

## **MINUTES**

**Tuesday, March 26, 2024  
East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:01 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

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

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 Finance/Administration Committee and the Pierce/Bland case; and read an excerpt from the Jan Duffy report.

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

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

### **Regular Business Meeting**

President Lesa R. McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. in the Administration Building Boardroom.

### **ROLL CALL**

Directors April Chan, Andy Katz, Doug A. Linney, Marguerite Young, William B. Patterson and President Lesa R. McIntosh 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 Lesa R. McIntosh led the Pledge of Allegiance.

### **Director Lesa R. McIntosh - 25 Years of Service**

Vice-President William B. Patterson recognized Director McIntosh for 25 years of service on the Board of Directors. He acknowledged that she is currently serving her fifth term as President of the Board. On behalf of the Board, staff and District customers, Vice-President Patterson thanked Director McIntosh for 25 years of leadership as a member of the Board.

### **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

### **PUBLIC COMMENT**

- Addressing the Board was Ivette Rivera who congratulated President McIntosh on 25 years of service and Director Young for being an advocate. Ms. Rivera commented on documents she provided to the Board and read an excerpt from the Jan Duffy report.
- Director Chan left the meeting at 1:24 p.m. and returned at 1:25 p.m.

### **CONSENT CALENDAR**

- Item #5 was pulled from the Consent Calendar for separate discussion.
  - Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Items 1-4 and 6 on the Consent Calendar carried (6-0) by the following voice vote: (Chan, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 052-24** – Approved the Regular Meeting Minutes of March 12, 2024.
  2. The following correspondence was filed with the Board: 1) Presentation entitled, “Extend Commercial Paper Liquidity Agreements,” dated March 26, 2024; 2) Presentation entitled, “EBMUD Campaign Finance Reform Ordinance (CFRO),” dated March 26, 2024; 3) Presentation entitled, “Water Supply Update,” dated March 26, 2024; 4) Presentation entitled, “Appointment Process for Vacant Board Seat – Ward 2,” dated March 26, 2024; 5) Speakers’ Bureau and Outreach Record CY24 dated March 26, 2024; 6) Document titled, “Local 798 v CCSF et al and Henning ESQ. Amicus C. Brief,” dated March 20, 2024; 7) Document titled, “California Supreme Court Clarifies Standard for Misuse of Public Funds Convictions,” dated June 23, 2016; and 8) Email dated March 28, 2023 from Ivette Rivera to Andy Katz, EBMUD Board Director/President regarding the comments of public concern raised at EBMUD Board meetings (with attachments).
  3. **Motion No. 053-24** – Awarded a contract beginning on or after March 26, 2024 to the lowest responsive/responsible bidder, Kenneally Optics, Inc. dba Prestige Lens Lab, for supplying prescription safety glasses and optician-supervised fitting services for the District for three years, with two options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$136,727 under Request for Quotation No. 2405.
  4. **Motion No. 054-24** – Awarded a sole source contract beginning on or after March 26, 2024 to A/C Service and Repair, Inc., for supplying one rebuilt Allis Chalmers cone valve for Wastewater Pump Station H for a total cost, after the addition of taxes, not to exceed \$110,000.

5. **Authorize the Office of General Counsel to employ the law firm of Complex Appellate Litigation Group LLP, for services of special counsel related to providing representation in the appeal in the *Pierce, et al. v. East Bay Municipal Utility District, et al.* matter.**

Ivette Rivera asked the amount the District is paying for these services and commented on the demographics of the firm. General Counsel Derek T. McDonald responded the amount being authorized is privileged information until the end of the litigation.

- Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Item 5 carried (5-1) by the following voice vote: (Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (Chan); ABSENT (None).

**Motion No. 056-24** – Authorized the Office of General Counsel to employ the law firm of Complex Appellate Litigation Group LLP, for services of special counsel related to providing representation in the appeal in the *Pierce, et al. v. East Bay Municipal Utility District, et al.* matter.

6. **Motion No. 055-24** – Approved the February 2024 Monthly Investment Transactions Report.

#### **DETERMINATION AND DISCUSSION**

7. **Authorize the execution of (i) a Second Amendment to the Sumitomo Mitsui Banking Corporation Standby Letter of Credit and Reimbursement Agreement and a related Fee Agreement to extend its expiration date for a term of five years at an annual cost of 0.32 percent based on the District's current credit ratings for the Commercial Paper Notes (Water Series), Tax-Exempt Subseries A-1 and (ii) a Third Amendment to the Bank of America, N.A. Revolving Credit Agreement and a related Fee Agreement to extend its expiration date for a term of four years at an annual cost of 0.32 percent based on the District's current credit ratings for the Commercial Paper Notes (Water Series), Tax-Exempt Subseries A-2.**

Treasury Manager Robert L. Hannay provided the presentation. The District's Commercial Paper Notes (Water Series) ("Water CP") Tax-Exempt Subseries A-1 ("Subseries A-1") and Tax-Exempt Subseries A-2 ("Subseries A-2") are outstanding in the total amount of \$281 million as of March 21, 2024. In accordance with the Water CP covenants, the District must procure and maintain one or more liquidity facilities enabling it to borrow an aggregate amount at least equal to the principal amount of commercial paper notes outstanding. Subseries A-1 is currently outstanding in the amount of \$144 million with liquidity support provided by Sumitomo Mitsui Banking Corporation (SMBC) which is set to expire on May 6, 2024. Subseries A-2 is currently outstanding in the amount of \$137 million with liquidity support provided by Bank of America, N.A. (BANA) which is set to expire on June 28, 2024. The District has negotiated extensions of the SMBC Standby Letter of Credit and Reimbursement Agreement (LOC) to May 4, 2029 (a five-year term) and BANA Revolving Credit Agreement (RCA) to June 28, 2028 (a four-year term) at an annual cost of 0.32 percent (32 basis points) based on the District's current credit ratings subject to such adjustments as detailed in the Second Amendment to the SMBC LOC and related 2024 SMBC Fee Agreement and Third Amendment to the BANA RCA and related BANA 2024 Fee Agreement. The terms are one year longer and correspondingly the pricing is 2-3 basis points higher than the terms and pricing of the expiring agreements. Consistent with the existing agreements, fees would increase incrementally in the event the District's credit ratings were to decline. Mr. Hannay explained that extending the current agreements is more cost-effective than substituting a new

liquidity facility. Upfront transaction costs are an estimated \$55,000 for an extension and \$170,000 for a substitution reflective of the simplicity or complexity of required documentation. Also, a new bank is unlikely to propose a low enough annual fee (below 0.30%) to offset the higher upfront costs of a substitution. The Finance/Administration Committee met earlier and supported the staff recommendations.

- Motion by Director Linney, seconded by Director Young to approve the recommended actions for Item 7 carried (6-0) by the following voice vote: (Chan, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35391-24** – Authorizing The Execution Of (I) A Third Amendment To Revolving Credit Agreement And A Related Fee Agreement And (II) A Second Amendment To Standby Letter Of Credit And Reimbursement Agreement And A Related Fee Agreement, And Authorizing Other Matters In Connection Therewith.

- 8a- **Approve implementation of the fourth year general salary increase of 3.4% in accordance**  
8b. **with the 2021-2025 Memoranda of Understanding (MOUs) between the District and the American Federation of State, County and Municipal Employees Locals 2019 and 444, International Union of Operating Engineers Local 39 and International Federation of Professional and Technical Engineers Local 21; and authorize a 3.4% general salary increase for Senior Management Team Members, Managers, Confidential employees and other Non-Represented employees in accordance with Resolution No. 35269-22. For purposes of Section 54953(c)(3) of the Brown Act, Senior Management Team Members referenced herein include General Manager, General Counsel, Secretary of the District, Director of Engineering and Construction, Director of Finance, Director of Operations and Maintenance, Director of Wastewater, Director of Water and Natural Resources, Director of Customer and Community Services, Director of Human Resources, Special Assistant III (Office of Diversity, Equity, and Culture), Special Assistant IV (Legislative Affairs), and Special Assistant IV (Public Affairs).**

President McIntosh announced that pursuant to Section 54953(c)(3) of the Government Code, the Board of Directors is providing an oral report for Item 8b prior to taking action on the salary, salary schedule and compensation paid in the form of fringe benefits paid to the members of the Senior Management Team listed below, including the General Manager and the General Counsel. In accordance with Resolution No. 35269-22 and employment agreements with the General Manager and the General Counsel, the Board may authorize the same general salary increases and benefits to the General Manager and the General Counsel as that granted to District employees at the department director level. As such, it is recommended that the General Manager and the General Counsel each receive a 3.4% increase to their current annual salary as set forth in their respective employment agreements and, commensurate with the 3.4% increase being granted to all District employees in this action, effective April 22, 2024. The 3.4% increase consists of a cost-of-living increase of 2.9% based on the Consumer Price Index and an additional 0.5% enhancement. Additionally, it is recommended that the following members of the Senior Management Team also be granted a 3.4% increase in their current annual salary, commensurate with the increase being granted to all District employees in this action, effective April 22, 2024: Secretary of the District, Director of Engineering and Construction, Director of Finance, Director of Operations and Maintenance, Director of Wastewater, Director of Water and Natural Resources, Director of

Customer and Community Services, Director of Human Resources, Special Assistant III (Office of Diversity, Equity, and Culture), Special Assistant IV (Legislative Affairs), and Special Assistant IV (Public Affairs). The current salaries of the aforementioned members of the Senior Management Team are contained in the Salary Schedule dated April 25, 2023, on file with the Secretary of the District.

- Motion by Director Young, seconded by Director Linney to approve the recommended actions for Items 8a – 8b carried (6-0) by the following voice vote: (Chan, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35392-24 – Revise District Salary Ranges, Salaries And Wage Rates.**

9. **Approve the candidate evaluation criteria and interview questions approved by the Ad Hoc Committee appointed by the Board of Directors for filling the vacant Board seat in East Bay Municipal Utility District Ward 2.**

General Manager Clifford C. Chan provided the presentation and outlined the process. Staff is seeking Board approval of the candidate evaluation criteria and interview questions approved by the Ad Hoc Committee for the interviews to be conducted during the Board meeting on April 9. Interested candidates had until 4:30 p.m. on March 22, 2024 to submit application materials. The District received five applications by the prescribed deadline. The Board will receive copies of all application materials on March 28. On March 29, the Secretary of the District will notify candidates and staff will issue a press release announcing the candidates that have submitted application materials. The Board will conduct in-person interviews at its regular meeting on Tuesday, April 9, beginning at 4:00 p.m. in the Administration Building Boardroom. The order of the interviews will be based on random selection. Candidates will receive the evaluation criteria and interview questions the week of April 1. On April 9, each candidate interview will be 15 minutes and will include opening and closing remarks as well as responses to the interview questions. This time does not include potential follow-up questions. The public will be able to participate in-person and online and can provide comments after all interviews are completed. The Board will deliberate after public comment. If the Board needs more time to deliberate, they can hold a special Board meeting on April 16 and on April 23, appoint one of the candidates to serve as the Director representing Ward 2 until the General Election on November 5, 2024. Under MUD Act section 11865 *et seq.*, the Board must exercise its option to appoint someone to fill the vacant Board seat in Ward 2 within 60 days of the effective date of John A. Coleman's resignation (no later than May 7, 2024). There was Board discussion regarding the process, the application materials received, and the option to appoint a candidate on April 9 in lieu of waiting until the April 23 Board meeting. The Board asked staff to have the necessary appointment documents available for execution on April 9. There was also discussion on using the forced ranking method during the interview process. The Board requested guidelines on the forced ranking method.

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

**Motion No. 057-24 – Approved the candidate evaluation criteria and interview questions approved by the Ad Hoc Committee appointed by the Board of Directors for filling the vacant Board seat in East Bay Municipal Utility District Ward 2.**

10. **Conduct a continued second reading of amendments to East Bay Municipal Utility District Campaign Finance Reform Ordinance No. 316 (CFRO) and adopt an Ordinance to amend the CFRO, entitled “An Ordinance Amending Ordinance No. 316 Entitled ‘East Bay Municipal Utility District Campaign Finance Reform Ordinance’”.**

General Counsel Derek T. McDonald announced the recommended action to conduct a continued second reading of the amendments to the CFRO and to adopt an ordinance to amend the CFRO. Proposed revisions were presented and discussed with the Legislative/Human Resources Committee on January 9, 2024 and February 13, 2024. The Board conducted a first reading of the revisions to the CFRO at the February 27, 2024 Board meeting, and a second reading at the March 12, 2024 Board meeting. At the March 12 meeting, the Board discussed and voted to approve the incorporation of revisions to the CFRO. Mr. McDonald reviewed the revisions which include: increasing campaign contribution limits for persons to \$2,000 and \$4,000 for Small Contributor Committees; expanding the provisions on prohibitions on contractor donations to include all contracts approved by the Board and not just contracts subject to the competitive bidding process; and increasing the amount a candidate can loan (e.g., self-fund) their campaign from \$10,000 to \$25,000, and allow for biennial CPI adjustments. The Board also voted to incorporate the Levine Act into the CFRO; update definitions (e.g., contribution, qualified campaign expenditure, Small Contributor Committee); reorganize document information; mandate website publishing of contribution limits as a best practice; correct and update the reference to the CPI to “San Francisco-Oakland-Hayward Consumer Price Index for Urban Consumers”; use non-binary terms when referencing persons; update references to the PRA and other common terms for consistency; update the voluntary expenditure limit from \$0.53 to \$0.80 per ward resident to reflect CPI adjustments since the CFRO was last updated in 2010; and update advertisement disclaimer requirements. A summary of the ordinance amendments will be published in a newspaper of general circulation in the District for two successive weeks. The ordinance would be effective April 25, 2024.

- Motion by Director Chan, seconded by Director Linney to approve the recommended actions for Item 10 carried (6-0) by the following voice vote: (Chan, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

**Ordinance No. 375-24** – An Ordinance Amending Ordinance No. 316 Entitled "East Bay Municipal Utility District Campaign Finance Reform Ordinance." (*Continued Second Reading and Vote*)

11. **General Manager’s Report.**

Water Supply Update – water production; precipitation to date; reservoir storage; and forecasted supply conditions for the remainder of water year 2024

Director of Operations and Maintenance David A. Briggs highlighted the following data as of March 20: gross water production; precipitation in the East Bay (15.92 inches) and in the Mokelumne (34.67 inches); and the snow depth (81 inches) and snow water content (29.70 inches) at Caples Lake. He reviewed and snowpack levels and snow water equivalent in the Sierras and current versus average storage for Northern California’s water supply as of March 21. The District’s total system storage was 647,000 acre-feet as of March 20 and is still projected to be approximately 630,000 acre-feet by September 30.

General Manager Clifford C. Chan announced the Speakers' Bureau and Outreach Record CY24 had been provided at Board places.

**12. Committee Reports.**

- Filed with the Board were the Minutes for the February 27, 2024 Finance/Administration Committee.
- President Lesa R. McIntosh reported the Board met earlier for the Recycled Water Strategic Plan Workshop and received information on the District's recycled water goal, California policy and regulatory impacts relating to recycled water, the process to prepare the 2024 Recycled Water Strategic Plan, key recycled water project updates and challenges, changed conditions and considerations, and potential future opportunities.
- Chair Andy Katz reported the Finance/Administration Committee met earlier in the day and received reports on the February 2024 Monthly Investment Transactions Report; Extending Liquidity Agreements for Commercial Paper Notes (Water Series) Subseries A-1 and Subseries A-2; and Applicant Project Process Improvements Update.

**REPORTS AND DIRECTOR COMMENTS**

**13. Other Items for Future Consideration.**

None.

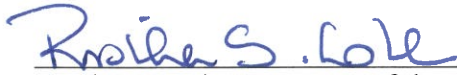
**14. Director Comments.**

- Director Linney reported presenting information on the District, including climate change, to the Alameda Rotary Club on March 19. He thanked staff for their assistance with preparing for the presentation.
- Director Patterson reported receiving the Niagara Movement Foundation's Legacy Award during their fundraising dinner on March 23 in Oakland. He thanked the Board members and staff who attended the event and staff for their congratulatory letters. He also reported attending memorial services for his sister on March 22 on the East Coast.
- Directors Chan, Katz, Young and President McIntosh had no reports.

**ADJOURNMENT**

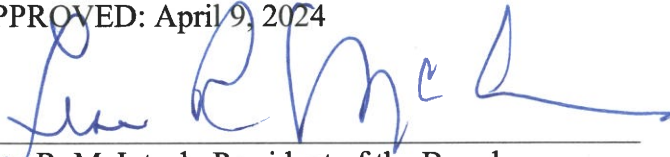
President McIntosh adjourned the meeting at 2:11 p.m.

SUBMITTED BY:



\_\_\_\_\_  
Rischa S. Cole, Secretary of the District

APPROVED: April 9, 2024



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Lesa R. McIntosh, President of the Board