

## **MINUTES**

**Tuesday, October 10, 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 11:08 a.m. in the Administration Building Boardroom.

### **BOARD OF DIRECTORS**

President Katz announced that in accordance with Government Code section 54953 et seq., Director John A. Coleman notified the Board President, the General Manager, and the Secretary of the District of the need to participate in the Regular Closed Session meeting from a remote location due to emergency circumstances. In accordance with Government Code section 54953 et seq., Director Coleman announced he was appearing remotely due to providing medical support for a relative.

President Katz called for a motion to amend the agenda to allow the Board to vote on Director Coleman's request to appear remotely.

- Motion by Director McIntosh, seconded by Director Chan, to amend the agenda to allow the Board to vote on Director Coleman's request to appear remotely carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

**Motion No. 161-23** – Approved an amendment to the agenda to allow the Board to vote on Director Coleman's request to appear remotely in the Regular Closed Session meeting pursuant to Government Code section 54953(f)(2)(A).

President Katz called for a motion to approve Director John A. Coleman's request to appear remotely in the Regular Closed Session pursuant to Government Code section 54953(f)(2)(A).

- Motion by Director Chan, seconded by Director McIntosh, to approve Director John A. Coleman's request to participate in the Regular Closed Session meeting from a remote location due to emergency circumstances in accordance with Government Code section 54953 et seq. carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

**Motion No. 162-23** – Approved Director John A. Coleman's request to appear remotely in the Regular Closed Session pursuant to Government Code section 54953(f)(2)(A).

President Katz announced that in accordance with Government Code section 54953(f)(2)(C), Director Coleman would need to keep his audio open and camera on at all times while appearing remotely. Additionally, in accordance with Government Code section 54953(f)(2)(B), Director Coleman would need to disclose whether any individual over the age of 18 is present in the room at any time during the remote

meeting and describe the general nature of the relationship with the individual. Director Coleman confirmed there was no one in the room with him over the age of 18.

### **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 was absent (excused).

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

### **PUBLIC COMMENT**

- Addressing the Board was Ivette Rivera who commented on documents she provided to the Board, a video she emailed to the Board, information omitted from documentation she received from a former Employee Relations manager, her proposed appraisal mediation session, and the District's whistleblower policy.

President Katz stated information on the District's whistleblower policy will be presented at a future Board meeting.

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

President Katz announced the closed session agenda and the Board convened to 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 1:20 p.m. in the Administration Building Boardroom.

### **BOARD OF DIRECTORS**

President Katz announced that in accordance with Government Code section 54953 et seq., Director John A. Coleman notified the Board President, the General Manager, and the Secretary of the District of the need to participate in the Regular Business meeting from a remote location due to emergency circumstances. In accordance with Government Code section 54953 et seq., Director Coleman announced he was appearing remotely due to providing medical support for a relative.

President Katz called for a motion to amend the agenda to allow the Board to vote on Director Coleman's request to appear remotely.

- Motion by Director Chan, seconded by Director McIntosh, to amend the agenda to allow the Board to vote on Director Coleman's request to appear remotely carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

**Motion No. 163-23** – Approved an amendment to the agenda to allow the Board to vote on Director Coleman's request to appear remotely in the Regular Business meeting pursuant to Government Code section 54953(f)(2)(A).

President Katz called for a motion to approve Director John A. Coleman's request to appear remotely in the Regular Business meeting pursuant to Government Code section 54953(f)(2)(A).

- Motion by Director McIntosh, seconded by Director Chan, to approve Director John A. Coleman's request to participate in the Regular Business meeting from a remote location due to emergency circumstances in accordance with Government Code section 54953 et seq. carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

**Motion No. 164-23** – Approved Director John A. Coleman's request to appear remotely in the Regular Business meeting pursuant to Government Code section 54953(f)(2)(A).

President Katz announced that in accordance with Government Code section 54953(f)(2)(C), Director Coleman would need to keep his audio open and camera on at all times while appearing remotely. Additionally, in accordance with Government Code section 54953(f)(2)(B), Director Coleman would need to disclose whether any individual over the age of 18 is present in the room at any time during the remote meeting and describe the general nature of the relationship with the individual. Director Coleman confirmed there was no one in the room with him over the age of 18.

### **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 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 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 four Outstanding Project of the Year awards from the American Society of Civil Engineers (ASCE), San Francisco section. Many District staff from various departments worked on these projects and were present representing all those that contributed to the projects' success. The *Moraga Creek Flood and Erosion Control project* received the Outstanding Flood Management Project of the Year award. This award recognizes projects whose primary purpose is flood management and flood protection and that showcase advances and/or innovation in the management of flood plains, addressing historical flood issues or emergency flood repairs and related improvements to the benefit of the environment and downstream lands and communities. The following staff were present representing all those that contributed to the success of the project: Samuel Gambino, Associate Civil Engineer; Javier Prospero, Senior Civil Engineer; Joe Kacyra, Assistant Engineer; Gopal Nair, Senior Environmental Health and Safety Specialist; Chris Potter, Senior Civil Engineer; Mark Silva, Ranger Supervisor; Bert Mulcahey, Supervising Fisheries/ Wildlife Biologist; and Ke'Anyia Kennedy, Real Estate Representative II. The *San Pablo Clearwell and Rate Control Station Replacement project* received the Outstanding Water Project of the

Year award. This award recognizes projects where the primary purpose is the supply, storage and conveyance of potable and/or recycle water, and which demonstrate innovation and improved the state of the practice of water supply and delivery projects. The following staff were present representing all those that contributed to the success of the project: Yousef Nouri, Associate Civil Engineer; Kevin Smith, Maintenance Superintendent; Karl Tingwald, Senior Civil Engineer; Dan McAuliff, Senior Construction Inspector; Robert Johnson, Senior Construction Inspector; Jamie Sweet, Assistant Engineer; Tom Bullock, Associate Civil Engineer; Jason Littlefield, Senior Water Treatment Operator; Sonya Spala, Associate Mechanical Engineer; Jin Lin, Assistant Engineer; Sanna Garcia, Associate Civil Engineer, and Jennifer McGregor, Senior Civil Engineer. The *Summit Pressure Zone South Pipeline Replacement, Phase 1 project* received the New Technology Project of the Year award. This award recognizes projects that demonstrate innovation and advancement in technology to advance more efficient and sustainable civil infrastructure, including implementation of new methods and improvements on existing methods and/or incorporating new emerging technology. The following staff were present representing all those that contributed to the success of the project: Benjamin Townley, Senior Civil Engineer; Patrick Wood, Senior Construction Inspector; Shawn Carlson, Plant Inspector; Larry Vieira, Plant Inspector; Shary Zamaroni, Assistant Engineer; Gus Cicala, Associate Civil Engineer; Krista Araica, Associate Civil Engineer; Jose Perez, Engineering Designer II; and Marshall McLeod, Senior Civil Engineer. The *Maloney Pumping Plant and Sobrante Water Treatment Plant Improvements project* received the Outstanding Water/Wastewater Project of the Year award. This award recognizes projects where the primary purpose is the treatment of water or wastewater, and which demonstrate innovation and improved the state of the practice for the water / wastewater treatment industry. The following staff were present representing all those that contributed to the success of the project: Sharon Hu, Senior Electrical Engineer; Terriane Reed, Senior Construction Inspector; Karl Tingwald, Senior Civil Engineer; Ray Vanover, Senior Construction Inspector; Samuel Abraham, Assistant Engineer; Cameron Nauman, Assistant Engineer; Ali Rahimi-Ardabili, Associate Electrical Engineer; Nikki Najdi, Associate Electrical Engineer; Alexander Borys, Senior Civil Engineer; Dennis Lingad, Assistant Engineer; Kevin Smith, Maintenance Superintendent; and Anna Lau, Associate Civil Engineer.

Next, Mr. Chan announced Director of Engineering and Construction Olujimi O. Yoloye was awarded the ASCE San Francisco section's Lifetime Achievement Award. The Lifetime Achievement award recognizes ASCE members who, through their innovative efforts and long-term involvement, have advanced or significantly contributed to the field of civil engineering. Mr. Chan highlighted Mr. Yoloye's over 40 years of professional experience in the fields of water resources, wastewater, engineering and construction management noting that thirty-eight years of Mr. Yoloye's career have been with EBMUD. Mr. Yoloye thanked the Board for the acknowledgement and their leadership and recognized former supervisors and colleagues that have been instrumental during his career. He thanked the Engineering and Construction Department staff for their hard work and for living the District's values of stewardship, integrity, respect, and teamwork. President Katz presented Mr. Yoloye with the Lifetime Achievement Award and acknowledged staff for their work in achieving the four Outstanding Project of the Year awards on behalf of the District. Board members thanked staff and expressed their pride and appreciation for staff's efforts.

## **PUBLIC COMMENT**

- Addressing the Board was Ivette Rivera who commented on the document she provided during the Regular Closed Session meeting public comment period, Director Chan's efforts on requesting amendments to a District policy, the State's whistleblower policy, and information omitted from documentation she received from a former Employee Relations manager.

Director Coleman requested a copy of the documentation from a former Employee Relations manager referenced by Ms. Rivera.

## **CONSENT CALENDAR**

- Motion by Director Linney, seconded by Director Young, to approve the recommended actions for Items 1-7 on the Consent Calendar carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).
1. **Motion No. 165-23** – Approved the Regular Meeting Minutes of September 26, 2023.
  2. The following correspondence was filed with the Board: 1) Presentation entitled, “Understanding Pension System Reciprocity,” dated October 10, 2023; 2) Speakers’ Bureau and Outreach Record CY23 dated October 9, 2023; 3) Email dated January 10, 2017, from Ivette Rivera to EBMUD Board of Directors regarding East Bay Municipal Utility District Employees Do Have The Right To Individual Representation (including exhibits); 4) Performance appraisal for Ivette Rivera dated August 16, 2023; 5) Email dated February 27, 2023 from Ivette Rivera to Board members regarding Please put Mr. Moten “in check” and hold him accountable for not addressing my retaliation allegations; and 6) Equal Employment Opportunity Commission letter of determination in the McIntosh versus EBMUD matter dated April 5, 1983.
  3. **Motion No. 166-23** – Authorized an agreement beginning on or after October 10, 2023, with Consolidated Engineering, Inc. in an amount not to exceed \$713,087 for road safety improvements and paving services.
  4. **Motion No. 167-23** – Authorized an agreement beginning on or after October 10, 2023 with NRG Business Marketing LLC for the sale of Resource Adequacy capacity from the Pardee hydropower facility for calendar year 2024.
  5. **Motion No. 168-23** – Authorized an agreement beginning on or after October 10, 2023, with Richard Heath & Associates Inc. in an amount not to exceed \$400,000 to conduct a pilot program to replace inefficient plumbing fixtures and repair private plumbing leaks for Customer Assistance Program participants.
  6. **Motion No. 169-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 057-18 with Panorama Environmental, Inc. to increase the agreement amount by \$298,847 to a total amount not to exceed \$924,926 and extend the agreement term until June 30, 2031 for maintenance, monitoring, and reporting of two environmental mitigation measures for the Duffel Photovoltaic Renewable Energy Project.
  7. **Motion No. 170-23** – Authorized amendments to the agreements previously authorized under Board Motion No. 051-23, with AIMS/PVIC CA, LLC dba AIMS Companies; Badger Daylighting Corp.; Bradley Tanks, Inc.; Hydro-X Services, Inc.; Pipe and Plant Solutions, Inc.; and Presidio Systems, Inc. to increase the aggregate amount of those agreements by \$1,100,000 to a total aggregate amount not to exceed \$2,980,000 and extend the agreement terms to October 10, 2024 for hydro/air-vacuum excavation services; and authorized additional agreements for hydro/air-vacuum excavation services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on October 10, 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.

## **DETERMINATION AND DISCUSSION**

### **8. Appoint Senior Community Affairs Representative.**

General Manager Clifford C. Chan announced Kathryn Horn as the candidate for appointment to the position of Senior Community Affairs Representative and highlighted Ms. Horn's education and experience.

- Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Item 8 carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

**Resolution No. 35367-23** – Appointing Kathryn Horn As Senior Community Affairs Representative (*effective October 23, 2023*).

Ms. Horn thanked the Board and expressed her excitement at returning to work at the District. Board members expressed their pleasure with Ms. Horn's return and welcomed her back to the District.

### **9. Authorize the issuance of special military pay and benefits for employees who are National Guard members and Military Reservists called to active duty by order of the President of the United States or Governor of California and authorize the General Manager to establish additional identical temporary or limited-term replacement classes and positions for regular full-time employees recalled to active military duty.**

General Manager Clifford C. Chan announced the District recently received two distinguished awards (the Pro Patria Award and the Freedom Award) for its commitment and support of EBMUD reservist employees. Both were awarded through the Employer Support for the Guard and Reserve, a Department of Defense office. The District currently grants military leave for employees who are members of the National Guard or Military Reserves who may be called to active service during a state or national emergency in accordance with applicable federal and state laws. The proposed resolution would authorize automatic continuation of benefits and special leave pay for members called to active duty for the duration of a qualifying event not to exceed 24 months.

- Motion by Director McIntosh, seconded by Director Young, to approve the recommended actions for Item 9 carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

**Resolution No. 35368-23** – Authorize Special Military Pay And Benefits For National Guard Members And Reservists Of The Armed Forces Of The United States Called To Active Duty.

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

#### **Understanding Pension System Reciprocity.**

General Manager Clifford C. Chan introduced the item. Director of Human Resources Cindy R. Charan provided historical background on EBMUD's Employee Retirement System and the agreement with the California Public Employees' Retirement System (CalPERS) that was authorized by the

EBMUD Board in 1984 to provide reciprocal benefits between the District and reciprocal public agencies. Ms. Charan reviewed the definition of reciprocity; reciprocal benefits for eligible employees; hypothetical examples of how an employee's pension is determined under the reciprocity agreement; reciprocity eligibility requirements and examples of when reciprocity could be established; and the District's administration of reciprocity when an employee is hired and when an employee eligible for reciprocity is nearing retirement. There was extensive discussion by the Board regarding the information presented. Ms. Charan, General Counsel Derek T. McDonald, Assistant General Counsel Lourdes L. Matthew, and Manager of Employee Services Lisa A. Sorani responded to questions on how reciprocal public agencies agree to provide reciprocity benefits based on eligibility requirements; language in the District's Retirement Ordinance regarding overlapping or concurrent service; CalPERS laws; section 34 of the District's Retirement Ordinance; clarifying eligibility requirements for employees that may have overlapping service with reciprocal public agencies; providing service credits for employees with overlapping service with reciprocal public agencies; the District's onboarding process and when reciprocity is discussed with new hires; when hiring documents, including forms regarding reciprocity are provided to new employees; clarifying language in the staff report regarding this item; the District's Retirement Board's authority to make revisions to its rules governing reciprocity or the CalPERS reciprocity agreement; and how the District administers reciprocity for pre- and post-Public Employees' Pension Reform Act employees.

- Addressing the Board were the following: 1) Lonna Coleman commented on section 34 of the District's Retirement Ordinance, the criteria for reciprocity in slide 4, and providing additional examples of eligibility requirements; and 2) Ivette Rivera commented on remarks made by the Board and District managers discussing reciprocity during the hiring process.

There was additional Board discussion and staff was asked to provide a copy of section 34 of the District's Retirement Ordinance, and how information in the Retirement Ordinance ties back to the requirements for reciprocity; information on when the District began providing the Roadmap to Retirement handbook to employees; information on when the District began providing hard copies of retirement-related information to employees; information on the District's authority to independently revise CalPERS reciprocity rules; and to add a hyperlink to the District's Retirement Ordinance on the District's intranet (Splashpad).

#### Monthly Report – September 2023

General Manager Clifford C. Chan announced he was available to answer questions regarding the Monthly Report. He also noted the Speakers' Bureau and Outreach Record CY23 had been provided at Board places.

### **REPORTS AND DIRECTOR COMMENTS**

#### **11. Committee Reports.**

- Filed with the Board were the Minutes for the September 26, 2023 Finance/Administration Committee.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier in the day and received updates on the Los Vaqueros Reservoir Expansion Project and Water Quality Program Semi-Annual Update.

- Legislative/Human Resources Committee Chair Lesa R. McIntosh reported the Committee met earlier in the day (Directors Coleman and Patterson were absent (excused)) and received updates on the Employee Bicycle Loan Program and the Diversity, Equity, and Inclusion Strategic Plan.
- Upper Mokelumne River Watershed Authority representative John A. Coleman reported the Board met on Friday, October 6, 2023 and accepted the Third Quarter FY 2023 Treasurer's Report; approved the Forest Projects Plan – Phase 2 Planning Report; and discussed possible action on Biomass Management Joint Power Authority Presentation.
- Director McIntosh left the meeting at 3:20 p.m. and returned at 3:21 p.m.

**12. Other Items for Future Consideration.**

None.

**13. Director Comments.**

- Director Coleman reported attending the ACWA Council of Past Presidents on October 2 (remote) and the UMRWA Board meeting and Pardee BBQ at Pardee Reservoir on October 6. He reported on plans to attend the EBMUD Ward 2 briefing in Lafayette on October 17; the Walnut Creek Water Treatment Plant public meeting and provide opening remarks on October 19 (remote); the East Bay Leadership Council Board meeting on October 20; and the ACWA fall conference in Indian Wells on November 28–November 30.
- Directors Chan, Linney, McIntosh, Patterson and Young, and President Katz had no reports.



**ADJOURNMENT**

President Katz announced today's meeting would be closed in honor of Senator Dianne Feinstein who passed away on September 29. He recounted Senator Feinstein's many accomplishments, her dedicated service to California and her leadership on water issues of importance to EBMUD during her time in the U.S. Senate. Senator Feinstein was instrumental in assisting EBMUD and Sacramento County with finding a path forward to build the Freeport Regional Water Project. The Senator was a champion for developing new water supplies and supported efforts to conserve and recycle water. Thanks to Senator Feinstein's support, EBMUD was able to secure federal funding for its water recycling program. On behalf of the Board, President Katz expressed hope that the Senator's family, staff, and friends will find solace in her outstanding record of achievements that have benefitted so many in our state and nation.

President Katz adjourned the meeting at 3:23 p.m. in honor of Senator Dianne Feinstein.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: October 31, 2023



Andy Katz, President of the Board