

**Peralta Community College District
Board of Trustees Agenda Report
For the Trustee Meeting Date of June 25, 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:

That the Board of Trustees (Board) adopt Resolution No. 12/13-36 approving a Second Amended and Restated Purchase and Sale Agreement (Purchase and Sale Agreement) between Peralta Community College District (District) and Alameda County (County) concerning the sale by the County and purchase by the District of certain real property, and the building and improvements thereon, located at 2015 Shattuck Avenue, Berkeley, California also known as 2120 University Avenue, Berkeley, California (APN 057-2034-010) ("Property"); Approving a Form of Commercial Tenant Lease Agreement; Making Certain Findings and Determination; Approving Related Agreements and Documents and Authorizing Related Actions.

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 explored several options and entered into negotiations with the County and The Regents of the University of California (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. After a good faith deposit had been made, the District and Cal continued conducting due diligence to determine the suitability of the Property for their respective educational and administrative purposes. Cal then informed the District and the County that it would not proceed with the anticipated acquisition. The District wishes to complete the purchase of the Property independently of Cal.

BACKGROUND/ANALYSIS:

On May 14, 2013 the Board adopted Resolution No. 12/13-29 approving and ratifying an Amended and Restated Purchase and Sale Agreement (Purchase and Sale Agreement) among Peralta Community College District (District), The Regents of the University of California (Cal), and Alameda County (County) concerning the sale by the County and purchase by the District and/or Cal of the Property. On May 20, 2013, Cal notified the County and the District pursuant to the terms of the Purchase and Sale Agreement that it would not proceed with the acquisition of the Property. On the same day, the District informed the County that it would continue with the purchase of the Property independently of Cal and would deposit an additional \$50,000 into the escrow established for the purchase of the Property, for a total deposit of, \$100,000 the "Deposit" as required under the Purchase and Sale Agreement. The County and the District jointly decided to revise the Purchase and Sale Agreement to clearly establish that the District would be the sole purchaser of the Property.

On May 28, 2013, pursuant to the terms of the Purchase and Sale Agreement, the County provided a Thirty Day Notice to Vacate to the two existing tenants at the Property. The Property is a 7-story building with approximately 49,300 square feet of space. The tenants currently occupy approximately 5,301 square feet on the ground floor of the Property. One of the tenants, Biryani House restaurant, occupies approximately 4,000 square feet of space and has operated the restaurant at that location since June 2005. The other tenant, People's Cafe, occupies approximately 1,300 square feet of space and has operated the coffee shop at that location since April 2006. Both tenants desire to continue operating their respective businesses at the Property. The District has no immediate plans to commence the required rehabilitation of the Property and

is considering allowing the tenants to remain in possession of their respective premises until construction begins at the Property. The District anticipates that the rehabilitation work will commence in Spring 2014.

California law contemplates that when governmental action leads to the displacement of any person, the person is entitled to certain relocation expenses. However, where there is no interference with a tenant's continued possession for the remainder of the term of a lease, the governmental agency is not liable for relocation assistance. One of the tenants has informed the District that it is a month to month tenant. The other tenant, People's Café, represents that it exercised its five year option to renew and has the right to occupy the premises until March 31, 2016. Although the Café Tenant has stated that an electronic transmission was sent to the County showing that it exercised its five-year option, no copies have been presented. Thus, neither tenant has provided written evidence of a right to continue occupying the premises past June 28, 2013, the date reflected on the County's notice to vacate. However, both tenants have operated their businesses out of the Property for over five years and the District wishes to provide them additional time to wind-up their operations. In exchange for this gesture of goodwill, both tenants would be asked to waive any claim they may have to relocation assistance or any other monetary compensation from the District. Under the terms of the proposed lease agreements, the District will provide 60 days notice to vacate to the tenants prior to commencement of the rehabilitation work, or the tenants will provide 60 days notice of termination of the lease to the District when they are ready to relocate, whichever is earlier.

In an effort to provide additional time for negotiation with the tenants, the District has requested an extension from the County to close escrow on an agreed-upon date in July instead of June 28, 2013, as currently scheduled. The County has not yet agreed to provide the extension requested, therefore, 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 and the loss of the Property.

Although the Property does not currently satisfy the requirements of the Field Act, the District has obtained a report from a structural engineer that describes in detail the structural modifications necessary to render the building in substantial compliance with the Field Act. The report is being presented to this Board in support of certain findings in the Resolution. Due diligence will continue to be conducted concerning engineering and environmental surveys and reports, and the applicability of any CEQA requirements or exemptions once a plan for the rehabilitation project is established. The District will also continue working with the California Department of Education, the Department of State Architect, and other governmental agencies with jurisdiction over the Property to ensure that the Property is rehabilitated in accordance with all applicable requirements.

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 adopt the Resolution approving the Second Amended and Restated Purchase and Sale Agreement and delegate authority to the Chancellor to (i) authorize the transfer and deposit of the balance of the purchase price into escrow, acquire the Property and cause the recording a quit claim deed and any other related instruments; (ii) continue with any 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 to obtain all required permits and approvals and comply with CEQA and any other applicable laws and regulations; and (iii) enter into short term leases with the tenants under substantially the terms and conditions established under the Resolution.

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 approximately \$9,200,000, including the remaining portion of the purchase price in the amount of \$8,900,000 and the remaining portion of the estimated \$175,000 to be used for the payment of consultants and services.

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

YES _____ **NO** _____

COMMENTS:

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?

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

DOCUMENT PREPARED BY:

Prepared by: *José M. Ortiz*
[Dr. José M. Ortiz, Chancellor]

DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: *José M. Ortiz*
[Dr. José M. Ortiz, 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: _____
Ron Gerhard, 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: _____
Thuy T. Nguyen, General Counsel

CHANCELLOR'S OFFICE APPROVAL

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

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