

**PERALTA COMMUNITY COLLEGE DISTRICT**  
**Board of Trustees Agenda Report**  
**For the Trustee Meeting Date of May 14, 2013**

**ITEM TITLE:**

Acquisition of Real Property and Building located at 2015 Shattuck Avenue, Berkeley, California (location also known as 2120 University Avenue, Berkeley, California)

**SPECIFIC BOARD ACTION REQUESTED:**

Consider approval of Resolution 12/13-29 approving and ratifying an amended and restated purchase and sale agreement among Peralta Community College District, The Regents of the University of California, and Alameda County concerning the sale by the County and purchase by the District and/or the University of California for 2015 Shattuck Avenue, Berkeley, California, also known as 2120 University Avenue, Berkeley, California (APN 057-2034-010). Board action ratifies the deposit of \$50,000 in escrow, to be credited toward the purchase price of the Property. The Purchase and Sale Agreement provides that the Deposit becomes non-refundable on May 21, 2013. The balance of the purchase price is due on June 28, 2013, which is a total purchase price of \$9 million (or \$4.5 million if Peralta jointly owns with The Regents of the University of California). Funding Source: Measure A Bond Funds. All Board approved contracts are subject to final negotiation and execution by the Chancellor. The Chancellor recommends approval.

**ITEM SUMMARY:**

Pursuant to its facilities master plan and other reports, the District has previously determined that additional space is needed for instructional and support services for Berkeley City College. The District has explored several options and over the past several months has entered into negotiations with the County and Cal to establish terms and conditions pursuant to which the County would sell and the District and Cal would, either jointly or independently, purchase the Property. The negotiations are at the point where a good faith deposit has been made and the District and Cal are conducting due diligence, jointly and independently, to determine the suitability of the Property for their respective educational and administrative purposes.

**BACKGROUND/ANALYSIS:**

On or about May of 2012 the Board authorized the Chancellor to enter into negotiations with the County for the purchase of the Property. The District ordered and obtained an appraisal of the subject Property to establish the fair market value of the Property. Cal contacted the District proposing to submit a joint offer for the purchase of the Property.

On or about August of 2012, the District and Cal agreed that it would be in their respective best interests to submit a joint offer for the Property. Since that time, the District and Cal have entered into negotiations to determine if it would be in their respective best interests and in the best interest of the public for the District and Cal to purchase the Property together and, if so, what types of arrangements could be made for such purposes.

On or about April 23, 2013, the Board authorized the Chancellor to continue negotiations for the anticipated purchase of the Property. Negotiations and due diligence are ongoing but the County desires to complete the sale of the Property on or prior to June 28, 2013 and the District and Cal are moving forward with the anticipated acquisition while continuing to evaluate the property. In furtherance of that objective, on or about May 1, 2013, the District, Cal and the County made and entered into a Purchase and Sale Agreement and the District and Cal, each, deposited in escrow \$50,000, for a total in the amount of \$100,000 (the "Deposit") to be credited toward the purchase price of the Property. The Purchase and Sale Agreement provides that the

Deposit becomes non-refundable on May 21, 2013. The balance of the purchase price is due on June 28, 2013 and failure to make the payment would result in forfeiture of the Deposit.

At this time, the District believes that the joint purchase and occupancy of the Property by the District and Cal is in the best interest of the District and the public. However, among the issues that have been highlighted during negotiations are actual or potential differing requirements concerning building code, seismic compliance or other requirements. Where the due diligence investigations are not in clear alignment, the District and Cal have decided to separately pursue and pay for those particular investigations. Cal and the District also determined that, to the extent their interests are aligned, it would be in their mutual best interest to jointly conduct due diligence and equally share the costs of such investigations. In connection with these and other due diligence requirements, the District staff anticipates that the services of consultants, including but not limited to structural engineers, environmental engineers, surveyors, attorneys, and architects will be required.

Items of due diligence being conducted, either jointly or independently, include the following:

- Preliminary title report;
- Engineering and environmental surveys and reports;
- Investigation of zoning requirements;
- Determining whether and under what conditions the existing commercial tenants could continue their operations at the Property;
- Applicability of any CEQA requirements or exemptions; and
- Determining the feasibility of the uses of the Property currently contemplated.

#### **ALTERNATIVES/OPTIONS:**

The District is not currently exploring other options with respect to the expansion needs of Berkeley City College.

#### **EVALUATION AND RECOMMENDED ACTION:**

The Chancellor recommends that the Board approve and ratify the Purchase and Sale Agreement and delegate authority to the Chancellor to (i) continue considering and negotiating the possibility of joint ownership and operation of the Property by the District and Cal, and any other agreement deemed necessary or desirable to establish terms and conditions for the joint purchase and use of the Property; (ii) continue with the due diligence investigation of the Property, including securing the services of engineers, architects, surveyors, appraisers, attorneys and any other consultants needed to assist the District with such matters.

#### **SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):**

The Board has authorized the use of proceeds of Measure A general obligation bonds for the payment of costs and expenses related to the purchase of the Property. Measure A, approved by District voters at an election on June 6, 2006, authorizes the District to issue general obligation bonds to finance college facilities and property and to pay costs incident thereto. Proceeds from Measure A bonds are used to finance the acquisition, construction and rehabilitation of college facilities, as authorized in the specific list of projects in the ballot measure authorizing Measure A. At present, the fiscal impact is the District's portion of the Deposit in the amount of \$50,000, paid from Measure A bond proceeds, to be credited toward the purchase of the Property, plus related and incidental costs and expenses. In addition, an estimated \$175,000 will be required for consultants and services in connection with the negotiations with the County and Cal, the due diligence investigations and other related matters.

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

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**COMMENTS:**

**WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?**

Chancellor Ortiz

**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.)

**DOCUMENT PREPARED BY:**

Prepared by: *Thuy Thi Nguyen*  
[Thuy Thi Nguyen, General Counsel]

Date: 5-7-13

**DOCUMENT PRESENTED AND APPROVED BY:**

Presented and approved by: *Jose M. Ortiz*  
[José M. Ortiz, Chancellor]

Date: 5-7-13

**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: *Ron Gerhard*  
Ron Gerhard, Vice Chancellor for Finance and Administration

Date: 5-10-13

**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: *Thuy T. Nguyen*

Date: 5-10-13

Thuy T. Nguyen, General Counsel

**CHANCELLOR'S OFFICE APPROVAL**

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

Signature: *José M. Ortiz*  
José M. Ortiz, Chancellor

Date: 5-7-13