receipt for a Public Records Act request, and the start date for the Pierce/Bland trial; and provided Director Chan with documents provided to other Board members during Director Chan's absence; and 3) George Cleveland, Raining Pride Affinity Group President commented on Pride events scheduled at the District during the month of June.

- Director Coleman left the meeting at 2:37 p.m. and returned at 2:40 p.m.

### **CONSENT CALENDAR**

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended actions for Items 1-2 and 4-10 on the Consent Calendar carried (7-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 089-23** – Approved the Regular Meeting Minutes of May 9, 2023.
  2. The following correspondence was filed with the Board: 1) Proclamation from City of Orinda Congratulating the East Bay Municipal Utility District on its Centennial Anniversary; 2) Speakers' Bureau and Outreach Record CY23 dated May 23, 2023; and 3) Second Revised Pretrial Scheduling Order and Trial Guidelines for Saji Pierce et al., v. East Bay Municipal Utility District.
  3. **Award a contract to the lowest responsive/responsible bidder Koffler Electrical Mechanical Apparatus Repair, Inc., for supplying four 1500 horsepower air compressor motors for the District's Main Wastewater Treatment Plant, beginning on or after May 23, 2023 for a total cost, after the addition of taxes, not to exceed \$1,637,433 under Request for Quotation No. 2312.**

Director Coleman asked if there are processes in place to reach out to vendors that do not respond to the District's requests for quotations or if additional actions are taken when the District receives one bid on a contract. General Manager Clifford C. Chan and Manager of Purchasing Kelley K. Smith responded and provided an overview of the District's current processes. The Board asked staff to explore ideas to help increase the number of bidders for District contracts.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Item 3 carried (7-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).
- Motion No. 095-23** – Awarded a contract to the lowest responsive/responsible bidder Koffler Electrical Mechanical Apparatus Repair, Inc., for supplying four 1500 horsepower air compressor motors for the District's Main Wastewater Treatment Plant, beginning on or after May 23, 2023 for a total cost, after the addition of taxes, not to exceed \$1,637,433 under Request for Quotation No. 2312.
4. **Motion No. 090-23** – Awarded a sole source contract to Emerson Process Management, Power & Water Solutions, Inc. for supplying distributed control system equipment, software, and a four-year contract for programming services for the Main Wastewater Treatment Plant and remote wastewater facilities beginning on or after May 23, 2023 with one option to renew for an additional one-year period for a total cost, after the addition of taxes, including option year, not to exceed \$6,900,000.
  5. **Motion No. 091-23** – Authorized an agreement beginning on or after May 23, 2023, with Brown and Caldwell in an amount not to exceed \$499,400 for preparation of the Recycled Water Strategic Plan Update 2024.

6. **Motion No. 092-23** – Authorized the Office of General Counsel to continue the employment of the law firm of Olson Remcho, LLP for specialized legal services related to elections and conflicts of interest in an additional amount not to exceed \$50,000.
7. **Motion No. 093-23** – Approved the Water Supply Assessment requested by the City of Berkeley for the Gilman Gateway Rezone Project pursuant to California Water Code sections 10910-10915.
8. **Motion No. 094-23** – Approved the April 2023 Monthly Investment Transactions Report.
9. **Resolution No. 35346-23** – Adopting Revised Policy 4.07, Investments, And Renewing Existing Delegation Of Authority For The Management Of Investments On Behalf Of The East Bay Municipal Utility District And Its Joint Powers Authorities To The Director Of Finance As The Treasurer Of The District.
10. **Resolution No. 35347-23** – Celebrating The Centennial Anniversary Of The East Bay Municipal Utility District.

#### **DETERMINATION AND DISCUSSION**

11. **Appointment to the position of Assistant Attorney.**

General Counsel Derek T. McDonald announced Nelly Chavez as the recommended candidate for the position of Assistant Attorney of the District and highlighted Ms. Chavez's education and professional background.

- Addressing the Board was Ivette Rivera who congratulated Ms. Chavez on her appointment and commented on female attorneys that have previously worked at the District.
- Motion by Director McIntosh, seconded by Director Young, to approve the recommended actions for Item 11 carried (7-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Ms. Chavez thanked the Board for the opportunity to contribute to the District's mission and said she looks forward to working at EBMUD.

**Resolution No. 35348-23** – Appointing Nelly Chavez to the position of Assistant Attorney of the District with the title of Attorney I (*effective June 5, 2023*).

12. **Adopt a resolution authorizing the General Manager or the General Manager's designee to execute indemnity provisions in all agreements within the General Manager's authority.**

General Counsel Derek T. McDonald reviewed the resolution which would authorize the General Manager or the General Manager's designee to execute agreements, permits, and other documents that include provisions to defend, indemnify, or hold harmless other parties or third parties, to the extent the General Manager or the General Manager's designee otherwise has authority to execute the agreement, permit, or other document. Mr. McDonald discussed resolutions that have been previously adopted by the Board that delegate this authority to the General Manager or the General Manager's designee. The District frequently must execute indemnity agreements that are not

included in the scope of these prior delegation resolutions. The Board, however, has not delegated authority to execute indemnity agreements that is coextensive with the authority of the General Manager or the General Manager's designee to otherwise execute an agreement. In addition, the prior resolutions delegating authority to execute certain types of indemnity agreements could benefit from greater clarity regarding their scope. This resolution would resolve this gap in authority and address concerns regarding scope. To assist in clarity, this resolution also would rescind and supersede Resolution Nos. 33156-99, 33278-01, and 33442-04 one year following this resolution's adoption. If adopted, the appropriate staff will be trained to review and execute agreements, permits or other documents that contain standard indemnity provisions. The General Counsel's office will provide guidance when an agreement, permit or other document contains indemnity provisions that deviate from the District's standard indemnity provisions. Mr. McDonald and General Manager Clifford C. Chan responded to questions from the Board on whether this information would be included in the General Manager's monthly report or in a monthly memo to the Board; indemnification authority in the Municipal Utility District Act; and providing information to the Board when the District has to pay a claim as a result of indemnity provisions.

- Motion by Director Young, seconded by Director McIntosh, to approve the recommended actions for Item 12 carried (7-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35349-23 – Authorizing The General Manager Or The General Manager's Designee To Execute Indemnity Provisions In All Agreements Within The General Manager's Authority.**

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

General Manager Clifford C. Chan announced the Speakers' Bureau and Outreach Record CY23 dated May 23, 2023 was available at Board places.

- Director McIntosh left the meeting at 3:11 p.m.

**REPORTS AND DIRECTOR COMMENTS**

**14. Committee Reports.**

- Filed with the Board were the Minutes for the May 9, 2023 Planning and Legislative/Human Resources Committee meetings.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day and received updates on the Monthly Investment Transactions Report for April 2023; Los Vaqueros Reservoir Expansion Project Funding; Annual Investment Policy Review; and Sewer Agency Billing and Collection Services.

**15. Other Items for Future Consideration.**

None.

**16. Director Comments.**

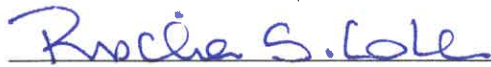
- Director Coleman reported participating in the East Bay Leadership Council Board meeting (remote) on May 19 and the Centennial Time Capsule media event in Oakland on May 22. He reported on plans to attend the USACE Change of Command Ceremony in Tiburon on June 23; a Sunset Gate meeting in Orinda on June 26; and a presentation to the San Ramon City Council in San Ramon on June 27. Director Coleman also commented on his tenure on the Board, the visionary leaders that planned and built the District's infrastructure, learning from past mistakes, and making plans for the future to address climate change.
- Director Linney commented he is proud to be a part of such a great organization and recognized all staff for their work at the District as well as the staff that contributed to the centennial events.
- Director Patterson commented on Senator Dianne Feinstein's retirement announcement and asked that a letter be sent in recognition of the support she has provided to the District.
- Director Young commented how the District's Mission Statement, Strategic Plan, Key Performance Indicators and other policy documents have helped guide her and the Board and expressed appreciation for the former Board members and former staff that attended today's meeting.
- President Katz thanked the team that coordinated the centennial events and especially the Community Fair on May 21 at Lake Temescal; and read the letter he wrote to the future president of the EBMUD Board of Directors that was included in the time capsule buried at the District's Adeline Maintenance Center in Oakland on May 22. President Katz also acknowledged the staff that were present in the Boardroom for their contributions and work on the centennial activities.
- Directors Chan and McIntosh had no reports.

**ADJOURNMENT**

President Katz announced that each year the District honors its employees and retirees who have passed away in the last year. Today, in addition to adjourning the meeting in honor of EBMUD's 100<sup>th</sup> Anniversary and the employees, past and present who have contributed to the District, today's meeting will also be closed in memory of those employees and retirees who passed away between May 16, 2022 and May 14, 2023. The names of these employees were displayed onscreen while the Board and others in attendance observed a moment of silence.

President Katz adjourned the meeting at 3:33 p.m.

SUBMITTED BY:



Risha S. Cole, Secretary of the District

APPROVED: June 13, 2023



Andy Katz, President of the Board

