

Agenda Item

16.07 Approve Minutes of October 20, 2009, Special Board Meeting

Meeting: 11/19/2009 ESUHSD REGULAR BOARD MEETING - 4:00 P.M.
Category: 16. Consent Calendar Items - ATTACHMENT A
Agenda Type: Action (Consent)
Public Access: Yes

Agenda Item Content



EAST SIDE UNION HIGH SCHOOL DISTRICT

TO: Board of Trustees
FROM: Dan Moser, Acting Superintendent
SUBJECT: Approve Minutes of October 20, 2009, Special Board Meeting


Attached are the minutes of the October 20, 2009, Special Board meeting for review and approval by the Board of Trustees.

FISCAL IMPACT: None
FUNDING SOURCE: None
RECOMMENDATION: It is recommended that the Board of Trustees approve the October 20, 2009, Board meeting minutes as presented.

Additional Executive Content

Our adopted rules of Parliamentary Procedure, Robert's Rules, provide for a consent agenda listing several items for approval of the Board by a single motion. Most of the items listed under the consent agenda have gone through Board subcommittee review and recommendation. Documentation concerning these items has been provided to all Board members and the public in advance to assure an extensive and thorough review. Items may be removed from the consent agenda at the request of any board member.

Created on 11/09/2009 at 04:56 PM by Mary Gillen. Last update on 11/12/2009 by Mary Gillen.

East Side Union High School District
Approved
Board of Trustees
November 19, 2009 



**EAST SIDE UNION HIGH SCHOOL DISTRICT
MINUTES OF THE SPECIAL BOARD MEETING OF THE BOARD OF TRUSTEES
Meeting Held at the Education Center
October 20, 2009
6:00 p.m.**

1. CALL TO ORDER/ROLL CALL

1.01 Roll Call

The Special Meeting of the Board of Trustees was called to order at 6:01 p.m. by President Martinez-Roach. Vice President Herrera, Clerk Biehl, Member Nguyen and Member Garcia were present.

2. PLEDGE OF ALLEGIANCE

3. WELCOME AND EXPLANATION TO AUDIENCE

Information explaining Board meeting procedures and how citizens can address the Board will be read. Written information is located near the entrance to the Board Room.

President Martinez-Roach extended a welcome to everyone, explained the format of the meeting and noted that all Board Meetings are recorded.

4. CONSIDERATION OF PROPOSED AMENDMENTS TO AGENDA

For consideration by the Board of Trustees.

There were no amendments to the agenda.

5. PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD OF TRUSTEES

Persons wishing to address the Board must fill out a "gold" request form, which is located at the entrance of the Board Room.

- *John Moore – Hanson Bridgett Report*
- *Megan Gilmore – IB Program*
- *Miguel Vasquez – IB Program*
- *Viridiana Mendoza – IB Program*
- *Soumya Ashokkumar – IB Program*
- *Kathy Pham – IB Program*
- *Robert Bosworth – IB Program*
- *Neethi Baskaran – IB Program*
- *Shahpar Amiri – IB Program*
- *Marie Anderson – IB Program*
- *Tere Barbella – IB Program*

- *Cindy Boswarth – IB Program*
- *Dave Johnson – IB Program*
- *Arti Nigam – IB Program*
- *Tim Schacher – IB Program*
- *Alexander Diep – IB Program*
- *Joe VanSambeek – IB Program*
- *Daniela Sanchez – IB Program*
- *Cecil Lawson – IB Program*
- *Sherry Gilmore – IB Program*
- *Andrea Bull – IB Program*
- *Michael Lawson – IB Program*
- *Annette Gonzales – IB Program*
- *Cyrus Tosco – IB Program*
- *Salvador Gutierrez – IB Program*
- *John Sellarole – Hanson Bridgett Report*

6. SUPERINTENDENT/BOARD OF TRUSTEES - OPERATIONAL ITEMS/BOARD DISCUSSION AND/OR ACTION

- 6.01 Hold Public Hearing at Approximately 6:00 p.m. for Solar/Renewable Energy Project and Proposed Energy Services Contract (Government Code Section 4217.12) - Jerry Kurr, Associate Superintendent of Administration and Business Services, Alan Garofalo, Associate Superintendent of Student Services and Facilities, and Rogelio Ruiz, Legal Counsel**

Rogelio Ruiz, Legal Counsel

The purpose for the hearing and tonight's meeting is that, under Government Code, the Board has to make a finding that the proposed contract and the proposed scope of the contract is in the best interest of the District. The anticipated cost to the District in connection with the contract will be less than the anticipated marginal cost to the District of energy that would have been purchased by the District in the absence of this agreement. That is the basis for the presentation tonight of the public hearing.

Presentation by Jerry Kurr on solar/renewable energy project and proposed energy service contract.

Public Hearing Held

Speakers:

- *Neil Struthers*
- *Miguel Rivera*

6.02 Approve Energy Services Contract with Chevron Energy Solutions and Approve Resolution #2009/2010-14 Authorizing a Lease Purchase Agreement for the Purpose of Financing the Chevron Energy Solutions Company Project, Designating the Lease Purchase Agreement as a Tax Exempt Obligation; and Authorizing and Prescribing Other Matters Related Thereto – Jerry Kurr, Associate Superintendent of Administration and Business Services, Alan Garofalo, Associate Superintendent of Student Services and Facilities, and Rogelio Ruiz, Legal Counsel

Patricia Martinez-Roach, Board President

What action is the Board going to be taking tonight?

Rogelio Ruiz, Legal Counsel

I am happy to go through the contract if you would like or I can cover the high points.

Patricia Martinez-Roach, Board President

Are there any questions for Jerry?

Eddie Garcia, Board Member

Explain the incentive or the projected \$7.9 million in savings because on October 8 when I walked out of here, I thought that was a solid number. So, now it is not as solid compared to the minimum guarantee. Can you describe the definitions of what those two things are?

Jerry Kurr, Associate Superintendent of Administration and Business Services

I understand where the numbers from the co-compliance test come from the minimum guarantee and I understand where the projections of what we expect the system to produce. That's where the \$7.9 million came from is the expectation of how the system should operate, but I think maybe that since these are both of these are Chevron's numbers you might want to ask what their thoughts are.

Mark Emerson, Chevron

So that I understand the question, there is a projected CSI amount of \$7.9 million and there is a guaranteed amount of \$7.4. We fully expect the projected amount. That is what you would see over five years. We've guaranteed it at 95% level. So, we are bearing 95% of that risk and that's the difference in those two numbers.

Eddie Garcia, Board Member

Was there a full understanding with staff on October 9 of this 95% guarantee?

Jerry Kurr, Associate Superintendent of Administration and Business Services

Actually, on October 9, I think we didn't have any...it was just projections and estimated production and what PG&E would write us in checks. We weren't assured of even having the \$7.4. The significant thing that has change is that we do have that in the contract now, which wasn't in there before.

Eddie Garcia, Board Member

What happened between October 8 and today?

Mark Emerson, Chevron

I went to Los Angeles on business after the meeting. I came back and felt like we had given away the store. I hadn't anticipated any guarantee for the CSI. What I had

anticipated is that we would take the three-year production guarantee, multiply that by five to get to a fifteen-year guarantee. Frankly, I think your staff and Legal Counsel have negotiated a very savvy deal.

Eddie Garcia, Board Member

Jerry and Rogelio, is the 95% a savvy deal?

Jerry Kurr, Associate Superintendent of Administration and Business Services

At one point in time in the conversation with Chevron, what we asked for...well, yes, I do think it is a savvy deal.

Rogelio Ruiz, Legal Counsel

A lawyer's answer always starts with, "It depends." First, let me just say that this has been an amazing process to jump into a contract like this on ten or eleven days. It has required a tremendous amount of effort. In fairness to Chevron, I will say that the original guarantee was for a period of three years and limited to savings, but the financial analysis and the proforma also assumed achieving a certain level of CSI incentives of \$7.9 million and change. During the course of negotiations, the goal has been to try to craft an agreement that would make certain for the contract price that the District would receive a system and a facility...and facilities, the energy system that would achieve the savings levels upon which the proforma is based and the savings estimates that Jerry has prepared, as well as achieve and qualify for, be eligible for, the maximum amount or a certain minimal amount of CSI incentives, which in this case were \$7.9 million. Again, in fairness to Chevron, I will say that that guarantee was never a part of the deal. In the eleventh-hour of negotiations, we had been negotiating up until about 4:30 p.m. today when we received what we have here. This was a late item addition to the contract for the protection of the District. So, my answer "it depends" really relates to that 5% differential.

Eddie Garcia, Board Member

I got it. Let me just say this, I think to Chevron, \$500,000 is probably not that difficult to find. For us, \$500,000 over five years is very difficult to find. If Jerry and Counsel say that this 95% gave us more than we expected when we walked in, then I am okay with that. Thank you. One last thing Madam President, we have received various nuts and bolts versions of the contract, various versions over time, I am comfortable...I really don't want to go through nuts and bolts, but I will defer to my colleagues as well.

Frank Biehl, Board Clerk

I just want to point out that there is going to be a phase two. I think we would certainly review whatever contract we entered into when looking at phase two. I assume phase two may be a process that may be open to more than one bidder. Certainly, Chevron would have the inside track assuming that they do a very good job on phase one. I feel comfortable with where we have gotten to at this point. I would like to move the staff recommendation, discussion can continue, but I would like to move.

J. Manuel Herrera, Board Vice President

Second.

Patricia Martinez-Roach, Board President

I am such a strong supporter of solar energy and saving money, but I just don't like being pressured and I really feel pressured with this contract, which I never ever sign a contract unless I have read it. This is just the way I operate; whether it is in my house

or whatever it is that I do. So, I don't feel comfortable getting something the day that I have to vote on it and then give it the respect that it deserves. I am really having a hard time with that and the pressure of deadlines. I am going to be abstaining on this for that reason because I don't like doing things this way. We should have had, I believe, a competitive bidding process. I believe that we should have had more public input. It is not okay to have only one person speak about a project that is important as this one and I am a little troubled by that. I know that there is a lot of passion and effort into this and I really appreciate it and I am all for saving energy, but it is just not the process that I am comfortable with.

J. Manuel Herrera, Board Vice President

I just want to say why I am supporting this strongly. Anything that has changed over the last couple of weeks or so has all been pretty much in favor of the District. There are no surprises in the basic framework of this proposal as it has been developing and as it has been discussed. Having one speaker today really is because we have heard other speakers at other times on the various elements of this proposal. It is time for us to make a decision and my vote is very strongly in favor. Thank you.

Lan Nguyen, Board Member

I agree with you that we are on a strict timeline. We have a very short timeframe to follow and it seems like we are competing with time. Since October 8 until now, I read the proposals and things related to this issue. I did have a few times to really call our General Counsel and ask for clarification. I really believe that we have a very good negotiation team with Mr. Kurr and General Counsel. I do believe they have negotiated the best deal that they can for the District.

Patricia Martinez-Roach, Board President

I do have one last comment regarding attorneys. I think it is an important fear that I have. We are dealing with Chevron. Chevron is a major corporation that has \$600-\$700 an hour attorneys working for them. My concern would be if we get into some kind of mess or something. I am a little concerned about this contract. Obviously, it is something you feel comfortable with, but I think we all have different comfort levels and I am just not there.

Eddie Garcia, Board Member

I just want to make one final comment. As far as this process, this process in my mind has been going on since March. It has been going on for a long time. This Board has been very inquisitive and very critical, especially in the early stages of Chevron's intent and being open with us and letting us know what we were really buying and what we are going to get. I think this has been well vetted out. I agree with Mr. Nguyen that we have got a great General Counsel. I definitely trust his opinion. I have had an opportunity to read some of this earlier today. Chevron, thank you very much for working with us on this. This is a great way for us to turn some capitol dollars into some badly needed operating dollars.

Frank Biehl, Board Clerk

I did read the contract as far as I could get through it, but I did not read all of the addendums that were included, but I did read it and I thought to myself, "Boy, these guys have written a contract before, haven't they!" I did note that it does have an arbitration clause if anything does go south that provides for the resolution of it and I think that's appropriate. From my limited experience in law, and I have read plenty of contracts over the years in business, it is pretty much the general clauses that are

involved in any type of work. It is just a lot of detail included and I feel comfortable with it because I feel that they want the second contract. They also want additional work within Santa Clara County here and the school board for that matter. They've done good work. At San Jose Unified and Milpitas, I have had the opportunity to look at those sites when they were dedicated and I think we've done the right thing. The most important thing is we need the \$8 million in operating funds over the next five years. For us not to get that is just going to be disastrous for this District. You saw people from IB here tonight upset about cuts that are occurring in their program because of what has happened to us from the State. Can you imagine what we are going to hear if we don't have this additional \$8 million over the next five years? Can you imagine how many people will be in this room complaining to us about the services that their children are not getting? That's why I am willing to do this. I think it is a prudent risk. There's always risk in anything that you do. I think it's part of what this District needs to do. We have to think outside of the box. We have to leverage our assets and I think this is a very appropriate way to do it. I believe the questions the Board has asked over the last six or seven months have been very appropriate and has brought us to a better-negotiated position with Chevron. I look forward to being there at the first shovel that moves the dirt and then a year after I want to be there for the dedication when they flip the switch. I also hope that within the next 240 days, hopefully a little sooner than that, we will have second proposal for phase 2, which will include the balance of our high schools and will include additional monies for our general fund. That is why I am going to be voting "yes" tonight. Thank you.

Rogelio Ruiz, Legal Counsel

I just have one other comment for the Board is that the current contract is for a total price of approximately \$24.1 million. Mr. Kurr's presentation today and at the time of the October 10th meeting, laid out that one portion of this \$9.1 million of this would be financed and so there will be some debts services associated with that cost. The financing portion will be brought to the Board at another hearing at the time of the next regular meeting, for the finance portion the \$9.1 million – the lease financing or financing agreement. So, that is still to come to the Board as part of this project.

Patricia Martinez-Roach, Board President

So, we are approving only \$50 million.

Rogelio Ruiz, Legal Counsel

You are approving...let me get a little more detailed... You are approving the entire contract for \$24.1 million. A portion of that purchase price is being proposed by Mr. Kurr to be paid through financing, but under the Government Code, we have to have a separate/additional public hearing as part of that financed portion. The contract includes an option provision if you will...if the financing suddenly becomes unavailable, we have another October of 2008, September of 2008, that the District can carve out that portion from the contract. So, we do have a safety net built within the contract. Since specific findings are required, I did prepare this as a resolution, which was handed out to the Board as Resolution #2009/2010-15.

Patricia Martinez-Roach, Board President

We do have a motion, which is to approve whatever you noted on here and it doesn't say resolution. We should have amended the agenda. How do we do this?

Rogelio Ruiz, Legal Counsel

The Board can still make the findings as part of a written resolution right now.

Patricia Martinez-Roach, Board President

Can I ask the maker of the motion to amend your motion to include the resolution?

Frank Biehl, Board Clerk

I will accept the recommended change to the motion to include Resolution #2009/2010-15 as presented to us tonight.

J. Manuel Herrera, Board Vice President

Second.

Motion by Clerk Biehl, second by Board Vice President Herrera as amended to approve the energy services contract with Chevron Energy Solutions and to include the approval of Resolution #2009/2010-15 Energy Conservation Services Agreement in the Form of an Agreement for Design and Construction with Chevron Energy Solutions Company.

Vote: 4/0/1 Patricia Martinez-Roach abstaining as indicated in minutes

6.03 Approve Board Members Attendance and Lawful Expenses for CSBA Conference and Delegate Assembly - Dan Moser, Acting Superintendent

- CSBA Delegate Assembly (Board Member)
- CSBA 2009 Annual Conference, which includes Attendance at CLSBA Meeting (Board Members)

Motion by Vice President Herrera, second by Member Garcia to approve Board Members attendance and lawful expenses for CSBA Delegate Assembly, CSBA Annual 2009 Conference, including attendance at CLSBA meeting.

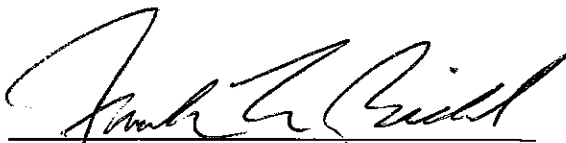
Vote: 5/0

7. ADJOURNMENT

President adjourns the meeting.

Meeting adjourned at 8:09 p.m. by President Martinez-Roach.

Respectfully submitted,


Board Clerk