

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustee Meeting Date of April 7, 2009

ITEM #

5

ITEM TITLE: *(Please define the subject; e.g., change order – Berkeley City College)*

Memorandum of Understanding for the Lake Merritt Station Area Specific Plan, also referred to as a Transit Oriented Development (TOD).

SPECIFIC BOARD ACTION REQUESTED:

Consider Approval of Memorandum of Understanding for the Lake Merritt Station Area Specific Plan, also referred to as a Transit Oriented Development (TOD), between the City of Oakland and the Peralta Community College District

In February 2008, the City, BART and the PCCD expressed a desire to enter into a Memorandum of Understanding (MOU) to cooperatively pursue development of a Specific Plan for the Lake Merritt BART Station Area (defined as a 1/2 mile radius around the Lake Merritt BART Station). An application was submitted for funding to the Metropolitan Transportation Commission (MTC) to support development of a Specific Plan.

In July 2008, the City was awarded \$720,000 from MTC to develop a Specific Plan and an environmental document for the Lake Merritt BART Station Area with the understanding that the City, PCCD and BART would each contribute \$50,000 in local match funding towards this effort.

Through this MOU, the Parties agree to work collaboratively towards the development and adoption of a Specific Plan for the Lake Merritt BART Station Area.

The plan has several objectives, among them: Supporting the educational needs of Laney College students and faculty. Laney College and the District will participate through:

- * A Community Advisory Committee. Laney College and the District Office will be represented on this committee.
- * A Technical Advisory Committee. Laney College and the District Office will also be represented on this committee.
- * Laney College will also be represented on the Grants Management Team, consisting of the City of Oakland, BART, and PCCD/Laney College. This team will be responsible for guiding the entire process, working with the planning consultant, and ensuring full community participation.

Laney College President Frank Chong has met with representatives of college staff to apprise them of the plan initiative.

PCCD and Laney College will have significant opportunity to influence and guide the planning process to insure that the needs and objectives of the college are incorporated into a finished document.

Enhancing student life and the physical area immediately around Laney College are major objectives of this effort, and ones that college leadership will have full opportunity to shape.

The creation of the TOD plan is a unique opportunity to collaborate with other agencies to develop and enhance the quality of life and physical attributes of Laney College for the benefit of our students, faculty, staff and visitors.

ITEM SUMMARY: (PLEASE *DISCUSS THIS ITEM*)

BACKGROUND/ANALYSIS:

ALTERNATIVES/OPTIONS:

EVALUATION AND RECOMMENDED ACTION:

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):

GENERAL FUNDS

OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):

YES _____ NO _____

COMMENTS:

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?

SPECIAL ASSISTANT JELKS

DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM? YES _____ NO X
_____ IF "YES", PLEASE INCLUDE THAT INFORMATION IN YOUR SUMMARY.

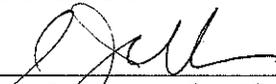
(*****Board contract approval is subject to negotiation and execution by the Chancellor.)

PLEASE ACQUIRE SIGNATURES IN THIS ORDER:

DOCUMENT PREPARED BY:

Prepared by:  Date: 2/11/09
[Alton Jelks, Assoc. V.C. and Special Asst. to the Chancellor]

DOCUMENT PRESENTED AND APPROVED BY:

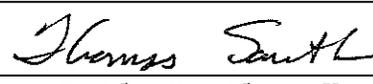
Presented and approved by:  Date: 4/1/09
[Alton Jelks, Assoc. V.C. and Special Asst. to the Chancellor]

FINANCE DEPARTMENT REVIEW

Finance review required Finance review *not* required

If Finance review is required, determination is: Approved Not Approved

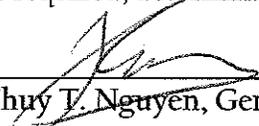
If not approved, please give reason: _____

Signature:  Date: 3/31/09
Thomas Smith, Vice Chancellor for Finance and Administration

GENERAL COUNSEL (Legality and Format/adherence to Education Codes):

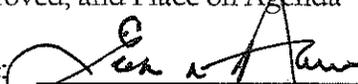
Legal review required Legal review *not* required

If Legal review is required, determination is: Approved Not Approved

Signature:  Date: _____
Thuy T. Nguyen, General Counsel

CHANCELLOR'S OFFICE APPROVAL

Approved, and Place on Agenda Not Approved, but Place on Agenda

Signature:  Date: 3/31/09
Elihu Harris, Chancellor

Memorandum of Understanding for the Lake Merritt Station Area Specific Plan

This Memorandum of Understanding ("MOU") is effective as of _____, 2009, by and between the CITY OF OAKLAND (hereafter referred to as "CITY"), the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (hereafter referred to as "BART") and the PERALTA COMMUNITY COLLEGE DISTRICT (hereafter referred to as "PCCD"), collectively referred to as the Parties, to cooperatively pursue development and adoption of planning and environmental document(s) for the Lake Merritt Station Area Specific Plan ("Specific Plan" or "Project").

RECITALS

- A. On July 29, 2003 the Central City East Redevelopment Project was unanimously adopted and approved at the joint public hearing of the City Council and the Oakland Redevelopment Agency. The Central City East Redevelopment Project Area (including of the Lake Merritt BART Station) begins at the southern border of Downtown and extends east to approximately Durant Street, covering 3,339 acres.
- B. Thereafter, BART led a community participatory planning and design process to provide a community vision for the Lake Merritt BART Station Area. Focus groups were conducted and a framework for improved streetscape design in the Lake Merritt BART Station Area was developed and incorporated into a Final Summary Report document.
- C. In summer 2007, the City and other local governments in the nine-county San Francisco Bay Area were invited to apply for regional designation of an area within their community as a Priority Development Area (PDA) as a part of the FOCUS initiative. PDAs are infill development opportunities within existing communities and are located primarily around transit stations and corridors. Regional agencies will support local governments' commitment to the FOCUS regional development and conservation initiative goals by working to direct existing and future incentives to these priority areas.
- D. In December 2007, the Oakland City Council approved a resolution authorizing application for PDA designation for the Oakland Transit Corridor (½-half mile radius around BART stations in Oakland and ¼-mile corridors along BART tracks and AC Transit routes on major arterials in Oakland) as a part of the FOCUS planning initiative.
- E. In February 2008, the City, BART and the PCCD expressed a desire to enter into a Memorandum of Understanding ("MOU") to cooperatively pursue development of a Specific Plan for the Lake Merritt BART Station Area (defined as a ½-mile radius around the Lake Merritt BART Station). An application was submitted for funding to the Metropolitan Transportation Commission (MTC) to support development of a Specific Plan.
- F. In June 2008, the City submitted an application for Community Engagement Funding in the amount of \$30,000 to the Association of Bay Area Governments (ABAG) to contract with a community based organization (Asian Health Services) to assist in providing a community engagement process to inform the development of a Specific Plan.

- G. In July 2008, the City was awarded \$720,000 from MTC to develop a Specific Plan and an environmental document for the Lake Merritt BART Station Area with the understanding that the City, PCCD and BART would each contribute \$50,000 in local match funding towards this effort.
- H. In August 2008, the City and Asian Health Services were awarded \$30,000 to conduct a community engagement process that would inform the Specific Plan effort and support local planning efforts to address issues associated with reinvestment and development that may change the existing neighborhood fabric.
- I. For purposes of this MOU, the Lake Merritt Station Area ("Project Area") is defined as generally the area within a ½ mile radius of the Lake Merritt BART station.
- J. The Parties agreed to work collaboratively towards the development and adoption of a Specific Plan for the Lake Merritt BART Station Area.
- K. A Specific Plan for the Project Area will articulate a vision and quantify the future potential of the area for housing, institutional, commercial, retail and transit oriented development. The plan will address the need for improved public safety, economic empowerment and improved cultural facilities. The Plan will identify improvements to public transit, bicycle and pedestrian facilities. A program for implementing the Project Area vision will be developed as part of the Specific Plan.
- L. Preliminary general planning objectives identified by the Parties for consideration in developing a Specific Plan, include:
 - a) Establishing high-density mixed-use development, including a residential neighborhood, which will increase patronage of transit facilities.
 - b) Providing development that will inspire community pride and serve as a catalyst for economic development in the surrounding community.
 - c) Improving public safety in the Station area;
 - d) Increasing pedestrian and bicycle traffic and safety in the Project Area and to the BART Station;
 - e) Improving transit access and connections between the BART station and the surrounding community.
 - f) Creating vibrant public spaces that accommodate existing BART Station Area users and contribute to the public well being and quality of life.
 - g) Identifying opportunities for shared parking in the Station Area.

- h) Supporting the educational needs of Laney College students and faculty.
- M. At the conclusion of the Specific Plan process, the City of Oakland will consider certification of the Environmental Impact Report ("EIR"), adoption of the Specific Plan and any proposed General Plan Amendments and Planning Code amendments.

AGREEMENT

In consideration of the foregoing, and for other valuable consideration which is hereby acknowledged, the Parties hereby agree to the following:

1. BART and PCCD will provide timely access to (and copies of) existing plans and surveys of their property within the Project Area to the City.
2. The City, BART and PCCD will collaborate on identifying proposed land uses for all property in the Project Area including coordination with the County of Alameda regarding their property needs.
3. BART and PCCD will each contribute \$50,000 towards the local match requirement to fund the development of the Specific Plan. Within thirty (30) days of receipt of an invoice from the City, estimated to be May 1, 2009 for \$25,000 and September 1, 2009 for an additional \$25,000, BART and PCCD shall provide payment by check payable to the City. The City's invoices shall stipulate Specific Plan interim products for which payment is requested. The City will establish a Project Number for deposit of funds and will provide a quarterly financial report documenting project expenditures over the duration of the Project.
4. The Parties will each make good faith efforts to secure available funding for any additional needs in furtherance of development of a Specific Plan.
5. The City will be the lead agency for the purpose of developing and adopting a Specific Plan and completing an environmental review document for CEQA compliance. BART and PCCD will be identified as responsible agencies under CEQA.
6. The City, BART and PCCD shall collaboratively provide direction to the overall effort to develop a Specific Plan, including:
 - a. The selection of the consultant team to prepare the Specific Plan and EIR.
 - b. The selection of members of all committees formed to support the preparation of the Specific Plan and EIR.
 - c. All community interaction in support of the Specific Plan.
 - d. Review and comment on draft documents produced during the Specific Plan process.

7. The Parties agree that the Specific Plan process will include, but not be limited to the following deliverables:
 - Background Data and Existing Conditions Report;
 - Documentation of the public outreach process;
 - Draft Specific Plan;
 - Draft EIR;
 - Draft General Plan and Planning Code amendments based on the Draft Specific Plan; and
 - Final EIR, final versions of the Specific Plan, and General Plan and Planning Code amendments.
8. The parties agree to continue to work cooperatively towards the development of the Specific Plan, including working to obtain necessary approvals from the respective agencies. Nothing in this MOU, however, shall be interpreted to require that the Parties' governing bodies commit, in advance, to approving any aspect of the Project, including, but not limited to, certification of the EIR.
9. Nothing in this MOU is intended to, nor does, waive any regulatory authority of the Parties.
10. This MOU is the product of negotiation and preparation by and among the Parties hereto and their respective attorneys. The Parties therefore expressly acknowledge and agree that this MOU shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly.
11. This MOU shall be interpreted in accordance with and governed in all respects by the laws of the State of California.
12. This MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents, subsidiaries, joint ventures, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives and all other persons, firms, associations and/or corporations connected with them, including, without limitation, their insurers, sureties and/or attorneys.
13. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this MOU, or the application of any term or provision of this MOU to a particular situation, is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision will remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this MOU or the application of this MOU to other situations will remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this MOU or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this MOU to carry out its intent.

14. This MOU may be executed in counterparts, and in facsimile and/or electronic form, and all so executed, shall constitute an agreement which shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives do not appear on the same page.
15. Each person who executes this MOU on behalf of a corporation, partnership, joint venture, unincorporated association, or other entity represents and warrants to each party hereto that he or she has the authority of the shareholders or members of said entity to do so, and agrees to indemnify and hold harmless each other party from any claim that such authority did not exist.
16. The Parties will work together in the spirit of good faith and cooperation to successfully implement this MOU. To the extent there are any disagreements among the Parties, including alleged violations of the MOU, the Parties will immediately raise those disagreements. Prior to initiating any legal action, the Parties will meet in good faith to attempt to resolve the disagreement through mediation. However, any and all legal actions may be brought only if the preceding dispute resolution process has been completed.
17. This MOU may be amended only by an instrument in writing signed by authorized representatives of the party against whom enforcement is sought.
18. Each party shall appoint a Project Manager and any formal contacts and any notice given pursuant to this MOU will be given in writing, via facsimile or email, and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

For City of Oakland:

Ms. Kerry Jo Ricketts-Ferris, Project Manager
City of Oakland
Community & Economic Development Agency
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612-2092
Phone: (510) 238-3944
Facsimile:
Email:

For the San Francisco Bay Area Rapid Transit District:

Mr. Kenya Wheeler, Senior Planner
Planning Department

San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 16th Floor
Oakland, CA 94612
Phone: (510) 287-4782
Fax; (510) 464-7674
Email: fwheele@bart.gov

For the Peralta Community College District:

Any party to this MOU may change the name or address of representatives for purpose of this Notice section by providing written notice to all other parties ten (10) business days before the change is effective.

19. The parties agree that the Recitals to this MOU are true and correct, and comprise an integral part of the MOU.

NOW THEREFORE, the Parties have executed this Memorandum of Understanding as of the date and the year first set forth above.

CITY OF OAKLAND:

By: _____
City Administrator

Reviewed As To Form And Legality By:

Oakland City Attorney

**SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT:**

By: _____
General Manager

Reviewed As To Form And Legality By:

BART Attorney

**PERALTA COMMUNITY COLLEGE
DISTRICT:**

By: _____
District Chancellor

Reviewed As To Form and Legality By:

Addendum

Memorandum of Understanding for the Lake Merritt Station Area Specific Plan

Notwithstanding any language to the contrary in this MOU, the Board of Trustees of the Peralta Community College District reserves all rights regarding final approval of any plans, proposals, Environmental Impact Plans resulting from the planning process described in this MOU and does not delegate its authority to the joint TOD planning body or any other entity.

CITY OF OAKLAND:

By: _____
City Administrator

Reviewed As To Form And Legality By:

Oakland City Attorney

PERALTA COMMUNITY COLLEGE DISTRICT:

By: _____
District Chancellor

Reviewed As To Form and Legality By:

District Legal Counsel