



October 3, 2022

Honorable Board of Supervisors  
County of Alameda  
1221 Oak Street, Suite 536  
Oakland, California 94612-4305

**SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE SALE OF SURPLUS PROPERTY AT 1150 AND 1220 HARBOR BAY PARKWAY, ALAMEDA; AWARD A CONTRACT TO LANDIS GRADEN DBA DCG STRATEGIES INC. FOR REAL ESTATE BROKERAGE SERVICES; DELEGATE AUTHORITY TO THE DIRECTOR OF GENERAL SERVICES AGENCY TO ACCEPT AUCTION BID DEPOSITS; PROCUREMENT CONTRACT NO. 23850; AMOUNT: \$2,500,000**

Dear Board Members:

**RECOMMENDATIONS:**

- A. Adopt a Resolution to authorize the sale and memorialize the process, and set forth the terms and conditions of the sale of surplus property at 1150 and 1220 Harbor Bay Parkway, Alameda, via auction per Government Code sections 25526-25535;
- B. Approve a Broker's Agreement (Procurement Contract No. 23850) with Landis Graden DBA DCG Strategies, Inc. (Principal: Landis Graden; Location: Dublin) to provide Real Estate Brokerage Services to the General Services Agency – Real Property Management, for the term of 10/18/2022 – 10/17/2023, with a commission rate of up to 5%, in an amount up to \$2,500,000;
- C. Delegate authority to the Director of the General Services Agency to sign the Broker's Agreement subject to the review and approval as to form by County Counsel and submit an executed copy of the Agreement to the Clerk of the Board for filing; and
- D. Delegate authority to the Director of the General Services Agency to conduct a public auction for the sale of 118,847 square feet of surplus County and City of Oakland jointly owned real property at 1150 and 1220 Harbor Bay Parkway, Alameda, to accept deposits from bidders, open bids, select the highest bidder, and return to your Board to award the sale.

**DISCUSSION/SUMMARY:**

On December 20, 2020, your Board authorized (Item No 27.1; File No. 30547) the County's acceptance of 50% undivided interest ownership of 1150 and 1220 Harbor Bay Parkway, Alameda (Property), and implementation of a Tenants-in-Common Agreement (Agreement) between County of Alameda (County) and the City of Oakland (City) (Co-tenants or Co-owners), as Tenants-In-Common of the Property. The Agreement memorialized the Co-tenant's desire to set forth their mutual agreements as co-owners of the Property, their respective rights and obligations concerning the Property, and their plan for its joint disposal. It also appointed the County as the lead Co-tenant with primary oversight of the disposal process.

The Property is the former Oakland Raiders Headquarters and Training Facility. Pursuant to Section 10-C of the Agreement between Co-tenants, the County is the lead Co-tenant in negotiating the disposition of the Properties. The Property consists of two main structures; the former Oakland Raiders Football Team's former Headquarters (Headquarters), a two-story building built in 1996, which is 100,607 square feet, the land is approximately 5 acres, and a stand-alone Training Facility (Training Facility), which is 18,240 square feet, the land is approximately 11 acres, along with several outbuildings which previously housed equipment.

On January 12, 2021, your Board approved (Item No. 21; File No. 30605) the declaration of the property as surplus property and authorized of the General Services Agency (GSA) to develop a disposal plan for the Property and negotiate for its sale. On September 30, 2021, the California Department of Housing and Community Development (HCD) determined that the County has met all the requirements under the Surplus Land Act to dispose of the co-owned, surplus land located at 1150 Harbor Bay Parkway and 1220 Harbor Parkway, Alameda. The County was then advised by HCD that it is permitted to proceed with the sale of the property through an open bid process.

Alameda County requires Real Estate Brokerage Services to be performed in an effort to market and sell the property. Under a separate contract, the Co-tenants have agreed to a marketing period of up to 12 months. The Contractor shall provide a broker's opinion of value, undertake real estate due diligence to offer potential buyers insight, prepare a marketing program for the property, market the site on multiple listing services and other commercial outlets, provide outreach to local brokers, collect auction deposits, run an auction at fair market value to secure a buyer for the property and close escrow for the following property:

1150 and 1220 Harbor Bay Parkway, Alameda

The auction process shall be pursuant to Government Code Sections 25526-25535 (Code), where the conveyance of the subject real property by the County, on behalf of the Co-owners, shall be made to the highest responsible bidder who most closely meets the terms and conditions of the notice inviting bids pursuant to the Code. The sale shall take place at the Alameda County Administration Building, following social distancing guidelines, and the winning bid brought back to your Board for acceptance by a four-fifths vote in addition to acceptance by the City, both by Resolution. Notice of the sale shall be given for five days prior thereto by publication in a newspaper published in the County. Upon acceptance of the highest bid, the sale of the Property shall be completed in an escrow of the County's choice. Escrow shall open within five days and is estimated to close within 30 days of receiving such approvals.

On October 12, 2021, your Board approved (Item No. 31) a pool of real estate brokers for real estate services. Landis Graden DBA DCG Strategies, Inc. received the highest score. Based on the terms of the First Amendment to the Agreement, the City has agreed to sign-off to the Broker Contract as-to-form. Based on a Broker's Opinion of Value the listing price for the property will be \$35,800,000. The agreed upon rate of commission will be 2.5% for DCG, as the listing broker, with the potential additional commission rate of 2.5% for the buyer's broker, should they be represented by one. In no event will the total commission paid exceed \$2.5 million.

**SELECTION CRITERIA/PROCESS:**

*GSA – Real Property Management (RPM) has determined that Alameda County does not currently have the resources to provide Real Estate Brokerage Services to properly market and sell the property.*

*GSA – RPM developed a Request for Proposal (RFP), which was issued on March 2, 2022 and sent directly to the real estate broker pool. Proposals were due on April 15, 2022.*

Three brokers provided proposals: Colliers, CBRE, and Landis Graden DBA DCG Strategies, Inc. The responses were evaluated and interviewed by the County Selection Committee. A maximum total of 100 evaluation points was available for this RFP. The total evaluation points include preference points derived from a 5% preference for local vendors and a 5% preference for certified Small Local Emerging Business (SLEB) vendors, for a total of 10%.

Landis Graden DBA DCG Strategies, Inc. (Certification Number: 21-00031; Expiration Date: 03/31/2023), was the highest scoring qualified vendor and is being recommended for award.

The following is the evaluation summary:

**EVALUATION SUMMARY**

<b>Vendor</b>	<b>Location</b>	<b>Local</b>	<b>SLEB</b>	<b>Evaluation Points</b>
Landis Graden DBA DCG Strategies, Inc. (Certification Number: 21-00031; Expiration Date: 03/31/2023)	Dublin, CA	Y	Y	88.67
CBRE	Oakland, CA	Y	Y	79.33
Colliers	Oakland, CA	Y	Y	75.67

**FINANCING:**

Sales proceeds from the Property will be deposited in Fund 21502 - Surplus Property Development Trust. Funding for the brokerage service calculated at 5% of the property selling price will be from the sales proceeds to the broker at the close of escrow. No appropriations are required, and there will be no increase in net County cost.

**VISION 2026 GOAL:**

Marketing and disposition of unneeded Real Estate meet the 10X Goal pathway of **Accessible Infrastructure** in support of our shared vision of a **Prosperous and Vibrant Economy**.

Respectfully submitted,

DocuSigned by:  
  
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Kimberly Gasaway  
Director, General Services Agency

I:/BOARD LETTERS/RPM/LETTERS/BOS.10.18.22.RPM.AWARD TO DCG HARBOR BAY – 1150 AND 1220

Attachment

cc: County Administrator  
Auditor-Controller  
County Counsel

Approved as to Form  
DONNA R. ZIEGLER, County Counsel  
DocuSigned by:  
By Andrew Massey  
Andrew Massey, Deputy

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA  
RESOLUTION NUMBER R-2022-522

**AUTHORIZE THE PUBLIC SALE OF SURPLUS PROPERTY; ASSIGN BROKERAGE TO SELL PROPERTY; SET TERMS AND CONDITIONS; DATE, TIME, AND PLACE FOR OPENING PROPOSALS; POST AND PUBLISH**

**WHEREAS**, the County of Alameda, a political subdivision of the State of California, is the owner of an undivided 50% interest in the fee title of that certain improved real properties located at 1150 and 1220 Harbor Bay Parkway, Alameda, CA (“Property”), and more particularly designated and described as:

SEE EXHIBIT “A” ATTACHED HERETO AND MADE A PART HEREOF.

**WHEREAS**, the City of Oakland, a municipal corporation, is the owner of the other undivided 50% interest in the fee title in the Property; and

**WHEREAS**, this Board of Supervisors found and determined that the County’s 50% undivided interest in the Property should be offered for public sale; and

**WHEREAS**, the City of Oakland’s City Council has determined that the City’s 50% undivided interest in the Property should be offered for public sale; and

**WHEREAS**, the City of Oakland and the County of Alameda have entered into a Tenancy in Common Agreement (“Agreement”) through which they have agreed to coordinate the sale of each party’s respective 50% undivided interest in the Property, and further to designate the County of Alameda as the party that shall conduct the sale of the Property, acting as agent for the City of Oakland; and

**WHEREAS**, the City of Oakland has taken such actions as may be required by law to permit the sale of its 50% undivided interest in the Property, and for that sale to be conducted by the County of Alameda acting as agent for the City of Oakland; and

**WHEREAS**, the requirements of Sections 54222 and 65402 of the Government Code of the State of California have heretofore been complied with, insofar as said code sections apply to the public sale of the Property; and

**NOW THEREFORE, BE IT RESOLVED**, that the Property described in the attached Exhibit “A” is approved for public sale under the following terms and conditions, to wit;

1. **AUTHORIZE PAYMENT OF COMMISSION TO BROKER**

Retain Landis Graden from DCG Strategies, Inc. (“Broker”) as the County’s broker to whom commission shall be paid from the proceeds of sale of the Property at the rate of 2.5%, except in the event the winning bidder is also represented by a broker, the commission shall be 5%, which amount shall be split evenly between said broker and Broker.

2. **MINIMUM PROPOSAL**

The minimum acceptable written proposal for the purchase of the Property is Thirty-Five Million Eight Hundred Thousand Dollars (\$35,800,000.00).

3. **OFFICIAL PROPOSAL FORM**

No written proposal will be considered unless submitted on the County of Alameda’s Official Proposal form, which is available from DCG Strategies 7600 Dublin Blvd., Suite 275 Dublin, CA 94568, telephone (925) 479-1350, on or before **Friday, June 30, 2023**, by 4:30 p.m.

4. **DEPOSIT**

Each bidder shall deposit with Old Republic Title the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) by a cashier’s check or certified check, payable to “Old Republic Title c/o 1150 and 1220 Harbor Bay Parkway”. Personal checks are not acceptable. The required deposit must be submitted with each written proposal in order for such proposal to be considered. In the event of oral bids, each person present who has submitted the required deposit and completed the Official Proposal Form is an eligible oral bidder. No deposits will be accepted by Old Republic Title, nor shall oral bids be accepted if the proposed bidder has not submitted the required deposit and completed the Official Proposal Form and delivered it to Old Republic Title Company c/o 1150 and 1220 Harbor Bay Parkway, 555 12<sup>th</sup> Street, Ste 2000 Oakland, CA 94607 on or before **Wednesday, July 5, 2023, by 4:30 p.m.** Upon completion of all bidding and acceptance of the highest bid, Old Republic Title will return the deposits to all parties except the high bidder, whose deposit will be retained, becomes non-refundable, and will be credited to the purchase price of the Property.

5. **SALE PROCEDURE**

(a) Written Proposals:

All of the written proposals received will be opened, examined, and declared acceptable or not by the Director of the General Services Agency, or her designee. Of the proposals submitted which conform to all of the terms and conditions herein stated, and which are made by responsible proposers, the proposal, which is the highest shall be accepted, unless a higher oral bid is accepted or the Director of the General Services Agency, or her designee, rejects all written proposals and oral bids. If no acceptable written proposal is received, the Property will be withdrawn from sale.

(b) Oral Bids:

If the Director of the General Services Agency is in receipt of one or more acceptable written proposals, the Broker will call for oral bids immediately following the opening examination, and declaration of acceptability of the written proposals. If, upon the call for oral bids, any responsible person who has made the required deposit and completed the Official Proposal Form as set forth above can offer to purchase the Property upon the terms and conditions herein stated, for a price exceeding the highest written proposal made by a responsible proposer by at least five percent (5%). After an initial oral bid is made, oral bidding may proceed in increments set by the Broker until the highest oral bid is finally made and accepted.

(c) Duplicate High Proposals:

In the event that two or more written proposals are received which are equal in amount, and no oral bids are made, the proposal accepted shall be that of the proposer whose name is drawn by lot immediately after the call for oral bids.

(d) Rejection of Written Proposals and/or Oral Bids:

The Director of the General Services Agency, or her designee, at his or her discretion, may reject any and all written proposals and/or oral bids and withdraw the Property from sale. If the sale is canceled, all deposits will be refunded without payment of interest.

(e) Final Acceptance by Board of Supervisors

Final acceptance of the highest written or oral bid, as the case may be, shall be subject to approval of the Board of Supervisors by resolution.

6. **GENERAL**

The Property is sold "as is" and the County of Alameda will pay to Broker the commission in accordance with the terms of paragraph 1 of this resolution in connection with the sale. Recording and survey monument preservation fees and documentary transfer tax shall be paid by the purchaser. The County of Alameda and the City of Oakland make no representations as to the condition of the Property, conformance to zoning requirements or permit regulations, soil conditions, or the existence, if any, of hazardous materials on the Property. No title shall pass until the transaction is completed by recordation of the Quitclaim or Grant Deed, at County's discretion. Purchaser is responsible for conducting their own due diligence.

7. **CONDITIONS OF SALE**

The total balance of the approved purchase price shall be paid in full on or before the first working day following forty-five (45) calendar days after the date of acceptance of either the highest written proposal or oral bid by the Board of Supervisors. Payment shall be made by cashier's check or certified check payable to "Old Republic Title c/o 1150 and 1220 Harbor Bay Parkway". At the time of payment, the recording and survey monument preservation fees and documentary transfer tax shall also be paid by check payable to "Old Republic Title c/o 1150 and 1220 Harbor Bay Parkway". Check(s) shall be delivered to Old Republic Title

Company c/o 286 14th Street, 555 12th Street, Ste. 2000 Oakland, CA 94607, by no later than 4:30 p.m. of the aforesaid first working day following the 45th calendar day after the aforesaid date of acceptance. Property taxes bills that would become delinquent on or before final acceptance of the highest proposal or oral bid by the Board of Supervisors shall be the responsibility of the City of Oakland and/or the County of Alameda as the case may be under the Agreement, and if they remain delinquent at the close of escrow shall be paid by the title officer out of the sale proceeds; excepting this circumstance there shall be no proration of property taxes. On the day of receipt of said funds or prior thereto, or on the following first working day, Real Property Management shall cause the recordation of the Quitclaim or Grant Deed, at County's discretion, at the office of the Alameda County Recorder, thereby completing the transaction.

8. **ESCROW**

Escrow shall be conducted by Old Republic Title and the escrow number of the escrow so opened within one (1) day of Board of Supervisors acceptance. The instructions for the escrow will be based upon the terms and conditions specified in this Resolution. The successful bidder shall pay all costs of this escrow, including recording fees, documentary transfer taxes, and any other title and escrow fees and charges. The sale shall be at no expense to the County or the City of Oakland, except that (a) the Broker shall be compensated as provided in paragraph 1, and (b) delinquent property taxes shall be paid as provided in paragraph 7. This transaction is to close within 45 days of Board acceptance of the high bid.

9. **ENTRY ON PROPERTY TO CONDUCT INVESTIGATION**

If a prospective proposer needs to gain entry to the Property to conduct any form of investigation or to tour the Property prior to the below stated date of opening written proposals, said party shall schedule a prospective appointment to tour the Property with Real Property Management (510) 301-0002. Open houses shall be conducted by the Broker, who shall advertise open house dates and times Property is to be held open.

10. **DEFAULT**

The non-payment of the full purchase price by the first working day following the 45-day time limit shall result in cancellation of the sale and forfeiture of deposit. No extension of time for payment will be granted.

The proposer or oral bidder understands and agrees that failure to comply with the provisions herein or other default will result in actual damages to the County and the City of Oakland, which will be extremely difficult to ascertain and determine. The County has determined that the required deposit is equal to or less than the estimated actual damages, which will be incurred by the County and the City of Oakland by the proposer's or oral bidder's default. Therefore, to avoid uncertainty and litigation should default occur, the County, the City of Oakland, and the proposer or oral bidder agree that the required deposit represents appropriate liquidated damages.

**AND BE IT FURTHER RESOLVED**, that **Monday, July 10, 2023**, at the hour of **11:00 a.m.**, at **1220 Harbor Bay Parkway, Alameda CA**, be and the same are hereby fixed as the date,

time and place for opening written proposals for the purchase of the real property described in Exhibit "A"; and

**BE IT FURTHER RESOLVED**, that copies of this resolution, signed by the President of this Board of Supervisors, shall be posted in three (3) public places in the County of Alameda, not less than fifteen (15) days prior to the date hereinbefore fixed for reception and opening of written proposals; and

**BE IT FURTHER RESOLVED**, that this resolution shall be published once a week for three (3) successive weeks prior to the date of reception and opening of proposals in Inter-City Express (News), a newspaper of general circulation, published in Alameda County; and

**BE IT FURTHER RESOLVED**, that the proceeds from the sale of said real property shall be deposited in the Fund 21502 - Surplus Property Development Trust account.

**BY ORDER OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, THIS 18TH DAY OF OCTOBER, 2022.**



**Exhibit A**  
**LEGAL DESCRIPTION**

The land referred to in this Report is situated in the County of Alameda, City of Alameda, State of California, and is described as follows:

**TRACT ONE:**

**PARCEL ONE:**

Parcel 2, Parcel Map 4507, filed February 13, 1985, Map Book 152, Pages 152, Pages 21-22, Alameda County Records.

**EXCEPTING THEREFROM:**

1. All overlying and other water rights, including, without limitation, the right to appropriate water and distribute it to other property without any right to the use of or rights in or to any portion of the surface of said land. The owner of the reserved water rights, however, covenants that it will not exercise the rights reserved over the surface of the property described above or within the subsurface of such property above a depth of 100 feet below the surface of said property. Breach of the foregoing covenant shall not, however, terminate or forfeit the rights so reserved, but injunctive relief and other appropriate legal and equitable remedies may be sought and obtained to prevent or remedy any such breach;

2. All oil, gas, mineral, geothermal and hydrocarbon substances in and under or that may be produced below a depth of 500 feet below the surface of said property without any right of entry upon the surface of said land for the purposes of mining, drilling, exploring or extracting such oil, gas, minerals, geothermal or hydrocarbon substance and except as provided above with respect to water rights, without any right to the use of or rights in or to any portion of the surface of said land to a depth of 500 feet below the surface thereof. As reserved in the deed from Harbor Bay Isle Associates, a California General Partnership recorded July 17, 1987, Series No. 87-201160, Alameda County Records.

**PARCEL TWO:**

Easement granted in the Deed to Chamanreal Inc., N.V., a Netherlands Antilles Corporation, recorded July 17, 1987, Series No. 87-201160, and subject to that certain Agreement for Limitation of Easement Rights, recorded July 17, 1987, Series No. 87-201161, Alameda County Records, described as follows: A non-exclusive easement as an appurtenance to Parcel One above, for construction, reconstruction, maintenance, repair and use of ingress and egress facilities and public and private utilities, sanitary sewers and storm drainage facilities over the strip of land designated as "ESMNT.A", lying within Parcel 4, Parcel Map 4507, filed February 13, 1985, Map Book 152, Pages 21-22, Alameda County Records.

**PARCEL THREE:**

Easement created in the Deed from Harbor Bay Isle Associates, a partnership, to the City of Alameda, a municipal corporation, recorded July 2, 1986, Series No. 86-158280, Alameda County Records, described as follows: An easement for an encroachment of a concrete wall along the Southerly boundary line of Parcel 3, Parcel Map 4507, filed February 13, 1985, Map Book 152, Pages 21-22, as an appurtenance to Parcel One above, including without limitation, a right of entry onto Parcel 3, for the purpose of maintaining the concrete wall and the right to drain temporarily the pond on Parcel 3 during the period of such maintenance.

Assessors Parcel No. 074-1339-016

**TRACT TWO:**

1150 and 1220 Harbor Bay Parkway

Parcel 1, Parcel Map 7025, filed December 4, 1997, Map Book 232, Page 98, Alameda County Records.  
EXCEPTING THEREFROM:

All oil, gas, mineral, geothermal and hydrocarbon substances in and under or that may be produces below a depth of 500 feet below the surface of said property without any right of entry upon the surface of said land for the purpose of mining, drilling, exploring or extracting such oil, gas, mineral, geothermal or hydrocarbon substances and, except as provided above with respect to water rights, without any right to the use of or rights in or to any portion of the surface of said land to a depth of 500 feet below the surface thereof.

APN: 074-1361-008

**Contract No.:** \_\_\_\_\_

**Administering Agency: Alameda County General Services Agency**

**Contract Description: Exclusive Real Estate Brokerage Services**

**EXCLUSIVE REAL ESTATE BROKERAGE SERVICES AGREEMENT  
1150 AND 1220 HARBOR BAY PARKWAY, ALAMEDA, CA**

THIS AGREEMENT is made at Oakland, California, as of \_\_\_\_\_, by and between the County of Alameda ("County"), and Landis Graden of DCG Strategies, Inc ("Broker") a California Real Estate Broker, (hereinafter collectively referred to as the "Parties"), for brokerage services in the sale of the vacant real property located in Alameda, California, described as APN 74-1361-8 commonly referred to as 1150 Harbor Bay Parkway, Alameda, CA and APN 74-1339-16 commonly referred to as 1220 Harbor Bay Parkway, Alameda, California, legal descriptions as shown in Exhibit A ("Property"), in which each of County and City owns a 50% undivided interest that City and County have decided through their separate Tenancy-in-Common Agreement ("TIC Agreement") elected the County to coordinate the sale by auction and to hire Broker to facilitate said auction, the parties agree as follows:

1. **Property Price.** County offers the Property for sale, at a Listing Price of Thirty-Five Million Eight Hundred Thousand Dollars (\$35,800,000.00). The sale shall be pursuant to a live public auction sale ("Auction") by highest bidder ("Buyer").

2. **Services.** Subject to the terms and conditions set forth in this Agreement, Broker shall provide the services as described in Exhibit B in the manner therein specified to assist with the marketing and sale of the Property.

3. **Payment for Brokerage Services.** It is mutually understood and agreed that Broker shall be paid a brokerage fee for services rendered only in the event of, a close of escrow of the Property, deducted from the proceeds of the sale of the Property by the Title Company. The brokerage fee shall be five percent (5%) of the sale price of the Properties. In the event that the Property is not sold, for any reason whatsoever, there will be no real estate commission due. The Broker agrees to cooperate with any and all brokers representing buyers, if any, and to split 50/50 the brokerage fee due in the event of a close of escrow. If no broker represents the Buyer, the Broker will receive a brokerage fee of two and half percent (2.5%) of the sale price of the Properties. In no event shall the brokerage fee exceed a maximum of Two Million Five Hundred Thousand Dollars (\$2,500,000).

4. **Payment for REDD Services.** It is mutually understood and agreed that at County's and City's election, County shall reimburse for additional services Broker provides via their subcontractors for approved Real Estate Due Diligence services, as further defined in Exhibit B ("REDD Services"), either directly to Broker upon Broker's submittal of an approved invoice or through the disbursement of escrow funds at the close of escrow. In no event shall the fee for REDD Services exceed a maximum of Twenty Eight Thousand Seven Hundred Fifty Dollars (\$28,750). Broker's entitlement to reimbursement for REDD Services shall be in addition to the payment of commission under paragraph 3 and shall not be conditioned upon the successful sale of the Property. In the event that escrow closes, the amount deducted to reimburse the Broker for the REDD Services shall be taken from the sale proceeds, and in accordance with the TIC Agreement shall be taken in equal amounts from the City's share of the sale proceeds and the County's share of the sale proceeds, as those amounts are determined under the TIC Agreement. In the event that the Auction is canceled, or escrow does not close, the Broker shall at that time be reimbursed for the cost of the REDD Services, which shall be split equally between the City and the County.

5. **Facilities. Equipment and Other Materials. and Obligations of Broker.** Broker shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, unless otherwise indicated in this Agreement. County shall furnish Broker contacts, materials, and services, if any, listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

6. **General Provisions.** The Parties agree to comply with the general provisions set forth in Exhibit D attached hereto and incorporated herein as if set forth in full.

7. **Insurance.** Broker shall file with County insurance in accordance with Exhibit E.

8. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.

9. **Time for Performance.** Time is of the essence, and, subject to the provisions of Section 3 of Exhibit D, failure of Broker to diligently perform services hereunder shall constitute material breach of this Agreement.

10. **Notices.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax or reliable mail service with confirmed delivery, to the address of the respective parties set forth below:

COUNTY: General Services Agency  
Kimberly Gasaway, Director GSA  
cc: Rachel Johnson, Real Property Program Manager  
1401 Lakeside Drive, Suite 900  
Oakland, California 94612

BROKER: DCG Strategies, Inc  
Attn: Mr. Landis Graden  
7600 Dublin Blvd., Suite 275  
Dublin, CA. 94568

County or Broker may from time to time designate any other address for this purpose by written notice to the other party.

10. **Term.** This Agreement shall commence upon the last date of execution of this Agreement ("Effective Date"). The term of this Agreement shall be one (1) year commencing on the Effective Date, unless terminated earlier by either party pursuant to Section 10 of Exhibit D.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

**“County”**

**COUNTY OF ALAMEDA, a political subdivision of the State of California**

By: \_\_\_\_\_  
Kimberly Gasaway  
Director, General Services Agency  
County of Alameda

Date: \_\_\_\_\_

**“Broker”**

**Landis Graden  
DCG STRATEGIES, INC.**

By: \_\_\_\_\_  
Landis Graden, Chief Executive Officer, DCG Strategies, Inc.

Date: \_\_\_\_\_

Approved as to form:  
DONNA R. ZIELGER  
County Counsel  
DocuSigned by:  
By: Andrew Massey  
Andrew J. Massey  
Deputy County Counsel

- Exhibit A: Legal Description
- Exhibit B: Scope of Services
- Exhibit C: Materials and Obligations of County
- Exhibit D: General Provisions
- Exhibit E: Insurance Requirements

**Exhibit A**  
**LEGAL DESCRIPTION**

The land referred to in this Report is situated in the County of Alameda, City of Alameda, State of California, and is described as follows:

**TRACT ONE:**

**PARCEL ONE:**

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**EXCEPTING THEREFROM:**

1. All overlying and other water rights, including, without limitation, the right to appropriate water and distribute it to other property without any right to the use of or rights in or to any portion of the surface of said land. The owner of the reserved water rights, however, covenants that it will not exercise the rights reserved over the surface of the property described above or within the subsurface of such property above a depth of 100 feet below the surface of said property. Breach of the foregoing covenant shall not, however, terminate or forfeit the rights so reserved, but injunctive relief and other appropriate legal and equitable remedies may be sought and obtained to prevent or remedy any such breach;

2. All oil, gas, mineral, geothermal and hydrocarbon substances in and under or that may be produced below a depth of 500 feet below the surface of said property without any right of entry upon the surface of said land for the purposes of mining, drilling, exploring or extracting such oil, gas, minerals, geothermal or hydrocarbon substance and except as provided above with respect to water rights, without any right to the use of or rights in or to any portion of the surface of said land to a depth of 500 feet below the surface thereof. As reserved in the deed from Harbor Bay Isle Associates, a California General Partnership recorded July 17, 1987, Series No. [87-201160](#), Alameda County Records.

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**PARCEL THREE:**

Easement created in the Deed from Harbor Bay Isle Associates, a partnership, to the City of Alameda, a municipal corporation, recorded July 2, 1986, Series No. [86-158280](#), Alameda County Records, described as follows: An easement for an encroachment of a concrete wall along the Southerly boundary line of Parcel 3, Parcel Map 4507, filed February 13, 1985, [Map Book 152, Pages 21-22](#), as an appurtenance to Parcel One above, including without limitation, a right of entry onto Parcel 3, for the purpose of maintaining the concrete wall and the right to drain temporarily the pond on Parcel 3 during the period of such maintenance.

Assessors Parcel No. 074-1339-016

**TRACT TWO:**

Parcel 1, Parcel Map 7025, filed December 4, 1997, [Map Book 232, Page 98](#), Alameda County Records.

**EXCEPTING THEREFROM:**

All oil, gas, mineral, geothermal and hydrocarbon substances in and under or that may be produced below a depth of 500 feet below the surface of said property without any right of entry upon the surface of said land for the purpose of mining, drilling, exploring or extracting such oil, gas, mineral, geothermal or hydrocarbon substances and, except as provided above with respect to water rights, without any right to the use of or rights in or to any portion of the surface of said land to a depth of 500 feet below the surface thereof.

APN: 074-1361-008

**EXHIBIT B**  
**SCOPE OF SERVICES**

1. Real Estate Brokerage Services

This Agreement shall serve to outline and define the scope of Broker's services in representing the County in the sale of the 1150 Harbor Bay Parkway Alameda, CA and 1220 Harbor Bay Parkway Alameda, CA, described as APN(s) 74-1361-8, and 74-1339-16 ("Property").

2. Broker Team

Broker's team consists of the following Key Personnel and subcontractors, as applicable during the contract term:

1. Landis Graden
2. Lauren Jennings
3. Jamil Muchell
4. Rachael Moy

Broker shall provide Real Estate Brokerage services and is the prime contractor. Broker, its team, their expertise, experience and proposed staffing, is set forth in Broker's Proposal dated April 15, 2022, incorporated into this Exhibit B by this reference, and attached to this Exhibit B as its Appendix 1. The limits of this incorporation by reference are set forth in Section 3 of this Exhibit B.

3. Scope of Project

The proposed project team consists of Landis Graden, Lauren Jennings, Jamil Muchell, and Rachael Moy providing the complete and full-service Real Estate Brokerage Services to lead to the sale of 1150 Harbor Bay Parkway Alameda, CA and 1220 Harbor Bay Parkway Alameda, CA, described as follows:

Broker shall provide commercial real estate brokerage services per the following Scope:

A. MARKET EVALUATION

- i. Review and evaluate the Property in preparation of sale according to reasonable commercial standards.
- ii. Produce a Broker's Opinion of Value, which will become the intellectual property of the County of Alameda upon submission.
- iii. Identify and provide County with list of potential buyers, including source information for locating potential buyers.

B. MARKETING

- i. Prepare for County's review a plan for marketing the Property designed to attract and inform a broad range of likely bidders of the opportunity to participate in the auction, which at a minimum shall include physical and digital advertising, an online website or page easily accessible by using search terms related to the Properties, and any other commonly prepared marketing materials used in the advertising of a property sale.
- ii. Prepare all necessary marketing materials for the Property and execute the marketing plan.
- iii. List the Property for sale using MLS, Loopnet.com and similar, and other internet listing services considered standard for the Alameda County, California commercial real estate market.
- iv. Using reasonable commercial methods and real estate industry standards, notify potential buyers from within the private commercial brokerage community that the Property is for sale and how to submit bids.
- v. Arrange for the cleaning and/or staging of Property, should it be deemed necessary by

County.

vi. Schedule, arrange, hold, and manage tours of the Property and a minimum of six open houses with potential buyers. Proposers shall provide specific details on how many open houses they intend to hold and the timing of their proposed open house(s).

#### C. AUCTION, ESCROW AND SALE

i. Facilitate and conduct auction process pursuant to applicable Government Codes sections 25526-25535.

ii. Qualify all prospective buyers for their ability to close on the sale of the Property. All potential purchasers and bids shall be presented to County. Broker shall not disqualify potential buyers without first presenting to County.

iii. Prepare real estate documents for sale of the Property, as directed by County.

iv. Manage all aspects of the escrow process with County's selected title company.

v. Maximize proceeds of the sale for the benefit of the County and City.

#### D. DELIVERABLES AND REPORTS

Provide the County with weekly, written reports of all marketing activities, a list of all prospective buyers, and a comprehensive list of all potential buyers not less than every week during the term of the listing, or upon request.

#### E. REAL ESTATE DUE DILIGENCE (REDD)

Broker shall solicit through a competitive process for contracts with subcontractors to provide REDD Services as provided in paragraph 4 of the Agreement. REDD Services shall consist of reports and inspections such as Phase I, Property Conditions Assessment (PCA), and asbestos survey, but excludes the scope of work in subsections A through D of paragraph 3 of this Exhibit B. Prior to any contract with any subcontractor, Broker shall submit to County for approval all bids and proposals related to all REDD Services. Broker shall not be entitled to reimbursement for REDD Services without prior County approval. County shall not be obligated to approve any contract between Broker and subcontractor. All proposals shall be valid for a 60-day period. Broker must receive written approval from County before engaging with subcontractor.

This Exhibit B has been drafted to include the requirements contained in the Request for Proposal for the disposition re Brokerage Services Proposal Former Oakland Raiders HG and Training Center, including any addenda, specifically including Exhibit A of the RFP the proposal response of Broker (Response), and additional services that the County obtained through negotiations, if any. In the event of any conflict (direct or indirect) among any of the exhibits, the RFP and the Response, the more stringent requirements providing the County with the broader scope of services shall have precedence, such that this Exhibit B including all attachments, the scope of work described in the RFP and the scope of work described in Broker's proposal shall be performed to the greatest extent feasible.

The RFP and Response may be relied upon to interpret this Agreement and shall be applied in such a manner so that the obligations of the Broker are to provide the County with the broadest scope of services for the best value.

#### 4. General Requirements

A. The Project shall successfully meet all applicable and the most current codes, laws, regulations, and professional standards specific to the sale of the Property(s). Certain exceptions are possible, but only when the County grants a written exemption to a specific standard or regulation.

B. Broker shall review existing County data, reports, plans, and other information regarding the project, and perform any investigations as necessary to become familiar with the project. Broker shall make



an independent assessment of the accuracy of the information provided by the County concerning existing conditions (including but not limited to existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Broker to perform the Services. Broker shall rely on the results of its independent investigations and not only on information provided by County. Broker shall review any supplied information and advise County of its adequacy for Broker's work and advise County of any further services necessary to complete the Project.

5. General Scope of Broker's Services

- A. Broker's services shall include all professional services within the scope of Broker's professional discipline (including Broker's team's professional disciplines) necessary to accomplish the tasks defined throughout this Exhibit B. These services will include, but are not limited to, the services outlined in Broker's proposed scope of services annexed to this Exhibit B as its Appendix 1. Broker shall have adequate personnel, facilities, equipment and supplies to complete Broker's Services. County is retaining Broker on an exclusive basis.
- B. Performance of Services will require Broker to work with, meet with, and attend meetings with County staff, with other governmental agencies, and with such other subcontractors as Broker determines necessary, to the extent necessary for performance of Broker's duties under this Agreement (including, but not limited to, Broker's express duties of coordination with other subcontractors). Broker will not commence services until a written Notice to Proceed is received from the County.
- C. Except as provided in paragraph 4 of this Agreement and Section 3(E) of this Exhibit B, Broker shall engage all appropriate specialty subcontractors as are necessary for proper completion of Broker's Services in accordance with the scope of work specified herein and utilizing the subcontractors as specified in Appendix 1, at the sole expense of Broker. Broker's contracts with its subcontractors (and their contracts with their subcontractors) shall incorporate this Agreement by reference to the extent not inconsistent with the subcontractor's scope of work. Broker shall secure County's approval for any subcontractors not listed in Appendix 1 and this Exhibit. Broker shall require each of its subcontractors to execute agreements containing a standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold County harmless from any negligent errors or omissions of the subcontractors.
- D. Broker shall provide County with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation and its incorporation into the Project, including but not limited to, all requirements imposed by applicable Government codes, California Department of Real Estate, and California Regulations (including but not limited to Title 24). Broker may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

6. Coordination of Services with the Project, County's Broker Team, and County Staff

- A. Broker shall fully coordinate its Services with the services of all real estate brokerage disciplines and subcontractors involved in completing the Project. The objective of this coordination shall be the successful sale of the Property(s). Broker shall immediately advise County in writing if any County staff or consultant fails in any manner to coordinate its work with Broker, and the nature of the non-compliance. County will have responsibility to then enforce compliance.
- B. If Property contains any hazards, potential hazards, and or is not in an immediate occupancy condition, Broker shall provide appropriate safety training for Broker's personnel. Broker shall review and train Broker's personnel in appropriate safety procedures for working and showing Property(s). Broker shall require all personnel under Broker's direction to wear hard hats when

entering the Property(s), and any other safety equipment such as orange vests and appropriate shoes, ear and eye protection whenever these precautions are required by OSHA safety standards. Broker shall provide all safety equipment for Broker's personnel.

- C. If the Broker finds a prospective buyer for the Property, the County will allow the Broker to also represent the Buyer and will consent to dual broker representation.
- D. Broker shall not have authority to act on behalf of the County or City in any capacity, and/or to bind County or City in any manner or form. All terms and conditions of any purchase and sale agreement or other agreements shall be subject to review and approval by the County and City, and County Counsel and shall not be binding upon County or construed as an expression of intent by County without express written authorization by the County.

## 7. Broker's Proposal

- A. The Broker has prepared and supplied County with a proposed scope of work dated April 15, 2022, which is attached to this Exhibit B as its Appendix 1 and incorporated herein by this reference ("Proposal"). Broker's Proposal represents Broker's initial proposed scope of services. This Agreement (and its appendices) the Proposal are deemed complimentary; what is called for by one is as binding as if called for in both and shall be performed by Broker. In the case of direct conflict between this Agreement and the Proposal, then the following rules apply:
  - i. Regarding any conflict (direct or indirect) between the Proposal and either the Agreement and its Exhibits A through E, the terms of the Agreement Form and its Exhibits A through E shall have precedence.
  - ii. Regarding any conflict (direct or indirect) between the Proposal and this Exhibit B, the more stringent requirements providing the County with the broader scope of services shall have precedence, such that the scope of work described in this Exhibit B and the scope of work described in the Proposal shall both be performed to the greatest extent feasible.

**Appendix 1 to Exhibit B: Broker's Proposal**

**EXHIBIT C**  
**MATERIALS AND OBLIGATIONS OF COUNTY**

Pursuant to the TIC Agreement, the City has appointed the County as its agent to facilitate the joint sale by auction of the Property. To permit the Broker to render the services required herein, the County shall, at its expense and in a timely manner provide the following services or other materials:

1. Appoint a County General Services Agency staff member to act as Project Manager on behalf of the County.

Madeline Serafin, Real Property Projects Manager  
Alameda County General Services Agency  
1401 Lakeside Drive, 9th Floor  
Oakland, CA 94612

2. County designated staff shall promptly review any and all documents and materials submitted by the Broker.

All other information, facilities, and equipment required to complete the services described Exhibit B of this Agreement shall be provided by the Broker.

## EXHIBIT D GENERAL PROVISIONS

**1. Independent Contractor.** At all times during the term of this Agreement, Broker shall be an independent contractor and shall not be an employee of the County or City. All persons performing services for the Broker under this Agreement shall be employees and/or agents of the Broker and not the County or City. Broker shall be liable for the acts and omissions of its subcontractors, its consultants, its employees, and its agents. Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between County and City and Broker. Broker acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be County or City employees, and shall not be entitled to receive any benefits conferred on County or City employees, including without limitation workers' compensation, pension, health, insurance or other benefits. Broker shall be solely responsible for payment of any required taxes, including California sales and use taxes, City of Oakland business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto. Broker shall be available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms of this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Broker's Services only and not as to the means by which such a result is obtained. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

**2. Licenses and Permits.** Broker represents and warrants to County that Broker and its subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Broker to practice its profession and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Broker to practice its profession at the time the services are performed.

**3. Time.** Broker shall devote such attention to the performance of services pursuant to this Agreement as may be necessary for the satisfactory and timely performance of Broker's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**4. Hold Harmless and Indemnification.** To the fullest extent permitted by law, Broker hereby agrees to protect, defend, indemnify, and hold County and City and their elected and appointed officials, officers, agents employees and volunteers (collectively, "Indemnitees") free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by County or City arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County or City) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or Agreement, except where such Liabilities are caused solely by the negligence or willful misconduct of any Indemnitee. Broker agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Broker. Broker also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Broker or County or City or to enlarge in any way the Broker's liability but is intended solely to provide for indemnification of County and City from liability for damages or injuries to third persons or property arising from Broker's performance pursuant to this Agreement. County and/or City may participate in the defense of any such claim without relieving Broker of any obligation hereunder. This indemnity obligation shall be for the full amount of all damage to County and City, including defense costs, and shall not be limited by any insurance limits.

Broker shall place in its subcontractor agreements and cause its subcontractors to agree to indemnities and insurance obligations in favor of County and City and other Indemnitees in the exact form and substance of those contained in this Agreement. Broker shall require all subcontractors to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Exhibit E. Broker shall verify each of its subcontractor's compliance.

**5. Broker Not Agent.** Except as County may specify in writing within a letter of intent, purchase and sale agreement, or other agreement for a particular real estate transaction, Broker shall have no authority, express or implied, to act on behalf of County or City in any capacity whatsoever as an agent. Broker shall have no authority, express or implied, pursuant to this Agreement to bind County or City to any obligation whatsoever.

**6. Assignment/Subcontracting Prohibited.** Broker and County agree that Broker's unique talents, knowledge, and experience form a basis for this Agreement and that the services to be performed by Broker under this Agreement are personal in character. Therefore, Broker shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

Broker shall use the Subcontractors for the scopes of work listed in its Statement of Qualifications and Proposal (exhibits to Exhibit B), below and shall not substitute Subcontractors unless approved by written instrument executed and approved by the County in writing.

To the extent Broker is permitted by County in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder, Broker shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California §3321. Broker shall remain fully liable and responsible for all acts and omissions of its Subcontractors in connection with the Services as if it engaged in the acts and omissions directly.

Broker shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or City or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County and City.

**7. Small Local and Emerging Business Participation** SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION: Broker has been approved by County to participate in contract without SLEB participation (attach SLEB waiver). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Broker may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- A. Broker must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- B. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- C. Small and/or Emerging Local Business participation and current SLEB certification status must be

maintained for the term of the contract. Broker shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- D. Broker shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Section 6 above. Broker will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- E. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay Broker for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

**8. First Source Program.** For contracts over \$100,000, Broker shall provide County ten (10) working days to refer to Broker, potential candidates to be considered by Broker to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Broker has available during the contract term before advertising to the general public.

**9. Personnel.**

- A. Broker warrants that all personnel assigned by Broker to perform services are duly trained and qualified to perform the work. Broker shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, request the replacement of any person assigned by Broker to perform services pursuant to this Agreement, Broker shall remove and replace any such person immediately upon receiving notice from County.
- B. Notwithstanding the foregoing, if specific persons are designated as part of a project team in Exhibit B, Scope of Services, Broker agrees to perform the work under this Agreement with those individuals identified. Reassignment or substitution of individuals named in the project team by Broker without the prior written consent of County shall be grounds for cancellation of the Agreement by County.

**10. Standard of Performance.** Broker shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Broker is engaged in the geographical area in which Broker practices its profession. All products of whatsoever nature which Broker delivers to County pursuant to this Agreement shall be prepared in a professional manner and conform to the standards or quality normally observed by a person practicing in Broker's profession.

**11. Termination.** This Agreement will be for one (1) year or until one of the following occurs, whichever is earlier:

- A. Brokerage payment is made pursuant to a subsequent close of escrow of the Properties.

- B. Termination of the proposed sale of the Properties by the County or City.
- C. Following delivery of notice and the expiration of applicable cure period pursuant to Section 21 of this Exhibit D, County may terminate this Agreement upon default by Broker hereunder, including without limitation, upon either of the following:
  - i. Broker's failure to diligently market the Property; or
  - ii. Broker's violation or allowing a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Services.
- D. Broker's assignment for the benefit of creditors, admission in writing its inability to pay its debts as they become due, filing of a voluntary petition for bankruptcy, adjudgment of bankruptcy or insolvency, filing of a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Broker in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Broker or of all or any substantial part of the properties of Broker, or if Broker, its directors or shareholders, take action to dissolve or liquidate Broker.

Broker shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including the property inquiry journal, letters, words, pictures, sounds, or symbols, or combinations thereof. County shall have full ownership and control of all such writings delivered by Broker pursuant to this Agreement.

**12. Non-Discrimination.** Broker shall not discriminate against any employee or applicant for employment, nor against any subcontractor or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the Americans with Disabilities Act or veteran's status. To the extent applicable, Broker shall comply with all federal, state and local laws (including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

**13. Drug-Free Workplace Policy.** Broker acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on County premises. Broker agrees that any violation of this prohibition by Broker, its employees, agents or assigns shall be deemed a material breach of this Agreement.

**14. Records.**

- A. Broker shall maintain all work products, including but not limited to, marketing and history, lead tracking log, purchase offers, any property drawings, specifications, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Broker during the course of performing the Services described in Exhibit B, for a period of at least five years following termination for any reason described in Section 10. All such records (except for materials subject to the attorney-client privilege, if any) shall be available to County, and County's authorized agents, officers, and employees, upon



request at reasonable times and places. Broker agrees to maintain full and adequate records in accordance with County requirements and will permit County, and County's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.

- B. Broker shall maintain all items described herein in an accessible location and condition for a period of not less than five years after termination for any reason under Section 10 or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Broker within a radius of fifty (50) miles from County's offices at 1401 Lakeside Drive, Oakland, California, Broker shall, upon County's request and at Broker's sole cost and expense, make such items available to County, and County's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius or Broker shall pay County its reasonable and necessary costs incurred in inspecting Broker's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County by this Section. The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

**15. Ownership of Information.** All professional and technical information developed under this Agreement and all worksheets, reports, and related data shall become the property of County, and Broker agrees to deliver all copies of such documents to County on completion of the services hereunder. The Broker may, however, retain one copy for its files.

Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Broker or its Subcontractors in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of County. In the event that it is ever determined that any works created by Broker or its Subcontractors under this Agreement are not Works for Hire under U.S. law, Broker hereby assigns all copyrights to such works to County. With the prior written approval of the County, Broker may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**16. Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

**17. Conflict of Interest.**

- A. Broker represents that it is familiar with Section 1090 and Section 87100, *et seq.*, of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- B. Broker represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Broker believes any member of County or City, or other officer, agent or employee of County or City or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Broker agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.

C. Broker covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Broker represents to and agrees with the County that Broker has no present, and will have no future, conflict of interest between providing the County the Services hereunder and any interest Broker may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County or City, as determined in the reasonable judgment of the County. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the County hereunder.

**18. Entirety of Agreement.** This Agreement contains the entire agreement of County and Broker with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

**19. Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this Agreement shall be brought under the jurisdiction of the Superior Court of the County of Alameda, State of California. Each party waives any Federal court removal and/or original jurisdiction rights it may have.

**20. General Compliance with Laws.** The Broker shall exercise usual and customary care to comply with applicable Federal, State and local laws, statutes, rules, orders and regulations which are in effect as of the date of this Agreement, or which may later be enacted, including without limitation, laws pertaining to nondiscrimination and fair housing. Broker shall comply with all laws regarding payment of prevailing wage, including, without limitation, California Labor Code Section 1720, as such laws may be amended or modified. Broker agrees to comply with any directives or regulations issued by the California State Department of Industrial Relations or any other regulatory body of competent jurisdiction. Copies of applicable prevailing wage rates are available at [http://www.dir.ca.gov/dlsr/DPreWageDeterminati\\_on.htm](http://www.dir.ca.gov/dlsr/DPreWageDeterminati_on.htm). Broker agrees and acknowledges that the services provided under this Agreement may be subject to DIR Compliance Monitoring Unit requirements, and that further information on Compliance Monitoring Unit requirements can be found at <https://www.dir.ca.gov/dlse/cmucmu.html>.

Broker further agrees to comply with all other related provisions of the California Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices and Sections 1811-1813 relating to the payment of Overtime, as such provisions may be amended or modified. Broker agrees and acknowledges that, 1) failure to comply with the proper prevailing wage requirements may result in a penalty of up to \$200 per day per worker; 2) failure to comply with apprenticeship requirements may result in a penalty of \$100-\$300 for each calendar day of violation; and, 3) failure to pay proper overtime rate may result in a penalty of \$25 per day per worker.

**21. Construction and Interpretation.** It is agreed and acknowledged by Broker that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to review the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

**22. Confidentiality of Data.** Broker acknowledges and agrees that, in the performance of the

Services under this Agreement or in the contemplation thereof, Broker may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Broker agrees that all information disclosed by County to or discovered by Broker shall be held in strict confidence and used only in the performance of the Agreement. Broker shall exercise the same standard of care to protect such information as a reasonably prudent Broker would use to protect its proprietary data, and shall not accept employment adverse to the County's or City's interests where such confidential information could be used adversely to the County's or City's interests. Broker agrees to notify the County immediately in writing if it is requested to disclose any information made known to or discovered by Broker during the performance of or in connection with this Agreement.

Permission, granted by the County, to disclose information on one occasion or at public hearing held by the County relating to the Agreement shall not authorize the Broker to further disclose such information or disseminate the same on any other occasions.

The Broker and its employees and/or agents, shall not comment publicly to the press or any media regarding this Agreement or the County's or City's actions on the same, except to the County's staff, Broker's own personnel involved in the performance of this Agreement, or with County's written permission.

**23. Breach.** Failure of either Party to this Agreement to comply with the terms and obligations set forth herein shall constitute a breach. In the event of a breach, the non-breaching party shall give the breaching party written notice of such breach at the address identified in Section 9 of this Agreement and request that the breach be cured. If the breach is not cured: (i) within thirty (30) days after receipt by the notice of breach, or (ii) if by reason of the nature of the breach, it cannot be cured within thirty (30) calendar days, then within a time that would be reasonable if the breaching party were to proceed with diligence to remedy the breach, the non-breaching party shall be entitled to any remedy available to it at law or equity, including early termination of this Agreement pursuant to the terms of Section 10 of this Exhibit D.

**24. Alteration.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by authorized representatives of all parties, except as expressly provided elsewhere in this Agreement.

**25. Severability.** Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

## Exhibit E – Insurance Requirements

### COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> As required by State of California	WC: Statutory Limits EL: No less than \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<p><b>Endorsements and Conditions:</b></p> <ol style="list-style-type: none"> <li>1. <b>ADDITIONAL INSURED:</b> County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of <b>both</b> CG 20 10, CG 20 26, CG 20 33, or CG 20 38; <b>and</b> CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County.</li> <li>2. <b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.</li> <li>3. <b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor' insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li>4. <b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.</li> <li>5. <b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit.</li> <li>6. <b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> <li>– Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>– Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li>7. <b>CANCELLATION OF INSURANCE:</b> Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions.</li> <li>8. <b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.</li> </ol>	