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OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo



To Board of Education

From Kyla Johnson-Trammell, Superintendent
Valerie Goode, Deputy Chief of Communications and Public Affairs

Board Meeting Date January 22, 2020

Subject Memorandum of Understanding
Vendor(s): City of Oakland and Peralta Community College
Services For: KDOL TV

Action Requested and Recommendation Approval by the Board of Education of Memorandum of Understanding, No cost between the District, City of Oakland, and Peralta Community College, Oakland, CA for the latter to distribute Public, Education and Government Funds (PEG Funds) to OUSD KDOL, as described herein for Fiscal years 2018-19 through 2022-2023.

Background
(Why do we need these services? Why have you selected this vendor) Oakland Municipal Code section 5.17.210 requires that local cable and video companies; AT&T and Comcast make quarterly payments to the city equal to 1% of their gross revenue, ("PEG Fee") to be used for capital expenses for PEG cable and video channels operating in Oakland. One of the channels operating in Oakland to receive the funds will be Oakland Unified School District's KDOL.

Competitively Bid No. Exception: No cost for OUSD for services.

Fiscal Impact No fiscal impact.

Attachments Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE CITY OF OAKLAND, OAKLAND UNIFIED
SCHOOL DISTRICT AND PERALTA COMMUNITY COLLEGE DISTRICT FOR
DISTRIBUTION OF PUBLIC, EDUCATION AND GOVERNMENT FUNDS

THIS MEMORANDUM OF UNDERSTANDING (hereinafter, the "MOU"), is made effective the 1st day of June, 2019, by and between the City of Oakland (hereinafter "City"), the Oakland Unified School District (hereinafter "OUSD"), and Peralta Community College District (hereinafter "Peralta") (collectively referred to as the "Parties") for the distribution of Public, Education and Government ("PEG") Funds.

WHEREAS, the City's Local Cable and Video Franchise agreement with franchise holders AT&T and COMCAST (hereinafter the "Franchise Holders") and Oakland Municipal Code section 5.17.210 require that the Franchise Holders make quarterly payments to the City equal to 1% of their gross revenue ("PEG Fee"), to be used for capital expenses for PEG cable and video television channels operating in Oakland, and

WHEREAS, the City, OUSD, and Peralta each operate a PEG channel in Oakland, and

WHEREAS, the City's PEG Channel is known as "KTOP," the Peralta Community College District's PEG Channel is known as "Peralta TV," and the Oakland Unified School District's PEG Channel is known as "KDOL," and

WHEREAS, pursuant to the City's Local Franchise, the State Video Services Franchise ("SVSF"), and the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), the City expects to receive approximately \$3.5 million in PEG Fees from the Franchise Holders for Fiscal years 2018-2019 through 2022-2023 ("PEG Funds"), and

WHEREAS, the Oakland City Council passed Resolution No. 87414 C.M.S. apportioning and allocating the PEG Funds for Fiscal Years 2018-2019 through 2022-2023 in equal shares between the PEG Channels operating in Oakland, and

WHEREAS, this MOU shall govern the terms and conditions for distribution of PEG Funds for Fiscal Years 2018-2019 through 2022-2023 pursuant to Oakland City Council Resolution No. 87414 C.M.S., and

WHEREAS, Peralta, through the authorized act of its Chancellor, accepts the apportionment of PEG funds as set forth in Oakland City Council Resolution No. 87414 C.M.S., and

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WHEREAS, OUSD, through the act of its Superintendent as authorized by OUSD's Board of Education, accepts the apportionment of PEG funds as set forth in Oakland City Council Resolution 87414 C.M.S., and

WHEREAS, the City, OUSD, and Peralta wish to enter into this MOU for the distribution of PEG Funds for Fiscal Years 2018-2019 through 2022-2023 to support the cable and video television facilities capital needs of their respective PEG Channels.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **EFFECTIVE DATE/TERM OF MOU** --The term of this MOU shall commence on the above-identified date and shall terminate on June 30, 2023 unless terminated on an earlier date pursuant to the terms of this MOU. The Parties intend the MOU to provide for PEG Fund apportionment and distribution to the PEG Channels operating in Oakland for Fiscal Years 2018-2019 through 2022-2023 as described below.
2. **PEG FUND APPORTIONMENT AND DISTRIBUTION** -- The City agrees to apportion and allocate to KTOP, KDOL, and Peralta TV ("PEG Fund Recipients") equal shares of the 1% PEG Fee capital support for cable and video television facilities ("PEG Capital Grant") as set forth in Oakland City Council Resolution No. 87414 C.M.S.
 - a. Said apportioned funds shall be deposited into the Parties' respective project accounts assigned by the City.
 - b. The Parties acknowledge that if the number of PEG Channels operating in Oakland increases or decreases during the Term of this MOU, then the equal apportionment and allocation of PEG Funds will be adjusted accordingly for the remainder of the Term. This means that each Party agrees and understands that its current PEG Fund allocation may increase or decrease accordingly during the Term of this MOU. Any additional PEG Channel(s) that begin operating in Oakland will be required to agree to the terms of this MOU.
3. **RESTRICTION ON THE USE OF PEG FUNDS** -- The Parties agree and understand that the funds and amounts identified herein as "PEG Funds" are restricted to the purchase of capital facilities equipment related to providing PEG Channel programming, and consistent with City's Local Franchise, SVSF, and DIVCA.
4. **SUPERCEDES PREVIOUS MOUs** -- This MOU replaces and makes void all previous MOU(s) between the Parties, which covers the same subject and time period.
5. **CITY LEAD AGENCY** -- The Office of the City Clerk shall be the lead Agency for the City to coordinate and approve all distributions of PEG Funds for the PEG Channels.
6. **DISBURSEMENT OF PEG FUNDS** - The City shall hold all PEG Funds for the various PEG Channels operating within Oakland. Within thirty (30) days of receipt of an invoice evidencing a qualified expenditure (including a copy of canceled checks) from a Party or its corresponding PEG Channel, the City shall disburse from that PEG Channel's project

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account, the qualified amount of the invoice.

7. **AUDIT PEG**—PEG Fund Recipients shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this MOU, and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this MOU.

PEG Fund Recipients shall (a) maintain said records for a period of four years following the last fiscal year during which the City paid an invoice to PEG Fund Recipient under this MOU, and (b) provide the City access to said records within 30 days of a request for access to the records by the City for the purpose of making an audit, examination or review of financial and performance data pertaining to this MOU.

PEG Fund Recipients agree to comply with all audit, inspection, record keeping and fiscal reporting requirements under state and local law incorporated by reference. All PEG Funds must be expended for authorized PEG capital improvement purposes and PEG Fund Recipients shall provide satisfactory proof and documentation to the City of such appropriate expenditure and use of PEG Funds, and all such funds not so documented or accounted for shall be immediately returned to the City.

8. **INDEMNIFICATION OF CITY**— Notwithstanding any other provision of this MOU, Peralta and OUSD shall, respectively, indemnify, hold harmless, and defend upon request, the City, and each of its Council members, officers, partners, agents, and employees (each of which persons are referred to collectively herein as “Indemnitees” or individually as “Indemnitee”) from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys’ fees) caused by or arising out of or from Peralta and OUSD’s respective use and expenditure of PEG Funds and from any:

- i.) Breach of Peralta and OUSD’s respective obligations, representations or warranties under this MOU,
- ii.) Act or failure to act in the course of performance by Peralta and OUSD, respectively, under this MOU,
- iii.) Negligent or willful acts or omissions in the course of performance by Peralta and OUSD, respectively, under this MOU, and
- iv.) Claim for personal injury (including death) or property damage to the extent based on strict liability or caused by any negligent act, error or omission of Peralta and OUSD, respectively.

- a. For purposes of the preceding Subsections (i) through (iv), the terms “Peralta” and “OUSD” includes Peralta, OUSD, and their respective officers, directors, employees, representatives, agents, servants, sub consultants and sub-recipients of PEG Funds.

- b. The City shall give Peralta and OUSD, respectively, prompt written notice of any

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such claim of loss or damage and shall cooperate with Peralta and/or OUSD, as applicable, in the defense of any action and all related settlement negotiations to the extent that cooperation does not conflict with the City's interests.

- c. Notwithstanding the foregoing, the City shall have the right to engage its own counsel for the purposes of participating in the defense of any action if Peralta and/or OUSD, as applicable, fails or refuses to defend the City with counsel acceptable to the City. In addition, the City shall have the right to withhold any PEG Fund allocation due to Peralta and/or OUSD, as applicable, in the amount of anticipated defense costs if Peralta and/or OUSD fails or refuses to defend the City. In no event shall Peralta and/or OUSD agree to the settlement of any claim described herein without the prior written consent of the City, which will not be unreasonably withheld.
 - d. Peralta and OUSD acknowledge and agree that they have an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision. Said obligation shall arise at the time any action or claim is tendered to Peralta and/or OUSD by the City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Peralta and OUSD's respective liability under this MOU shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
9. **ASSIGNMENT** -- PEG Fund Recipients shall not assign or otherwise transfer any rights, duties, obligations or interest in this MOU or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.
10. **PUBLICITY** -- Any publicity generated by PEG Fund Recipients for a project funded pursuant to this MOU, during the term of this MOU and for one year thereafter shall make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" shall be stated explicitly in all promotional material, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. City staff will be available whenever possible at the request of PEG Fund Recipients to assist PEG Fund Recipients in generating publicity for the project funded pursuant to this MOU. PEG Fund Recipients further agree to cooperate with authorized City officials and staff in any City generated publicity or promotional activities undertaken with respect to this project.
11. **TERMINATION** -- Any party to this MOU may terminate this MOU immediately for cause or without cause by giving (30) calendar days' written notice to the other Parties. Unless terminated as provided in this MOU, this MOU will terminate on June 30, 2023.

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12. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES -- PEG Fund Recipients shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this MOU, the Parties agree as follows:

- a. PEG Fund Recipients shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but is not limited to, the following employment activities: hiring, promotions, demotions, transfers, recruitment, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. PEG Fund Recipients shall state in all solicitations or advertisements for employment placed by or on behalf of a PEG Fund Recipient that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. PEG Fund Recipients shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act.
- d. If applicable, PEG Fund Recipients shall send to each labor union or representative of workers with whom they have a collective bargaining agreement, contract, or memorandum of understanding, a notice advising the labor union or workers' representative of PEG Fund Recipient's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13. POLITICAL PROHIBITION -- Subject to applicable State and Federal laws, moneys paid pursuant to this MOU shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

14. RELIGIOUS PROHIBITION -- There shall be no religious worship, instruction, or proselytization as part of, or in connection with, the performance of the MOU.

15. VALIDITY OF PEG FUND APPORTIONMENT AND ALLOCATION --This MOU shall not be binding or of any force or effect until it is (a) approved by a resolution or equivalent act of each of the parties, (b) approved for form and legality by the Office of the Oakland City Attorney, and (c) signed by the Oakland City Administrator or his or her designee and an authorized representative of OUSD and Peralta.

16. GOVERNING LAW-- This MOU shall be governed by the laws of the State of California.

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17. NOTICES – Any Party wishing or required to give notice to any other Party to this MOU, shall provide notice in writing, by facsimile (or by email as to OUSD) and prepaid U.S. certified or registered mail, to the following Party representatives:

City of Oakland
One Frank H. Ogawa Plaza, Suite 201
Oakland, CA 94612-2033
Fax:
Attn: City Clerk

Peralta Community College District
333-East 8th Street
Oakland, CA 94606
Fax: 510-466-5350
Attn: James Stein

with a copy to:
Office of the Chancellor
Peralta Community College District
333 East 8th Street
Oakland, CA 94606
Attn: Contracts Coordinator
Phone: (510) 587-7876
Email: contracts@peralta.edu

Oakland Unified School District
314 East 10th Street
Oakland, CA 94606
Email: ousdlegal@ousd.org
Attn: Mario Capitelli & General Counsel

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

18. ENTIRE AGREEMENT OF THE PARTIES – This MOU supersedes any and all agreements, either oral or written, between the Parties with respect to the rendering of services by PEG Fund Recipients for the City and contains all of the representations, covenants and agreements between the Parties with respect to the rendering of those services. Each Party to this MOU acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which is not contained in this MOU, and that no other agreement, statement, or promise not contained in this MOU will be valid or binding.

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19. **MODIFICATION/AMENDMENT** -- Any modification of or amendment to this MOU, must be agreed upon in writing by all Parties hereto. Any modification of or amendment to this MOU shall be effective only if it is in writing and signed by all Parties hereto.

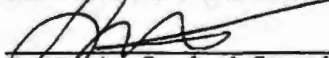
20. **SEVERABILITY/PARTIAL INVALIDITY** -- If any term or provision of this MOU, or the application of any term or provision of this MOU to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this MOU to carry out its intent.

CITY OF OAKLAND
A Municipal Corporation


By: Edward Reiskin Date
Assistant City Administrator


LaTonda Simmons Date
City Clerk

PERALTA COMMUNITY COLLEGE DISTRICT


By: Regina Stanback Stroud Date
Chancellor 12/13/19

OAKLAND UNIFIED SCHOOL DISTRICT


By: Jody London Date
President, Board of Education 2/5/2020


By: Kyla Johnson-Trammell Date
Superintendent & Secretary, Board of Education 2/5/2020

87414 C.M.S.
City Resolution No.

Approved as to form and legality

City Attorney Date

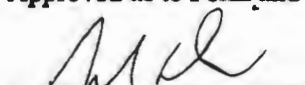
District Resolution No.

Approved as to form and legality

General Counsel Date

District Enactment No.

Approved as to Form and Legality


Josh Daniels Date
Office of the General Counsel 12/18/19

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