

## **MINUTES**

**Tuesday, September 12, 2023  
East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

President Andy Katz called to order the Regular Closed Session Meeting of the Board of Directors at 11:04 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

Directors April Chan, John A. Coleman, Doug A. Linney, Lesa R. McIntosh, Marguerite Young and President Andy Katz were present at roll call. Director William B. Patterson arrived at 11:07 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) Lonna Coleman commented on the investigation into her claims, requesting a scope statement from the Ad Hoc Committee for the investigation, and remarks made by Board members at a previous meeting; and 2) Ivette Rivera commented on documents she distributed to the Board, pay for performance awards, and redacted information regarding life coaches for staff in records she received in response to a Public Records Act request to the District.

General Counsel Derek T. McDonald clarified why the information was redacted in the records referenced by Ivette Rivera.

### **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 1:19 p.m. in the Administration Building Boardroom.

### **ROLL CALL**

Directors April Chan, John A. Coleman, Doug A. Linney, Lesa R. McIntosh, Marguerite Young, and President Andy Katz were present at roll call. Director William B. Patterson arrived at 1:22 p.m.

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.

## **PRESENTATION**

General Manager Clifford C. Chan announced the District received two distinguished awards for its commitment and support of EBMUD reservist employees. Both were awarded through the Employer Support for the Guard and Reserve (ESGR). ESGR is a Department of Defense office that was established in 1972 to promote cooperation and understanding between Reserve Component Service members and their civilian employers, and to assist in the resolution of conflicts arising from an employee's military commitment. The District received the Pro Patria Award, which recognizes the outstanding support provided by employers to their reservist employees. Each year, one small, one large, and one public sector employer are honored with this distinction in their state. The second award is the Freedom Award which was instituted by Secretary of Defense William Perry in 1996. This award represents the highest honor among the Department of Defense employer awards. It signifies exceptional support for those who serve in the Guard and Reserve. This year, 15 employers were chosen out of 1,863 companies nominated. Since 1996, only 325 employers have received the Freedom Award. EBMUD is the only public water or wastewater utility to have received this honor. These achievements are not just a testament to our commitment but also a recognition of the dedication and sacrifice made by our reserve employees. EBMUD's nominations for the awards were made by Bob Musick, a Navy Reservist and Electrical Technician at Pardee. Mr. Chan and Mr. Musick traveled to the Pentagon to accept the Freedom Award in August. EBMUD's recognition and the recognition of the 14 other employers this year is prominently displayed at the Pentagon. Mr. Chan also announced that staff presented information at the Legislative/Human Resources Committee earlier in the day on proposed policy changes at the District to provide additional support for reservist employees. Next, Mr. Musick thanked the Board and acknowledged the continued support of his supervisors, and the District provides he and his family with peace of mind and has assisted with his success as a Navy reservist. Mr. Chan and Mr. Musick recounted their experience during the Freedom Award ceremony at the Pentagon. President Katz presented the Freedom Award and Mr. Musick presented the Pro Patria Award. The Board thanked Mr. Musick for his work and his service as a Navy reservist.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Lonna Coleman commented on the investigation into her claims, the scope of the investigation including all the allegations she has made, and the current court appeal about her portion of Director Coleman's EBMUD retirement benefits; 2) George Cleveland, Chief Steward, AFSCME Local 2019 commented on the Human Resources Department Strategic Plan Update presented to the Legislative/Human Resources Committee earlier in the day and changes to the District's internal investigations process; 3) Ivette Rivera commented on the Pierce/Bland lawsuit, items she provided to the Planning Committee, and read excerpts from Bernard Alexander's closing arguments in the Pierce/Bland trial; and 4) Momin Khawaja, speaking on behalf of Ambreen Khawaja, commented on the District's System Capacity Charge (SCC) and other installation charges for water service to an Accessory Dwelling Unit (ADU) and requested a reduction in charges or payment options.

Director McIntosh reported staff has been updating her on this matter. Director of Customer and Community Services Andrew L. Lee provided an update and explained why the District has determined the ADU requires a separate meter. Mr. Lee reported the District cannot install the new services until the charges have been paid in full and that staff has been working with the customer and is researching payment options including by credit card that would include a fee from the credit card vendor. There was a brief discussion by the Board regarding the matter, SCC charges in the District's SCC Region 1, as well as the total cost to install a new meter and other infrastructure for the ADU. Staff was advised to continue working with the customer on payment options and to provide an update on SCCs for ADUs at a future meeting.

### **CONSENT CALENDAR**

- Items 1 and 7a-7b were pulled from the Consent Calendar for separate discussion.
- Addressing the Board was Ivette Rivera who commented on the Diversity, Equity, and Inclusion Strategic Plan Update presentation that was deferred to a future meeting due to time constraints during the Legislative/Human Resources Committee meeting earlier in the day.
- Motion by Director McIntosh seconded by Director Patterson, to approve the recommended actions for Items 2-6 and 8-9 on the Consent Calendar carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

**1. Approve the Regular Meeting Minutes of August 8, 2023 (revised) and August 22, 2023.**

Director Young stated she could not vote on Item 1 because she was not present at the August 22, 2023 meeting.

Motion by Director Linney, seconded by Director Chan, to approve the recommended actions for Item 1 carried (6-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (Young); ABSENT (None).

**Motion No. 151-23** – Approved the Regular Meeting Minutes of August 8, 2023 (revised) and August 22, 2023.

- 2.** The following correspondence was filed with the Board: **1)** Presentation entitled, “Capital Improvement Program Management,” dated September 12, 2023; **2)** Speakers’ Bureau and Outreach Record CY23 dated September 12, 2023; **3)** Written comments from Lonna Coleman Closed Session, dated September 22, 2023; **4)** Written comments from Lonna Coleman Regular Session, dated September 12, 2023; **5)** Document entitled, “Plaintiffs’ Opposition to Defendants’ Motion for Judgment as a Matter of Law, New Trial and/or Remittitur,” dated September 29, 2023; **6)** CPER Journal Article entitled, “Garcetti Four Years Later: Can Public Employee Whistleblowers Be Protected,” dated March 2011; **7)** San Leandro Times article entitled, “Chan Questions EBMUD’s Transfer of Funds,” dated August 24, 2023; **8)** Document entitled, “Finance Committee Audit Tracking Report,”; and **9)** Letter dated August 31, 2023 from Ambreen Khawaja to EBMUD Board of Directors regarding WSA 17763, Urgent Re-evaluation of Disproportionate Water Meter Installation Charges, Unit, dated August 31, 2023.

3. **Motion No. 145-23** – Authorized an agreement beginning on or after September 12, 2023 with Autodesk, Inc. for one year with four options to renew for additional one-year periods in an aggregate amount, including option years, not to exceed \$990,000 for hydraulic modeling software licensing, maintenance and support.
4. **Motion No. 146-23** – Authorized an agreement beginning on or after September 12, 2023 with CD & Power for three years, in an amount not to exceed \$831,837 for maintenance of District electrical generators.
5. **Motion No. 147-23** – Authorized an agreement beginning on or after September 12, 2023, with the City of Berkeley in an amount not to exceed \$101,200 for gate valve pot upgrades.
6. **Motion No. 148-23** – Authorized an interconnection agreement beginning on or after September 12, 2023 with Pacific Gas and Electric Company in an amount not to exceed \$180,000 to connect the Oakport Storage Facility Photovoltaic Project to the electrical grid.
- 7a. – **Authorize amendments to the agreements previously authorized under Board Motion No. 197-22 with Arrowhead Concrete Construction; Bruce Enterprises; Gary Golobe dba Cornerstone Paving; Pacific General Engineering; and Sonnikson and Stordahl Construction to increase the aggregate amount of those agreements by \$2,000,000 to a total aggregate amount not to exceed \$3,300,000 and extend the term of the agreements to September 12, 2024 for concrete repair services; and authorize additional agreements for concrete repair services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on September 12, 2023, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager's monthly report.**
- 7b.

Director Coleman asked about the increase in the aggregate amount of the agreements. Manager of Maintenance Support Gina L. Jenkins and Director of Operations and Maintenance David A. Briggs explained the increase was due in part to escalating costs for materials and additional costs for contractors and equipment to complete work during peak workloads. Staff reviewed historical spending on these services, and they have remained relatively flat over the past few years. Staff was asked to provide additional information on these expenditures.

– Director Chan left the meeting at 1:56 p.m. and returned at 1:59 p.m.

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

**Motion No. 150-23** – Authorized amendments to the agreements previously authorized under Board Motion No. 197-22 with Arrowhead Concrete Construction; Bruce Enterprises; Gary Golobe dba Cornerstone Paving; Pacific General Engineering; and Sonnikson and Stordahl Construction to increase the aggregate amount of those agreements by \$2,000,000 to a total aggregate amount not to exceed \$3,300,000 and extend the term of the agreements to September 12, 2024 for concrete repair services; and authorized additional agreements for concrete repair services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on September

12, 2023, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager's monthly report.

8. **Motion No. 149-23** – Authorized Kaiser Health Plan premium increases to take effect on January 1, 2024 as follows: (1) 22.3% for HMO Plan for active employees; (2) 15.2% for retirees in Senior Advantage High Plan; and (3) 17.1% for retirees in Senior Advantage Low Plan.
9. **Resolution No. 35362-23** – Amending Resolution No. 35353-23 To Revise Job Titles For Three Job Classifications, To Adjust The Salary Grades For Four Job Classifications And To Correct An Error In The Number And Character Of Positions Set Forth In Exhibit A To Resolution No. 35353-23.

### **DETERMINATION AND DISCUSSION**

10. **Appoint the Assistant Attorney of the District with the title of Attorney III.**

General Counsel Derek T. McDonald announced Patricia Bonheyo as the candidate for appointment to the position of Assistant Attorney of the District and highlighted Ms. Bonheyo's education and experience.

- Motion by Director Coleman, seconded by Director McIntosh, to approve the recommendation actions for Item 10, carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Ms. Bonheyo thanked the Board and said she looks forward to the opportunity to serve at the District.

**Resolution No. 35363-23** – Appointing Patricia Bonheyo To The Position Of Assistant Attorney Of The District With The Title Of Attorney III (*effective September 25, 2023*).

11. **Capital Improvement Program (CIP) Management.**

Director of Finance Sophia D. Skoda and Director of Engineering and Construction Olujimi O. Yoloeye provided the presentation. The CIP is a component of the biennial budget (e.g., fiscal year [FY] 2024 – FY 2025) and is developed over a roughly six-month period with regular updates to and input from the Board. The CIP is informed by master plans and studies to guide the approach to the District's renewal and replacement of its infrastructure. Ms. Skoda discussed appropriations versus cash flow, the CIP development timeline and process, and how staff implements the CIP after Board approval. Mr. Yoloeye reviewed an illustration of the appropriations and cash flow process for two projects which demonstrated how appropriations are moved between projects and highlighted factors that prompt appropriation transfers including modifications to the scope of a project; schedule changes; cost changes; and unanticipated or emergency projects. Ms. Skoda reviewed the language in the resolution adopted by the Board which authorizes staff to transfer unexpended appropriations to other approved capital projects. The resolution also states that the Office of Budget and Performance will submit an annual report of the transferred capital unexpended funds to the General Manager. She highlighted key appropriation transfers between FY 2018 and FY 2023 noting the figures exclude transfers related to reorganizing projects. Mr. Yoloeye provided details on the factors that permitted the \$279.1 million in appropriation transfers in FY

2023 for the Upper San Leandro (USL) Water Treatment Plant project as well as the status of the \$3.5 million awarded to the project in 2022 from the Federal Consolidated Appropriations Act. Ms Skoda concluded with information on benefits to managing the CIP within existing appropriations, situations that may require staff to request budget amendments, and potential impacts if budget amendments are more frequently requested. To improve visibility for the CIP management process, staff will provide the Board with the summary of appropriation transfers currently provided to the General Manager and Senior Management Team, develop opportunities to enhance capital project budget management processes, and continue working with the District's Internal Auditor on best practices. There was considerable Board discussion regarding the information presented. Staff responded to questions from the Board regarding project change orders; when project change orders can be made; the process for deciding which project funds will be transferred; how funds are transferred between projects; the \$2.5 million threshold for the appropriation transfer summary report provided to the General Manager and how this number compares to other agencies; when appropriation transfers are reported to the Board; implementing a process for the Board to approve large appropriation transfers; implementing an appropriations transfer tracking report to be submitted to the Board on a monthly basis; the decision to transfer appropriations to the USL project; the report from the District's Internal Auditor regarding appropriation transfers; and calendaring a discussion regarding internal controls for a future Finance/Administration Committee meeting.

- President Katz left the meeting at 2:07 p.m. and returned at 2:08 p.m.
- Director McIntosh left the meeting at 2:28 p.m. and returned at 2:30 p.m.
- Addressing the Board was Ivette Rivera who commended the Board members who were being persistent about this matter, and commented on the San Leandro Times article entitled, "Chan Questions EBMUD's Transfer of Funds," dated August 24, 2023 and project change orders.

There was additional Board discussion and staff was asked to provide the summary of appropriation transfers report to Board; begin including a list of appropriation transfers over \$2.5 million in the General Manager's Monthly Report; and calendar a discussion regarding internal control processes for CIP management for an upcoming Finance/Administration Committee and provide an update and recommendations from that discussion to the Board.

## 12. **General Manager's Report.**

### Board of Directors 2023 Retreat.

General Manager Clifford C. Chan announced in early 2023, Board members had expressed interest in having a retreat. The Board received information in their agenda materials with potential topics and dates for a retreat. He asked Board members to review the information and return their completed forms to the Secretary's Office by Friday, September 15.

### General Manager's Monthly Report – August 2023.

General Manager Clifford C. Chan announced he is available to respond to questions regarding the monthly report and that the Speakers' Bureau and Outreach Record CY23 had been provided at Board places.

## **REPORTS AND DIRECTOR COMMENTS**

### **13. Committee Reports.**

- Finance/Administration Committee Chair William B. Patterson reported the Committee met in special session earlier in the day and received an update on the Revised Single Audit Report for Fiscal Year 2022. Due to time constraints staff did not provide the update on Capital Improvement Program Management which was reviewed with the Board under Agenda Item 11.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier in the day and received updates on the Walnut Creek Water Treatment Plant Pretreatment Project Update and Availability of the Draft Environmental Impact Report and the Dam Safety Program Annual Report.
- Legislative/Human Resources Committee Chair Lesa R. McIntosh reported the Committee met earlier in the day and received updates on Special Military Pay and Benefits for National Guard Members and Military Reservists and the Human Resources Department Strategic Planning. Due to time constraints, the Diversity, Equity, and Inclusion Strategic Plan update was deferred to a future meeting.
- Upper Mokelumne River Watershed Authority Board representative John A. Coleman reported the Board met on July 28 and discussed the Second Quarter FY 2023 Treasurer's Report; the Forest Projects Plan – Phase 1 Project Implementation Work Plan Funding Strategy; the FY 2024 Budget; and the Upper Mokelumne Biomass Feasibility Investigation.
- Upper Mokelumne River Watershed Authority Board representative William B. Patterson reported the Board met in special session on August 25 and discussed the Forest Projects Plan – Phase 1 Project and possible action on the Forest Projects Plan – Phase 1 Project Implementation Funding Strategy Follow-up.

### **14. Other Items for Future Consideration.**

None.

### **15. Director Comments.**

- Director Coleman reported giving a presentation at the Pleasant Hill City Council on September 11 and plans to participate in the following: Lafayette Art and Wine Festival in Lafayette September 23 – 24; DERWA Board meeting in Dublin on September 25; ACWA Council of Past Presidents on October 2 (remote); providing a presentation on water at the Lafayette-Orinda Presbyterian Church in Lafayette on October 5; UMRWA Board meeting and Pardee BBQ on October 6 at Pardee Reservoir; Ward 2 briefing in Lafayette on October 17; Walnut Creek Water Treatment Plant public meeting in Walnut Creek on October 19; and the East Bay Leadership Council Board meeting on October 20.
- Directors Chan, Linney, McIntosh, Patterson, Young, and President Katz had no reports.

**ADJOURNMENT**

President Katz adjourned the meeting at 3:38 p.m.


SUBMITTED BY:



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Rischa S. Cole, Secretary of the District

APPROVED: September 26, 2023



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Andy Katz, President of the Board