

## MINUTES

**Tuesday, June 23, 2020**

**East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California  
*\*Teleconference\****

### Regular Closed Session Meeting

President Marguerite Young called to order the Regular Closed Session Meeting of the Board of Directors at 11:05 a.m. She announced that due to COVID-19 and in accordance with Alameda County Health Order 20-14 (issued June 5 and revised June 18, 2020), and with the Governor's Executive Order N-29-20 which suspends portions of the Brown Act, this meeting would be conducted via teleconference only. In compliance with said orders, a physical location was not being provided for this meeting.

### ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call (all via teleconference).

Staff participants included General Manager Clifford C. Chan, General Counsel Craig S. Spencer, Attorney Jonathan D. Salmon (Item 1a), Attorney Anna P. Gunderson (Item 1a), and Director of Wastewater Eileen M. White (Item 1a).

### PUBLIC COMMENT

There was no public comment.

### ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Young announced the closed session agenda. The Board convened for discussion (via teleconference).

### Regular Business Meeting

President Young called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. She announced that due to COVID-19 and in accordance with Alameda County Health Order 20-14 (issued June 5 and revised June 18, 2020), and with the Governor's Executive Order N-29-20 which suspends portions of the Brown Act, this meeting would be conducted via teleconference only. In compliance with said orders, a physical location was not being provided for this meeting.

### ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call (all via teleconference). Staff participants included General Manager Clifford C. Chan, General Counsel Craig S. Spencer, Secretary of the District Rischa S. Cole, and Assistant to the General Manager Janetta M. Johnson.

## **BOARD OF DIRECTORS**

President Young led the Pledge of Allegiance.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

Addressing the Board was Joey D. Smith, Reigning Pride Committee member who thanked the Board for allowing the Pride flag to fly at the Administration Building during the month of June.

## **CONSENT CALENDAR**

- Items 6 and 20 were pulled from the Consent Calendar for separate discussion.
  - Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Items 1-5 and 7-19 on the Consent Calendar, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 111-20** – Approved the Special Meeting and Regular Meeting Minutes of June 9, 2020.
  2. The following correspondence was filed with the Board: **1)** Updated Policy 1.14R – Customer Assistance Policy (effective June 23, 2020); **2)** Presentation entitled, “Coronavirus Update,” dated June 23, 2020; **3)** Memorandum date June 23, 2020, to Board of Directors from Kelly Zito, Special Assistant to the General Manager, regarding Oakland Chamber of Commerce Annual Meeting & Awards – June 30, 2020; **4)** Affidavit of Posting dated June 18, 2020 for the “Notice of the Time and Place of Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Wastewater Capacity Fee, and Other Fees Not Subject to Proposition, and Regulations for Fiscal Year 2021”; **5)** Affidavit of Posting dated June 18, 2020 for the “Notice of the Time and Place of a Public Hearing of the East Bay Municipal Utility District to Consider a Resolution Ordering the Wet Weather Facilities Charge to be Collected on the Property Tax Roll”; and **6)** Speakers’ Bureau and Outreach Record CY20, dated June 23, 2020.
  3. **Motion No. 112-20** – Awarded a contract to the lowest responsive/responsible bidder, Mountain Cascade, Inc., in the amount of \$17,430,488 for Acorn No. 1, Derby, Scenic, and Scenic East Reservoirs Rehabilitation work under Specification 2153.
  4. **Motion No. 113-20** – Authorized an agreement beginning on or after June 23, 2020 with Brown and Caldwell for Wet Weather Consent Decree-required hydrologic and hydraulic model (Flow Model) updates, calibration and testing, and additional services dependent upon Flow Model results for two years with three options to renew for additional one-year periods for a total cost not to exceed \$2,702,081.

5. **Motion No. 114-20** – Authorized an agreement with Industrial Employers and Distributors Association in an amount not to exceed \$231,905 to provide expert labor relations negotiating and consulting services during the two-year period from July 1, 2020 to June 30, 2022, with an option to extend the agreement for an additional two years from July 1, 2022 through June 30, 2024.
6. **Motion No. 128-20** – Authorized an agreement beginning on or after June 23, 2020 with Joe Hill Consulting & Engineering Corporation in an amount not to exceed \$300,000 for project-based training and mentoring services for the Upper San Leandro Water Treatment Plant Maintenance and Reliability Improvements Project.
  - Addressing the Board was Justin Young, 1<sup>st</sup> Vice President, AFSCME Local 2019 who commented the union did not oppose the agreement; however he noted that since January 2019, the District has awarded four electrical engineer support contracts totaling \$2.5 million and said those funds could have been used to recruit and retain staff. Director of Engineering and Construction Olujimi O. Yoloye provided an update on Electrical Engineer recruitments and said the District will be conducting a salary survey for the Electrical Engineer classification in the next few weeks.
  - Motion by Director Coleman, seconded by Director Linney, to approve the recommended action for Item 6, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
7. **Motion No. 115-20** – Authorized an agreement beginning on or after June 23, 2020 with Magna IV Engineering, Inc. in an amount not to exceed \$329,884 for testing and training services for electrical power equipment and systems at the District's wastewater facilities.
8. **Motion No. 116-20** – Authorized agreements with GSI Environmental Inc. and Terraphase Engineering Inc. to provide general environmental services from July 1, 2020 to June 30, 2023 with two options to renew for additional one-year periods for a total combined cost not to exceed \$3,000,000.
- 9a-9b. **Motion No. 117-20** – Authorized agreements with three vendors in an aggregate amount not to exceed \$1,400,000 for the rental of Fully Maintained and Operated (FM&O) flagging services beginning on or after June 23, 2020 for a one-year period (Bay Area Traffic Solutions, Inc., Yolanda's Construction Administration & Traffic Control, and Traffic Control Pros); and authorized additional agreements for FM&O flagging services with vendors meeting District standards and offering pricing at or below the range in the agreements above. These additional agreements may be issued, on an as-needed basis, to increase flexibility and ensure availability of FM&O flagging services to the District. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.

10. **Motion No. 118-20** – Authorized a 25-year Power Purchase Agreement with Solar Star Bear Creek, LLC, (Solar Star) a subsidiary of SunPower, to develop up to 4,570 kilowatts of photovoltaic-generated electricity on the District's Duffel watershed property in Orinda and sell the energy to the District at a fixed price of \$0.0616 per kilowatt hour. Additionally authorize the District to offer limited indemnification and up to \$183,000 under the agreement for development services to Solar Star.
11. **Motion No. 119-20** – Authorized an amendment to the agreement awarded under Board Motion No. 158-19 with Sure Secure Solutions, LLC to increase the amount by \$60,000 to a total amount not to exceed \$225,800 for the completion of a comprehensive vulnerability assessment of the District's information technology environment.
12. **Motion No. 120-20** – Authorized an amendment to the agreement awarded under Board Motion No. 092-19 with Terraphase Engineering, Inc. to increase the amount by \$67,845 to a total amount not to exceed \$217,545 to prepare a trench soils master plan.
13. **Motion No. 121-20** – Authorized an amendment to the contract awarded under Board Motion No. 019-20 with CDW Government LLC to increase the amount by \$511,599 to a total amount, after the addition of taxes, not to exceed \$1,364,264 to add Microsoft Office 365 and Enterprise Mobility and Security licensing to the existing Microsoft Enterprise Agreement through January 31, 2023.
14. **Motion No. 122-20** – Authorized the execution of a 25-year Land Lease with Robin Hauge, Chelsey Hauge, and Samuel Zavaleta for approximately 7,500 square feet of land within the District Property CC-525 located in Canyon Watershed for \$50,000.
15. **Motion No. 123-20** – Approved the assignment of all contracts to deliver, install, support and maintain NetApp storage systems and to provide subscription services for Commvault backup software previously awarded under Board Motion Nos. 025-16, 124-17, 036-18, and 172-18 from Integrated Archive Systems to General Datatech LP.
16. **Motion No. 124-20** – Approved the Water Supply Assessment requested by the City of Berkeley for the Southside Zoning Amendments Project pursuant to California Water Code, Sections 10910-10915.
17. **Motion No. 125-20** – Approved the May 2020 Monthly Investment Transactions Report.
18. **Motion No. 126-20** – Filed the Report and Recommendation of the General Manager to Transfer Unpaid Liens for Delinquent Charges to Alameda and Contra Costa Counties' 2020-2021 Property Tax Rolls.
19. **Motion No. 127-20** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider, Harris & Donlan, LLP, for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed \$75,000.

20. **Resolution No. 35189-20** – Adopting Revised Policy 1.14, Customer Assistance Policy; Revised Policy 2.04, Contractual Agreements with Former Employees; Revised Policy 2.20, Workforce Communications; Revised Policy 4.20, Use of District Technology Resources; Revised Policy 7.05, Sustainability and Resilience; and Revised Policy 9.06, Bay-Delta Protection.
- General Manager Chan stated the Finance/Administration Committee, in its meeting earlier today, requested a revision to the language for Program Initiative No. 8 in Policy 1.14, Customer Assistance Policy, to include “and/or Medical Provider” after Primary Care Provider.
  - Motioned by Director Patterson, seconded by Director Mellon, to approve the recommended action for Item 20 , carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

#### **DETERMINATION AND DISCUSSION:**

21. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine stated Legislative Report No. 05-20 contained one bill for Board consideration. She reviewed the bill tenets and responded to a Board question on where the bill is in the legislative process.

Next, Ms. Dumaine provided an update on State budget activities and federal activities related to COVID-19. She reported on the status of bills regarding the State budget and potential budget cuts for schools. She also reported on the status of H.R. 6800 (HEROES Act), a federal bill that responds to COVID-19’s impact on the economy, public health, state and local governments, individuals, and businesses; and staff’s continued efforts to obtain funding for special districts. She responded to Board questions regarding proposed revisions to the juvenile justice system and corresponding impacts to the Pine Grove Youth Conservation Camp and infrastructure stimulus funding. She said staff will provide a status update on the State budget and the HEROES Act in July.

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended action for Item 21, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 129-20** – Received Legislative Report No. 05-20 and approved a position of SUPPORT for ACA 5 (Weber) Government Preferences; and received information on State and Federal Government Actions Related to the Coronavirus Disease 2019 (COVID-19).

22. **Adopt the resolution authorizing principles and an action plan for the District’s response to racial discrimination and violence against Black and African Americans as most recently exemplified by the killing of George Floyd.**

Manager of Human Resources Laura A. Acosta reported an Ad Hoc Committee comprised of Board members, staff and union representatives worked collaboratively to develop a

resolution that expands the guiding principles, approved by the Board at its June 9, 2020 meeting, into strategies from which an action plan can be developed. The purpose and intent of the resolution is to establish the District's response to individual and systemic racism and its commitment to taking meaningful action, internally and externally to address the impacts of acts of prejudice, abuse of power, racial bias, or racism and barriers to diversity, equity and inclusion.

- The following persons addressed the Board: 1) Gina Jenkins, Manager of Maintenance Support expressed appreciation for the District's efforts to develop a resolution; commented on resolution Principle Nos. 6 and 8; highlighted previous incidents where African American employees reported receiving no support from the District after reporting assaults by customers or mistreatment by law enforcement; and urged the Board to listen to African American employees about their experiences working at the District and provide support when an employee reports being assaulted or mistreated by customers or law enforcement; 2) Eric Larsen, President, ASFCSME Local 444 commented the union endorses the resolution; and 3) Joey D. Smith, President, ASFCSME Local 2019 commented the union endorses the resolution and urged the Board to ensure that the good words in the resolution turn into good works.

Each Board member expressed appreciation for the collaborative work done to develop the resolution and discussed the comments from Ms. Jenkins and the intent of the resolution. The Board asked that the Ad Hoc Committee continue meeting to develop the action plan and to regularly provide updates to the Legislative/Human Resources Committee. Director Katz asked staff to calendar a discussion on police oversight for the next EBMUD/EBRPD Liaison Committee meeting. He also asked staff to confirm if the District's Employee Assistance Program provider has received cultural competency training to properly support staff when needed. General Manager Chan advised staff will schedule meetings for the Ad Hoc Committee. Director Mellon proposed a future discussion on revising the District's holiday schedule to recognize Juneteenth in lieu of recognizing President's Day as a District holiday.

- Motion by Director Patterson, seconded by Director Mellon, to approve the recommended actions for Item 22, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35190-20** – Authorizing Principles and an Action Plan for the District's Response to Racial Discrimination and Violence Against Black and African Americans as Most Recently Exemplified by the Killing of George Floyd.

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

Acting Director of Operations and Maintenance David A. Briggs provided an update on the District's response to the Coronavirus. He responded to Board questions related to the District's supply of N-95 masks; the quality of District prepared hand sanitizer; staff cubicle modifications; the contact tracing process; the status of employees on quarantine; and whether the District could face liability for a claim based on a person's allegation that he or she contracted the COVID-19 virus as a visitor to a District recreation area.

General Manager Chan announced the Board received a memo today via email regarding the Oakland Chamber of Commerce's Annual meeting and awards event on June 30, 2020. He also reported the Speakers' Bureau and Outreach Record was available and noted staff is updating event information as agencies begin rescheduling events to take place virtually and/or telephonically.

**REPORTS AND DIRECTOR COMMENTS:**

24. **Committee Reports.**

- Filed with the Board were the June 9, 2020 Planning Committee and Legislative/Human Resources Committee Meeting Minutes.
- Finance/Administration Committee Chair Bill Patterson reported the Committee met earlier in the day (via teleconference) and received updates on the following: Monthly Investment Transactions Report, Annual Update on Employees' Retirement System, and Revisions to District Policies.

25. **Other Items for Future Consideration.**

None.


26. **Director Comments.**

- Director Coleman reported on plans to attend the FRWA Board meeting (remotely) on July 9.
- Director Patterson wished everyone a happy Father's Day.

**ADJOURNMENT**

President Young adjourned the meeting at 3:01 p.m.

SUBMITTED BY:

  
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Janetta M. Johnson, Assistant to the General Manager

APPROVED: July 14, 2020

  
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Marguerite Young, President of the Board