

# **PERALTA COMMUNITY COLLEGE DISTRICT**

## **Resolution No. 12/13-36**

### **APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT CONCERNING THE PURCHASE OF REAL PROPERTY; APPROVING A FORM OF LEASE FOR CERTAIN PORTIONS OF THE REAL PROPERTY; MAKING REQUIRED FINDINGS AND DETERMINATIONS; APPROVING RELATED DOCUMENTS AND AUTHORIZING RELATED ACTIONS**

**WHEREAS**, pursuant to applicable laws, including but not limited to provisions of the California Education Code (“Code”), commencing with Section 81000, the Peralta Community College District (“District”) is authorized to acquire real or personal property, including but not limited to offsite buildings and other improvements; and

**WHEREAS**, the District has previously authorized the Chancellor to negotiate the terms of a purchase and sale agreement with Alameda County (the “County”) for the acquisition of certain real property, a seven story building with approximately 49,300 square feet of usable space, fixtures and improvements located at 2015 Shattuck Avenue, Berkeley, California, identified by APN 057-2034-010 (the “Property”); and

**WHEREAS**, the Property is located within the jurisdictional boundaries of the District, the District has determined that additional space is needed for instructional and support services for Berkeley City College and based on ongoing due diligence and examination of the Property, the District believes that that the Property would satisfy some of those needs; and

**WHEREAS**, pursuant to the provisions of Government Code section 54222(c), prior to making a public disposition of the Property, the County offered to sell the Property to the District and to The Regents of the University of California (“Cal”) and both the District and Cal expressed interest in acquiring the Property and initiating negotiations with the County; and

**WHEREAS**, pursuant to Government Code section 54223, if the price or terms cannot be agreed upon after a good faith negotiation period, the County may make other disposition of the Property and the County has indicated that, if the District does not acquire the Property, the County will publish a request for public bids to be opened in September 2013; and

**WHEREAS**, pursuant to Section 3 of Resolution 12/13-29, approved by this Board on May 14, 2013 (“Resolution 12/13-29”), this Board approved and ratified an Amended and Restated Purchase and Sale Agreement (the “Purchase and Sale Agreement”) providing terms and conditions for the County to sell the Property to the District and/or to Cal; and

**WHEREAS**, on or about May 20, 2013, Cal informed the County and the District that it would not proceed with the acquisition of the building either jointly with the District or on its own and, thereafter, the County and the District agreed to enter into an Amendment to the

Purchase and Sale Agreement (the “Amendment”) to affirm the terms of purchase for the total purchase price of Nine Million dollars (\$9,000,000) (the “Purchase Price”); and

**WHEREAS**, the District has obtained an appraisal of the Property and determined that the Purchase Price is equal to or less than the fair market value identified in the appraisal; and

**WHEREAS**, a good faith deposit in the amount of \$100,000 (the “Deposit”) has been paid by the District, including, as contemplated and authorized under Section 3 of Resolution 12/13-29, the \$50,000 portion of the Deposit reimbursed to Cal upon its withdrawal from the transaction; and

**WHEREAS**, the remainder of the Purchase Price will be paid by the District on the closing date, which, pursuant to the Amendment is scheduled for July 11, 2013; and

**WHEREAS**, pursuant to Title 14 of Chapter 3 of the California Code of Regulations, commencing with Section 15000, which provides Guidelines (Guidelines) for Implementation of the California Environmental Quality Act (CEQA), the District has determined that the acquisition of the Property and the anticipated lease of certain portions of the Property, would be categorically exempt from CEQA under Section 15061(b)(3); and

**WHEREAS**, the District has ordered investigations to be made and reports to be prepared to determine what if any actions would be required under CEQA in connection with any rehabilitation project, and such investigations will continue; and

**WHEREAS**, the Board of Trustees of the District previously authorized the Chancellor (or a designee) to perform due diligence to ascertain the condition of the Property as required to comply with applicable provisions of law, including but not limited to the requirements of the Field Act, commencing with Section 81130 of the Education Code, or any other applicable building standards or seismic requirements; and

**WHEREAS**, in connection with its investigation and assessment of the Property, the District has retained the services of structural engineers, architects, appraisers, environmental consultants, attorneys and other independent consultants and the Board of Trustees desires to approve and ratify all such contracts and actions; and

**WHEREAS**, the District has determined that the building being acquired was constructed prior to January 1, 1998 and meets the structural requirements of the 1976 Building Code, or subsequent editions, as contemplated under Section 81149 of the Education Code, and the District may acquire the building as provided therein; and

**WHEREAS**, the District has determined that it is in the best interest of the District to complete the acquisition of the Property rather than allow the County to proceed to public sale; and

**WHEREAS**, on May 29, 2013, pursuant to the terms of the Purchase and Sale Agreement, the County delivered Thirty Day Notices to Vacate on June 28, 2013 to the two commercial tenants (the “tenants”) currently occupying certain portions of the ground floor of the Property; and

**WHEREAS**, the tenants have occupied said portions of the Property for at least five years and wish to continue their respective business operations at the Property at least until the District determines to proceed with any rehabilitation work deemed necessary or desirable by the District; and

**WHEREAS**, the District acknowledges that the tenants require additional time to relocate their respective business operations and, since the District does not anticipate occupying the Property immediately, the District believes it would be in the best interest of the public and the District to enter into a lease agreement with each of the tenants to provide terms and conditions for its respective continued use and occupancy of the Property; and

**WHEREAS**, the leases would commence upon acquisition of the Property by the District and would be subject to termination upon 60 days notice by either party or to extension upon mutual agreement, and subject to waiver and release by tenant of any claim for monetary compensation from the District, including without limitation any claim for reimbursement of any deposits paid by tenant to a prior owner or any claim for relocation assistance; and

**WHEREAS**, if prior to the closing, the Chancellor (or a designee) determines that acquiring the Property would not be in the best interest of the District or would otherwise be in contravention of any applicable requirement of law or regulation, the Chancellor (or a designee) is authorized to provide, or cause to be provided, notice to the County and to take any steps deemed necessary or desirable to rescind the offer to purchase or otherwise terminate the District's obligations under the Purchase and Sale Agreement with the understanding that the Deposit will be forfeited to the County; and

**WHEREAS**, the Board of Trustees desires to authorize the Chancellor (or a designee) to take all actions and exercise all documents and certificates required to complete the purchase of the Property upon payment of the remaining Purchase Price, to provide for reimbursement to Cal for any amounts paid by Cal in connection with due diligence which the District previously agreed to reimburse, to provide for the recording of any documents required to be recorded and to deliver any required certificates, including the certificate of recordation contemplated under Section 27281 of the Government Code, to continue negotiating the terms and conditions of lease agreements with the tenants, and to cause to be prepared, published and submitted any document or reports necessary in connection with the Property.

**NOW, THEREFORE, THE BOARD OF TRUSTEES DOES HEREBY DETERMINE, RESOLVE AND ORDER AS FOLLOWS:**

**Section 1.** The facts and conclusions above, and the findings made by the Board of Trustees of the District ("Board") herein, are supported by substantial evidence.

**Section 2.** The Board finds that contingent on satisfaction of applicable requirements and otherwise to the satisfaction of the Chancellor (or a designee, each), the acquisition of the Property would be in the District's best interest.

**Section 3.** The Second Amended and Restated Purchase and Sale Agreement, in substantially the form presented to this Board for consideration, is hereby approved and all actions heretofore or hereafter taken by the Chancellor (or a designee, each) with respect thereof, including the payment of the Deposit in the amount of \$100,000, the payment of the remaining

portion of the purchase price in the amount of \$8,900,000, and any expenditures in connection with due diligence and approvals contemplated or required in connection with the Purchase and Sale Agreement, are hereby ratified, approved and confirmed. The Chancellor (or a designee) is authorized and directed, for and on behalf of the District, to execute and deliver the Purchase and Sale Agreement in substantially said form, with such changes, insertions and omissions as the Chancellor (or a designee) executing the same may require or approve such determination, requirement or approval to be conclusively evidenced by the execution of the Purchase and Sale Agreement or any amendment thereto. The Chancellor (or a designee) is authorized to complete the transactions herein and therein contemplated, including but not limited to reasonable, prudent expenditure of funds as required to continue due diligence investigations as to the environmental condition of the Property (Phase I and, if needed, Phase II reports), mechanical inspections, compliance with the Field Act or other applicable building or seismic standards and compliance matters, investigations concerning the condition of title to the Property and any encumbrances on the Property, negotiations with the commercial tenants concerning their relocation or ongoing operations on portions of the Property on a temporary basis, and any matters affecting zoning, governmental or regulatory approvals or land use. The Chancellor is authorized and directed to cause a copy of this Resolution to be forwarded to the escrow agent, as described in the Purchase and Sale Agreement.

**Section 4.** The Board further authorizes the Chancellor (or a designee) to retain engineers, architects, surveyors, appraisers, environmental consultants, attorneys and other consultants, to cause to be filed or published any required notices or applications, to direct the preparation of reports, studies or surveys or such other services in connection with the ongoing investigation, use or lease of the Property. To the extent determinations concerning the acquisition, lease or use of the Property are not required by law to be made by this Board, the Chancellor is specifically authorized to make such determinations, particularly but not limited to those required in connection with any governmental applications, permits or approvals.

**Section 5.** The Board hereby finds and determines that a report describing in detail the structural modifications necessary to render the building in substantial compliance with the Field Act has been submitted to this Board. The Board finds that the requirements of section 81149 of the Education Code concerning the acquisition of a building that is non-compliant with the Field Act have been satisfied and authorizes and directs the Chancellor (or a designee) to continue working with District consultants, and representatives of DSA, DGS and any other governmental agencies with jurisdiction to plan a rehabilitation project that would bring the Property into compliance with the Field Act and/or any other applicable building standards or seismic requirements.

**Section 6.** The Board finds that the acquisition of the Property is categorically exempt from CEQA under Section 15061(b)(3) because such acquisition and the anticipated lease of portions of the Property by the District at this time will not result in changes to existing uses that might have a significant environmental effect. The Board hereby directs the Chancellor (or a designee) to file the appropriate notices to ensure this finding takes effect as provided under CEQA. The Board hereby authorizes and directs the Chancellor (or a designee, each) to conduct any additional required due diligence or investigations, including but not limited to retaining consultants and to expend funds in connection with such due diligence, and to obtain any studies or reports deemed necessary or desirable by the Chancellor (or a designee) in connection with

CEQA, in particular with respect to any proposed rehabilitation of the Property; provided however, that any CEQA reports, or required findings or determinations and any plans for any rehabilitation project shall be presented to this Board for consideration and further action.

**Section 7.** The Board hereby approves the form of Commercial Tenant Lease Agreement on file with the Clerk and presented to this Board for consideration. All actions heretofore or hereafter taken by the Chancellor (or a designee) to finalize negotiation of the terms of the lease with each of the tenants is hereby confirmed, ratified and approved. The Chancellor (or a designee) is authorized and directed, for and on behalf of the District, to execute and deliver the leases in substantially said form, with such changes, insertions and omissions as the Chancellor (or a designee) executing the same may require or approve, such determination, requirement or approval to be conclusively evidenced by the execution of a lease concerning each of the tenants, provided that the leases shall be subject to termination upon 60 days notice by either party and a waiver and release of any claim for monetary compensation from the District for any deposits and for relocation assistance shall be requested.

**Section 8.** The Chancellor (or a designee) is hereby authorized and directed to acquire of the Property, unless a determination is made prior to the closing that such acquisition is not in the best interest of the District or is in contravention of any applicable requirement, law or regulation. The Chancellor (or a designee) is hereby authorized, in the name and on behalf of the District, to execute and deliver such notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances, or other instruments as deemed necessary or advisable to carry into effect the intent of this Resolution or comply with the requirements of the instruments hereby approved or authorized. The Chancellor (or a designee) is authorized to cause to be recorded with the County recorder's office a quitclaim deed and/or any other instrument required to evidence the acquisition of the Property and, in connection with such recording, to provide any certifications required, including without limitation the certificate of recordation contemplated under section 27281 of the Government Code.

**Section 9.** This Resolution shall be effective immediately.

**PASSED AND ADOPTED** this \_\_\_\_\_<sup>th</sup> day of June, 2013 by the following Board vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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José M. Ortiz  
Chancellor and Secretary, Board of Trustees  
Peralta Community College District