

## **MINUTES**

**Tuesday, November 28, 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 11:07 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

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

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 conducted by the Board appointed Ad Hoc Committee into claims asserted by Mrs. Coleman; and 2) Ivette Rivera commented on remarks made by Board members in response to comments from the public and on provisions in the employment contracts for the former and current General Counsel.

Director Linney commented on his service on the Ad Hoc committee and the time committee members spent reviewing information and documentation. The Board reviewed the Ad Hoc Committee's recommendations that the allegations made against the General Manager and General Counsel were unfounded. The Board determined that no further action is warranted, and the investigation was closed. Director Linney requested information on the legal fees paid to assist with preparing the Ad Hoc Committee's report to the Board. President Katz commented on the care the Board took to look carefully at the facts of the investigation. Director Coleman commented the investigation did not address decisions and mistakes made by staff that eventually led to a court case.

### **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 1:16 p.m. in the Administration Building Boardroom.

### **BOARD OF DIRECTORS**

President Katz announced that in accordance with Government Code section 54953 et seq., Director April Chan notified 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 just cause. In accordance with Government Code section 54953 et seq., Director Chan announced she was appearing remotely due to a personal medical emergency.

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

- Motion by Director Young, seconded by Director Patterson, to amend the agenda to allow the Board to vote on Director Chan's request to appear remotely 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. 185-23** – Approved an amendment to the agenda to allow the Board to vote on Director April Chan'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 April Chan's request to appear remotely in the Regular Business Meeting pursuant to Government Code section 54953(f)(2)(A).

- Motion by Director Coleman, seconded by Director Young, to approve Director Chan's request to appear remotely 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. 186-23** – Approved Director April Chan'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 Chan would need to keep her audio open and camera on at all times while appearing remotely. Additionally, in accordance with Government Code section 54953(f)(2)(B), Director Chan 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 Chan confirmed there was no one in the room with her over the age of 18.

### **ROLL CALL**

Directors April Chan (remote), John A. Coleman (remote), Doug A. Linney, Lesa R. McIntosh, Marguerite Young, William B. Patterson, 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.

## **PRESENTATION**

General Manager Clifford C. Chan announced that for the 18<sup>th</sup> consecutive year, the District received the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting for its Annual Comprehensive Financial Report (ACFR). The ACFR is evaluated by an impartial panel of judges to ensure it meets the high standards of the program. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The following staff were present to represent the team responsible for producing the report: Yenny Coburn, Accountant III; Matt Houck, Accountant II; Winsun Hsieh, Accounting Systems Supervisor; Melody Wang, Accounting & Financial System Analyst; Lisa Chan, Accounting Systems Supervisor; Victoria Jenner, Information Systems Administrator II; and Kevin Ma, Accounting Systems Supervisor. Director Patterson, Chair of the Finance/Administration Committee presented the award to staff and on behalf of the Board thanked them for their work.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Kelly A. commented on the Los Vaqueros Reservoir Expansion Project Cost Update presented to the Finance/Administration Committee earlier in the day and EBMUD's participation in the project; 2) Lonna Coleman commented on the investigation conducted by the Board appointed Ad Hoc Committee into claims asserted by Mrs. Coleman; 3) Bernard Ashcraft, The Bay Area Business Roundtable, commented on documents he submitted to the Board, meeting with the General Manager, and a workforce development project with EBMUD to provide jobs for low-income and people of color communities to be trained as Cardiac Monitor Technicians; and 4) Ivette Rivera commented on documents she provided to the Board, the employment contracts for the previous and current General Counsel, documents she emailed to the Board, and a complaint determination she received.

Director Linney commented that at the request of Lonna Coleman, the Board appointed an Ad Hoc Committee that spent several months reviewing documentation and thoroughly investigating the allegations asserted by Mrs. Coleman. The committee found each allegation to be unfounded and the Ad Hoc Committee's report was accepted by the Board.

President Katz thanked Mr. Ashcraft and commented on previous work with Mr. Ashcraft on procurement issues and improvements relating to the District's Contract Equity Program. President Katz welcomed further input from Mr. Ashcraft to assist the District with improving its contract equity and outreach efforts and confirmed the District received Mr. Ashcraft's memo regarding the proposed joint workforce development project.

## **CONSENT CALENDAR**

- Item 11 was pulled from the Consent Calendar for separate discussion.
- Motion by Director Patterson, seconded by Director Young to approve the recommended actions for Items 1-10 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. 187-23** – Approved the Special Meeting Minutes of November 3, 2023 and the Regular Meeting Minutes of November 14, 2023.

2. The following correspondence was filed with the Board: 1) Speakers' Bureau and Outreach Record CY23 dated November 28, 2023; 2) Article from Conforto Law Group entitled "Inferring Pretext Employment Discrimination Cases," dated February 1, 2016; 3) Document entitled "Agreement for Employment of Derek McDonald as General Counsel of East Bay Municipal Utility District"; 4) Article from Monthly Labor Review entitled "The employment-at-will doctrine: three major exceptions," dated January 2001; 5) Memorandum dated November 9, 2020 to Ayriel Bland from Rischa Cole regarding Notice of EEO Complaint Determination; 6) Memorandum (undated) from Contra Costa County Superior Court Judge Barry Baskin regarding racism and equal justice; 7) Document (undated) entitled "Who Is Bernard Ashcraft?????"; and 8) Letter dated May 18, 2023 to Clifford Chan, General Manager from The Bay Area Business Roundtable regarding Cardiac Monitor Technician Training Project (with attachments).
3. **Motion No. 188-23** – Awarded a sole source contract beginning on or after January 25, 2024 to DLT Solutions, LLC for supplying Autodesk computer-aided design software for two years in an aggregate amount, after the addition of taxes, not to exceed \$527,414.
4. **Motion No. 189-23** – Authorized an agreement beginning on or after November 28, 2023 with Digital Revolution Media Center, LLC, in an amount not to exceed \$119,350 to scan and name various forms of the District's archival photographs and related physical assets for integration and cataloging in the District's digital asset management system.
5. **Motion No. 190-23** – Authorized an agreement beginning on or after November 28, 2023 with Four Seasons Landscape for three years, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$338,010 for landscape maintenance services at Pardee Center.
6. **Motion No. 191-23** – Authorized additional funds to the agreement previously authorized under Board Motion No. 124-19 with Universal Protection Service LP dba Allied Universal Security Services, formerly G4S Secure Solutions, Inc., to increase the agreement amount by \$350,000 to a total amount not to exceed \$18,624,555 for contract security services without change to the August 13, 2024 expiration date.
7. **Motion No. 192-23** – Authorized the expenditure of funds beginning on or after November 28, 2023, in an amount not to exceed \$100,000 annually for the placement of advertisements in newspaper publications for employment opportunities, legal notices, bidding opportunities, and general public notices for five years at a total cost not to exceed \$500,000.
8. **Motion No. 193-23** – Authorized the General Manager to execute a Project Partnership Agreement (PPA) with the Department of the Army to facilitate the Department of the Army's planning and design of the East Bayshore Recycled Water Project Oakland-Alameda Estuary Crossing Pipeline and provide for funding of up to \$3,200,000 of the cost of the work with federal funds pursuant to Section 219 of the Water Resources and Development Act of 1992 as amended. As part of the PPA, the District will be required to contribute one-quarter of the cost of the work, for a total projected amount of \$1,070,000.
9. **Motion No. 194-23** – Approved the October 2023 Monthly Investment Transactions Report.

10. **Resolution No. 35372-23 – Authorizing The General Manager To Execute An Agreement With The California Department Of Water Resources Funding Certain Measures For The Benefit Of Lower Mokelumne River Anadromous Fish Habitat And To Perform Certain Actions In Furtherance Thereof.**
11. **Approve revisions to the following District policies: Policy 2.21 – Employee Appeal and Grievance; Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line; and Policy 7.13 – Security.**

Director Coleman asked why Policy 3.08 did not require an advisory election for annexations outside of the Alameda County Urban Limit Line similar to the requirement for Contra Costa County. Internal Auditor Supervisor Barry N. Gardin and Attorney Karen L. Donovan described how Alameda County's Measure D governs any changes to land use designations in the county and that proposed changes must be subject to a new vote of the county electorate. Alameda County does not need to conduct an advisory election since it requires a new vote for changes to land use designations. There was considerable Board discussion regarding advisory election costs and if the District would be required to pay these costs; whether the results of advisory elections for annexations are binding; how the District communicates to the county's Local Agency Formation Commission (LAFCO) on its position while the LAFCO is reviewing annexation requests related to the District; alternative tools available to the District to oppose annexations; whether approval of the policy is time sensitive; and having further discussions on additional revisions to the policy. There was more discussion on deferring action on the policy until staff calendared additional discussions with the Planning and Finance/Administration Committees. The Board was reminded that the revisions being considered today would only remove references to two District policies that are not germane to Policy 3.08 and would not change any policy language. Directors McIntosh, Coleman, and Chan commented they would like to have additional discussions before taking action on the policy. Director McIntosh stated she would abstain from voting on Policy 3.08. Director Coleman asked the Board to consider conducting a separate vote on the revisions to Policy 3.08.

- Addressing the Board was Ivette Rivera who commented on Policy 2.21 and asked if the Board was authorized to vote on the policies since staff discussed the proposed revisions with less than a quorum of the Finance/Administration Committee earlier in the day. Ms. Rivera expressed opposition to the Board's acceptance of the proposed revisions to Policy 2.21 and asked the Board to review the documents she submitted regarding the three major exceptions to the employment-at-will doctrine.

President Katz clarified the Board's authority to vote on policies that are discussed with less than a quorum of a committee. There was discussion on whether the District interprets the term "non-discriminatory" to include protected conduct and whistleblower retaliation, the language regarding whistleblowers that is currently included in Policy 6.04 – Ethics of the Board of Directors, and plans for staff to discuss a separate whistleblower policy at a future Board committee meeting.

- Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Policy 2.21 and Policy 7.13 carried (6-0) by the following roll call vote: (Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (Chan); ABSENT (None).
- Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Policy 3.08 carried (4-0) by the following roll call vote: (Linney, Patterson, Young and Katz); NOES (None); ABSTAIN (Chan, Coleman, and McIntosh); ABSENT (None).

**Resolution No. 35373-23** – Adopting Revised Policy 2.21, Employee Appeal And Grievance; Revised Policy 3.08, Advisory Election For Annexations Outside The Contra Costa County Urban Limit Line; And Revised Policy 7.13, Security.

## **DETERMINATION AND DISCUSSION**

### **12. Appointment of Controller.**

General Manager Clifford C. Chan announced David Glasser as the candidate for appointment to the position of Controller and highlighted Mr. Glasser's education and experience.

- Motion by Director Linney, 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).

David Glasser thanked the General Manager and the Board for the opportunity to serve at the District.

**Resolution No. 35374-23** – Appointing David Glasser As Controller (*Effective December 4, 2023*).

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

General Manager Clifford C. Chan announced the Speakers' Bureau and Outreach Record CY23 had been provided at Board places.

## **REPORTS AND DIRECTOR COMMENTS**

### **14. Committee Reports.**

- Filed with the Board were the Minutes for the November 14, 2023 Planning and Sustainability Committee meetings.
- Finance Committee Chair William B. Patterson reported the Committee met earlier in the day and due to a lack of quorum, all items were heard but no action was taken. The Committee received reports on the Los Vaqueros Reservoir Expansion Project Update; Monthly Investment Transactions Report; Revisions to District Policies; Fiscal Year 2023 Total Annual Budget & Performance Report; Fiscal Year 2023 Financial Indicators; and Fiscal Year 2023 Audited Financial Statements.

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

None.

### **16. Director Comments.**

- Director Chan acknowledged being absent from the Finance/Administration Committee meeting earlier in the day and reported being unable to attend the ACWA fall conference in Indian Wells. Director Chan wished staff and Board members safe travels to the conference.
- Director Coleman reported participating in an interview with an Acalanes High School student regarding energy consumption and plans to attend the ACWA fall conference in Indian Wells November 28–November 30.

- Director Young announced the recent birth of a new grandson, Noah Alonzo Young Garces.
- President Katz reported on plans to participate in the December 12, 2023 Board meetings remotely from the United Nations Climate Change Conference, 28<sup>th</sup> Conference of the Parties in Dubai, United Arab Emirates.
- Directors Linney, McIntosh, and Patterson had no reports.

### **ADJOURNMENT**

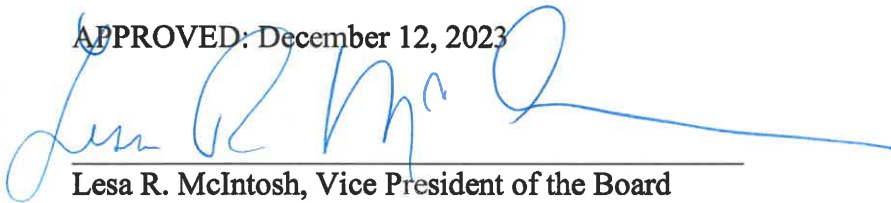
President Katz adjourned the meeting at 2:16 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: December 12, 2023



Lesa R. McIntosh, Vice President of the Board

