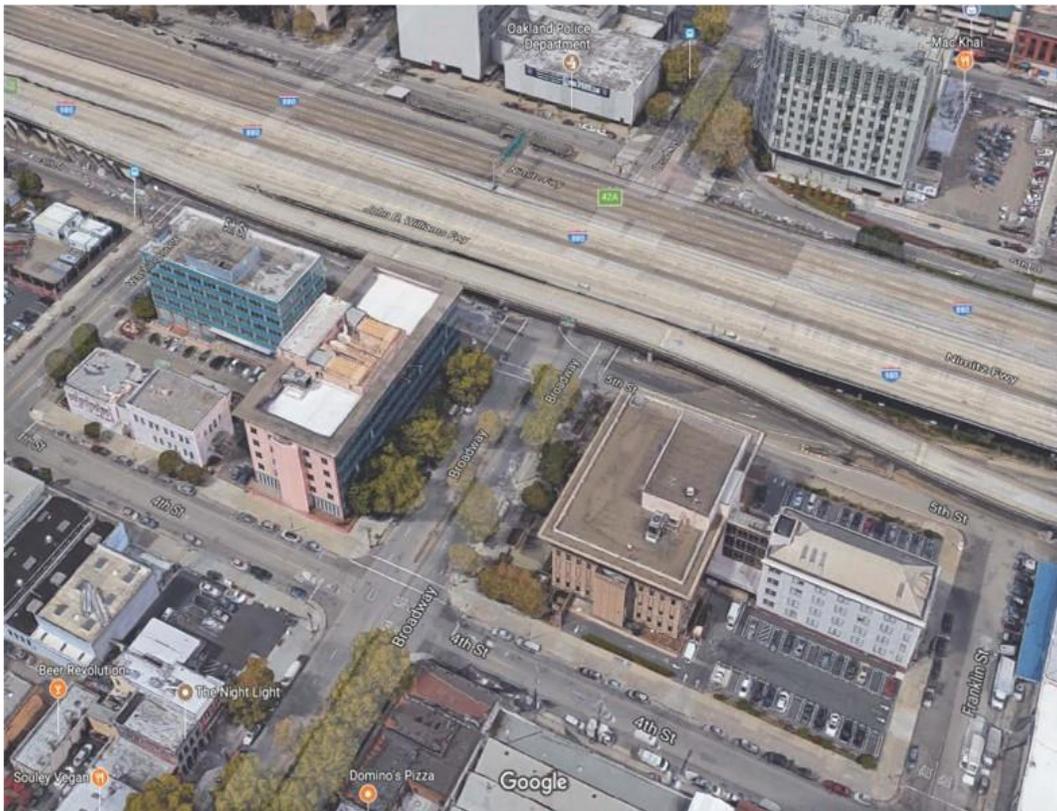


# REQUEST FOR PROPOSALS

## Residential/Mixed-Use Development Opportunity

401 Broadway and 430 Broadway  
Oakland California



**Issue Date: November 10, 2020**

**Due Date: January 28, 2021**

**Alameda County Community Development Agency**

**Contact: Stuart Cook**

[stuart.cook@acgov.org](mailto:stuart.cook@acgov.org)

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# **TABLE OF CONTENTS**

## **Request for Proposals**

### **401 and 430 Broadway, Oakland CA**

<b>I.</b>	<b>INTRODUCTION</b>	<b>1</b>
	<b>A. Overview</b>	<b>1</b>
	<b>B. RFP Timeline</b>	<b>2</b>
	<b>C. County Objectives</b>	<b>2</b>
	<b>D. Updated Property Information</b>	<b>4</b>
	<b>E. Updated Entitlements Information</b>	<b>5</b>
<b>II.</b>	<b>WRITTEN SUBMITTAL REQUIREMENTS</b>	<b>6</b>
	<b>A. Executive Summary</b>	<b>6</b>
	<b>B. Project Team</b>	<b>6</b>
	<b>C. Development Vision</b>	<b>7</b>
	<b>D. Community Benefits</b>	<b>7</b>
	<b>E. Maintenance and Management</b>	<b>8</b>
	<b>F. Community Engagement</b>	<b>8</b>
	<b>G. Entitlements</b>	<b>8</b>
	<b>H. Construction Workforce and Contracting Commitments</b>	<b>9</b>
	<b>I. Proposed Project Schedule and Benchmarks</b>	<b>9</b>
	<b>J. Minimum Business Terms Statement</b>	<b>10</b>
	<b>K. Financial Offer</b>	<b>10</b>
	<b>L. Exclusive Negotiating Agreement</b>	<b>12</b>
<b>III.</b>	<b>SUBMITTAL PROCESS</b>	<b>12</b>
	<b>A. Inquiries and Addenda</b>	<b>12</b>
	<b>B. Submittal Due Date and Deposit</b>	<b>13</b>
<b>IV.</b>	<b>EVALUATION CRITERIA AND SCORING</b>	<b>13</b>
<b>V.</b>	<b>RFP SELECTION PROCESS AND PROJECT DEVELOPMENT</b>	<b>14</b>

<b>VI.</b>	<b>GENERAL INFORMATION</b>	<b>15</b>
<b>A.</b>	<b>Rights of the County</b>	<b>15</b>
<b>B.</b>	<b>Submission Confidentiality</b>	<b>16</b>
<b>C.</b>	<b>No Warranty</b>	<b>16</b>
<b>D.</b>	<b>Expenses and Use of Submittal</b>	<b>17</b>
<b>E.</b>	<b>Disqualifications</b>	<b>17</b>
<b>F.</b>	<b>Protests</b>	<b>18</b>
<b>G.</b>	<b>Acknowledgements</b>	<b>20</b>

### **APPENDICES**

<b>Appendix A.</b>	<b>County Broadway Properties Request for Qualifications</b>
<b>Appendix B.</b>	<b>Draft Record of Survey</b>
<b>Appendix C.</b>	<b>Measure A-1 Implementation Policies</b>
<b>Appendix D.</b>	<b>Minimum Business Terms Acknowledgement</b>
<b>Appendix E.</b>	<b>Exclusive Negotiating Agreement</b>

# I. INTRODUCTION

## A. OVERVIEW

This Request for Proposals (RFP) is the second stage in the County of Alameda's developer selection process for the disposition and development of two County-owned properties in the City of Oakland, California. The County of Alameda (County) issued a Request for Qualifications (RFQ) on July 22, 2020 for the long-term ground lease, development and management of the County Broadway Properties, located at 401 and 430 Broadway, as mixed-use/mixed income projects. The purpose of the RFQ was to solicit qualifications from interested developers, evaluate responses to the RFQ, and select the top qualifiers to then participate in a subsequent Request for Proposals (RFP) process.

On September 10, 2020, the County received six Statements of Qualifications from developers in response to the RFQ. The submittals were evaluated and scored by a County Evaluation Committee, according to the criteria listed in the RFQ, and all of the developer teams were interviewed. Based on these criteria, the Evaluation Committee unanimously selected three development teams to participate in the subsequent RFP process.

The County is now pleased to invite the three selected pre-qualified development teams to submit detailed proposals for the ground lease and development of the County's Broadway Properties. This RFP describes how the pre-qualified teams can secure additional information needed to submit a proposal, the submittal requirements, evaluation criteria, RFP timeline and next steps.

This RFP is inclusive of both of the County Broadway Properties (401 and 430 Broadway). Development teams can choose to submit proposals for one or the other of the two sites – or can submit proposals for both sites. The County, in its sole discretion, can elect to select different development teams for each of the sites, choose one development team for both sites, or reject all proposals for either or both Properties.

Responses to this RFP must be received by the County by **January 28, 2021** at 4:00 p.m., PST. Information regarding the RFP can be found online at <https://www.acgov.org/cda/properties.htm> (note that this is a different web address than the original RFQ). This webpage may be periodically updated with information pertaining to the Broadway Properties RFP and it is the sole responsibility of respondents to ensure that they check this webpage frequently to ensure they have the latest information on the Broadway Properties disposition process.

**B. RFP TIMELINE**

RFP released:	November 10, 2020
Site Tours:	Week of November 30 – December 4, 2020*
Final Questions Due	January 5, 2020
Answers to Final Questions Released	January 19, 2020
Submittals Due:	January 28, 2021
Evaluation and Selection Recommendation:	February- April, 2021*

\*Subject to change

**C. COUNTY OBJECTIVES**

The County of Alameda’s objectives for the development of the Broadway Properties were laid out in the RFQ (**Appendix A**) and are restated below:

**Housing Development**

The County’s major objective is to have the two Broadway Properties developed with as much housing as possible, as affordable as possible (given potential funding sources), and as quickly as possible.

In furtherance of this objective, the County is seeking to enter into a long-term ground lease or leases, the length subject to negotiation but with a maximum of 99 years, with qualified developers under the provisions of Government Code Section 25539.4, which requires that:

- A minimum of 80% of the area of any parcel of property be used for the development of housing.
- A minimum of 40% of the total number of housing units developed on any parcel be affordable to households whose incomes are equal to or less than 75% of the maximum income of lower income households, and at least half of those units must be affordable to very low income households. In other words, a minimum of 20% of the units on each property must be affordable to households with incomes that do not exceed 50% of Alameda County Annual Median Income (AMI) and an additional 20% (minimum) of the units on each property must be affordable to households with incomes that do not exceed 60% AMI.
- Affordable units are restricted by a recorded regulatory agreement to remain continually affordable for the longest feasible time, and the agreement shall contain a provision making it binding on successors in interest.

While a minimum of 40% of units on each parcel must meet the affordability requirements of Government Code Section 25539.4, the County is seeking to develop the Properties to maximize both the number and the affordability of residential units – while creating sustainable and financially feasible projects that meet County and City design goals and that can be constructed in a timely fashion. A creative mix of market-rate and affordable units on each of the Properties that enhances the financial feasibility of development and helps meet the County’s design and financial objectives below is encouraged.

### **County Design Objectives**

The County is seeking development projects that will:

- Conform with the City of Oakland’s Downtown Oakland Specific Plan and are compatible with existing and any planned development.
- Through urban design, maximize the Properties’ prime location as the gateway to Jack London Square and Howard Terminal, and enhance the connection between Jack London Square and Downtown Oakland.
- Capitalize on the Properties’ proximity to public transportation options and enhance the pedestrian environment.
- Use strong urban design to provide high quality, active and safe public spaces.
- Recognize and address design and equity issues regarding the adjacent Interstate 880 freeway.
- Engage with the community in the development of the project(s), to ensure an equitable development that reflects and acknowledges both the surrounding neighborhood and the wider community.
- Enhance the livability and vitality of the Jack London neighborhood.
- Create active ground floor spaces that enhance the adjacent streets, emphasizing uses that compliment and leverage the surrounding area.
- Incorporate green and sustainable design to minimize vehicle and building-related greenhouse gas emissions.

## County Financial Objectives

The County is seeking development teams with the demonstrated financial capacity to:

- Fund and execute on the entitlement process in an expeditious manner.
- Fund and carry out the demolition and clearance of the existing County buildings on the Properties.
- Provide all necessary equity funds for the development of the Properties.
- Secure all necessary financing, including affordable housing funds, necessary for the successful development of the Properties, without relying on County funds.
- Provide a fair long-term ground-lease revenue stream to the County.

The County does not anticipate the need to lease any space within the new developments on the Broadway Properties for County purposes.

### **D. UPDATED PROPERTY INFORMATION**

The property offering, site description and city and regional context provided in the Request for Qualifications document is relevant and this information should be considered in the development of proposals. Additional information regarding the Properties is provided below.

The County Surveyor has produced a draft Record of Survey (**Appendix B**) that shows property lines, monuments, existing structures and curb lines, as well as the BART tunnel easement in the northwest corner of the 401 Broadway Property. The draft Record of Survey is available for download as both a PDF and a CAD file.

As noted in the RFQ, the 401 Broadway site is currently composed of two legal parcels, which the County is in the process of merging into one parcel. The County Surveyor expects to have this process completed by **April 2021**.

The 401 Broadway site currently has three now-vacant County buildings: the two story former Coroner's Building (approximately 16,700 square feet with the original building dating to the 1920s and a later annex dating to the 1960s) with a street address of 480 4<sup>th</sup> Street; the five-story former Public Health Building (approximately 55,500 square feet, dating to the early 1960's) with a street address of 499 5<sup>th</sup> Street; and the five-story former Social Services Building (approximately 101,000 square feet, dating to the early 1960's) with a street address of 401 Broadway.

The 430 Broadway site contains the five-story approximately 109,000 square foot Probation Building. Approximately 25,000 square feet of the building is currently occupied by the County Probation Department. The County will relocate this function, at the County's cost, prior to the commencement of the ground lease for 430 Broadway.

As noted in the RFQ responses to questions, dated August 2020, the City of Oakland DEIR for the draft Downtown Oakland Specific Plan shows no buildings of historic significance on the County Properties. However, in recent correspondence with City staff, they indicated that the 1920's era Coroner's Building on 5<sup>th</sup> Street is classified as "C-3" – and therefore considered "potentially historically significant". The other existing buildings, all of which date to the early 1960's, were not considered significant when that portion of the City was surveyed in the 1980's because at that time they were less than 50 years old. Now that the 1960's era buildings are over 50 years old City staff believes they will need an updated evaluation as to their potential significance.

Floor plans for the existing County structures are available as pdf files. The County has also compiled all County reports on known environmental issues for both of the Broadway Properties. Respondents can access these floor plans or reports by sending a request by email to Stuart Cook at [stuart.cook@acgov.org](mailto:stuart.cook@acgov.org) with "floor plans" or "environmental reports" in the subject line.

The ground lease(s) will require the selected respondent(s) to accept the Properties, in their existing state and condition, "As-Is", with all faults. All due diligence, abatement and demolition costs will be the responsibility of the selected developer(s). Proposers should also assume that the cost of removing/disposing of any existing County property on the Properties (including furniture, emergency generators, etc.) will be the sole cost and responsibility of the selected developer(s).

**Site Tours:** The County will offer individual site tours to each of the RFP development teams. The tours are anticipated to be scheduled for the week of November 30 – December 4, 2020 and to be 3± hours. Each team will be contacted regarding the exact date and process for the site tour.

## **E. UPDATED ENTITLEMENTS INFORMATION**

The July, 2020 RFQ stated that Oakland Planning staff anticipated that the final draft Downtown Oakland Specific Plan (DOSP) and the associated Final Environmental Impact Report would be released in late 2020, as well as draft changes to existing zoning regulations consistent with the DOSP, with formal City consideration and adoption of the Specific Plan in early 2021.

In recent conversations with Oakland Planning staff, they now anticipate that the draft zoning regulations will be available by Spring, 2021, with the DOSP and associated zoning changes adopted "by the end of 2021".

## II. WRITTEN SUBMITTAL REQUIREMENTS

Please submit clear and concise responses with the information requested below, including a table of contents at the front of the response. Proposals should be organized as follows:

### A. EXECUTIVE SUMMARY

1. A narrative summary, no longer than **four** pages, of the highlights of the proposal, including a clear statement of any financial or other benefits to the County.

If the proposal is for both Properties, the summary should include information on the development team's ability to complete development of both properties in a timely manner.

2. A conceptual site plan and an elevation for each of the Broadway Properties, no larger than 11'x17" per site, detailing the following:

- Conceptual layout of proposed development
- Building type and footprints and their planned uses
- Building heights and stories
- Proposed parking
- Proposed private and public open spaces (if any)

### B. PROJECT TEAM

Identify and describe the development team with the following information. Highlight any changes or additions to the team since the RFQ submittal. Include biographical and relevant experience information for new team members in an appendix.

- Description of the development team, including the legal name of submitting organization(s) (and any parent(s) or affiliate(s), entity description of submitting organization (e.g. 501(c)(3), corporation, joint venture, limited partnership) and date established.
- Name, title, address, phone number and e-mail address of the person designated as the primary contact person for the development team.
- Name, title, and contact information of the person(s) authorized to negotiate on behalf of the submitting organization(s).
- Name, title, and contact information of the person(s) authorized to execute agreements with the County.
- Names and roles of all others in the development entity assigned to this project.

- Names and roles of all team members (i.e., architects, engineers, consultants, contractors, capital partners) and organizations included in the proposal, and the relationships between the team members and organizations.
- Identify all team members and organization that are Alameda County based, have offices in Alameda County, and/or are listed on the County’s SLEB database ([https://www.acgov.org/sleb\\_query\\_app/gsa/sleb/query/slebmenu.jsp](https://www.acgov.org/sleb_query_app/gsa/sleb/query/slebmenu.jsp)) including the nature of work they will perform.

**C. DEVELOPMENT VISION**

Provide a narrative description of the proposed development plan for the Property or Properties. The narrative should clearly address the County’s stated goals for the Properties, as well as specific information regarding:

- Number, size and type of residential units.
- Number of affordable units, size of affordable units, levels of affordability, and populations that would be targeted. If the proposal targets the affordable housing to particular populations (e.g. elderly, special needs), the proposal should include a brief summary of how the proposed targeting complies with Fair Housing Laws.
- Any special services that would be provided to residents.
- Number and size of market-rate units
- Amount and type of nonresidential uses including any ground-floor uses
- Types and amount of parking
- Proposed amenities
- Equity of design and access
- Any special features
- Overall FAR, building heights, and setbacks
- Proposed building cladding and styles

Provide detailed site plans, elevations, perspectives, schematics and floor plans that clearly illustrate the development vision. All drawings should be no larger than 11 x 17 inches.

The County recognizes that the proposed development plan will be subject to adjustment and change as a result of the community engagement and City entitlement process. However, it is important that the proposed development plan clearly set out the development team’s vision for the Property or Properties.

**D. COMMUNITY BENEFITS**

Through this RFP process, the County has already committed to providing significant community benefits with the development of the County Broadway Properties, including:

- Requiring that a minimum of 40% of all units on each Site be affordable to low and very-low income residents.
- As described below, the County is requiring compliance with State Prevailing Wage laws; that the selected development team and its contractor enter into a project labor agreement for construction labor; and that the development team commit to specific goals for small, local and disadvantaged contractors.
- Development of the County Broadway Properties is expected to generate significant City of Oakland and Oakland Unified School District impact fees to fund transportation, parks and schools.

Identify and describe any other Community Benefits that are proposed as part of the development and how they would be funded.

## **E. MAINTENANCE AND MANAGEMENT**

Provide a detailed description of how the proposed development will be maintained and managed, including the affordable housing, market-rate housing and any non-residential components. Provide maintenance and management examples from other projects of similar design and scale that the development team has successfully implemented.

## **F. COMMUNITY ENGAGEMENT**

Provide a detailed description of the approach and timeline of how the development team plans to engage stakeholders and the wider community at the neighborhood, City and County levels to build support for the proposed project. Describe the process the team would take to ensure community involvement, including any aspects that would be tailored to the unique characteristics of the County Broadway Properties. Explain your understanding of important issues in the area and how these would be addressed. How would you ultimately ensure that your engagement supports creating a community-serving, feasible project. Identify process, any unique assets, team members' relevant experience in similar endeavors, and stakeholders to be engaged.

## **G. ENTITLEMENTS**

Recognizing the current uncertainty of when the Downtown Oakland Specific Plan (DOSP) will be adopted by the City, provide a detailed plan and schedule for obtaining entitlements for the Broadway Properties. Please identify any major issues that your development vision may need to address to gain entitlements, and address whether you would plan to utilize density bonus laws or streamlining laws (such as SB 35). Clearly explain why you believe the plan and timeline you describe is the best way to successfully gain entitlements for your proposed project.

## **H. CONSTRUCTION WORKFORCE AND CONTRACTING COMMITMENTS**

The County will require that all development projects on the County Broadway Properties not otherwise subject to federal or state prevailing wage laws comply with State prevailing wage laws (Labor Code §1720 et seq.) More information on compliance and wage rates can be found at the California Department of Industrial Relations website: <https://www.dir.ca.gov/>. Selected developers will be required to provide certified payrolls to the County as well as any other prevailing wage monitoring reports.

In addition, the County has a desire to advance the County's proprietary interest in the timely and successful completion of the development of the County Broadway Properties and the avoidance of labor disputes. Therefore, in order to promote labor peace, to secure the availability of an adequate skilled labor pool, and to ensure that these construction projects are completed on time and on schedule for the benefit of residents and County taxpayers, all construction on the County Broadway Properties shall have a Project Labor Agreement ("PLA") signed by the developer, the Building and Construction Trades Council of Alameda County, and affiliated construction trades unions, unless a PLA is prohibited by any State or federal law, regulations or funding conditions. The County will not be a party to these private PLAs.

PLAs for development on the County Broadway Properties will be required to include the same PLA components as specified in Section X, (F) of the Measure A-1 Implementation Policies, adopted by the Alameda County Board of Supervisors November 7, 2017 with the qualification in Section X, (E), as such Policies have been amended from time to time. A copy of the Implementation Policies can be found in **Appendix C**.

The County is also seeking to maximize the employment of Alameda County residents, particularly disadvantaged residents, as well as maximizing contracting with Alameda County-based businesses, particularly small, minority-owned and women-owned businesses, as defined in the Measure A-1 Implementation Policies Sections VIII and IX. The County is seeking a commitment from the development team(s) to, at a minimum, meet the numeric goals for each of these categories set forth in Sections VIII (B), IX(A) and (B) of the Measure A-1 Implementation Policies for the development projects as a whole.

The proposal should specify how the development teams intends to comply with prevailing wage and PLA requirements, hiring and contracting goals.

## **I. PROPOSED PROJECT SCHEDULE AND BENCHMARKS**

Provide a detailed Project Schedule that clearly indicates anticipated timelines for due diligence, community engagement, entitlements (including environmental approvals), negotiation of business and lease terms, financing, demolition, construction, lease-up and stabilization, using April 14, 2021 as the assumed execution of the Exclusive Negotiating Agreement. Clearly indicate how you anticipate phasing of development, including which Property would be developed first if the proposal is for both Properties, and phasing within each Property.

## **J. MINIMUM BUSINESS TERMS STATEMENT**

The RFQ included a list of minimum business terms that the County will expect to be included in the subsequent Exclusive Negotiating Agreement, Lease Disposition and Development Agreement and ground lease. Each of the qualifying RFP development teams signed a statement acknowledging and accepting these terms. **Appendix D** restates these terms as an executable document. Please sign a copy of **Appendix D** and include the signed copy in the Proposal.

## **K. FINANCIAL OFFER**

As described below, provide details regarding the proposed project's feasibility and proposed financial terms for a ground lease with the County. These details will be understood to represent the development team's expectations based on expected project costs and revenues, as well as phasing and financing considerations. Proposers may elect to provide separate pro formas and ground rent structures for the market rate and affordable housing components, if appropriate.

### **1. Pro Forma**

Provide a detailed pro forma that shows the basic details of the Project, including unit mix, sources and uses of funds, development costs, income statement, and cash flow statement. The pro forma should include, but is not limited to:

- a.** A development budget indicating total project costs, including all direct, indirect, and financing costs, that clearly specifies key assumptions and how calculations are made, including from predevelopment up to, and including, stabilized operations.
- b.** Clearly defined Developer Fee statement that includes the amount of required cash out during construction and permanent conversion phases, and the amount amortized over the first ten (10) years.
- c.** Clearly defined Partnership and Asset Management Fees taken from the cash flow and any escalation expected.
- d.** Amount expected for property management fees and whether it is a related property management company.
- e.** A stabilized year operating statement detailing assumptions for all sources of income, a vacancy factor, detailed operating expense budget including proposed lease payment, net operating income, capital reserves, debt service, and equity returns.
- f.** A sources and uses table during predevelopment, construction, and permanent phases of the Project.
- g.** A clear statement regarding the respondent's profit/return requirement and how it is calculated.
- h.** A long-term operating cash flow for the first 20 years of the ground lease.
- i.** A statement and schedule of ground rent payments to the County reflecting the financial offer.

Provide, on the thumb drive submitted with the Proposal, an Excel spreadsheet used to prepare the pro forma. The pro forma should be contained within a single Excel workbook that is unlocked and unprotected and contains all formulas used for calculation. Construction cost estimates should be shown in either the Unifomat or Masterformat format.

## 2. **Market Assessment**

Provide a market rate assessment of current and projected rental market conditions for the uses and density proposed for the County Broadway Properties, including any ground-floor commercial uses. The assessment should include sufficient information to establish market support for the Project based on an analysis of rent comparables and anticipated market trends. For the market rate component of the Project, clearly identify and provide information for the Project's competitive project set (e.g., the comparable projects that are similar to and serve as a benchmark for the Project).

## 3. **Financial Offer**

Provide a detailed proposal that includes, but is not limited to:

- a. A clear description of the proposed ground lease base rent structure, including any participation rent.
- b. Total amount of ground lease payments, including a detailed rent schedule for the first 20 years of the lease.
- c. Frequency of rent payments.
- d. Proposed term of the lease (not to exceed 99 years including all extension options). Proposals with a shorter lease terms, including all extension options, will be favored by the County.
- e. Timing of the commencement of rent payments and any contingencies associated with the proposed timing.
- f. Periodic adjustments to the rent and method of calculating the adjustments.
- g. If the proposal is for both Properties, the financial offer should include any adjustments that are proposed to address potential delays in completion of the entire development as a result of a single development team developing both properties.

## 4. **Development Financing Plan**

Provide an explanation of the project's expected financial structure, including potential sources and amounts of equity and debt financing, as well as any expected affordable housing financing required from local, state or federal sources. Being as specific as possible, identify any assumed reliance on external funding sources (grants, tax credits, etc.) and the development team's experience and competitiveness securing these funding sources.

Specifically, describe the Project's prospective capital stack, e. g., how the pre-development costs and initial phases of demolition, site improvements and construction will be funded, and identify the anticipated source(s) of the up-front funding. Define assumptions and caveats of development timing and sources. Ensure all information provided is consistent with the pro forma.

## 5. Ownership Entity Structure

The proposal should include the ownership structure for the entity proposed to develop, own and manage (if applicable) the projects, including the roles of all development team members that will be part of the ownership entity. If the proposal contemplates use of a limited liability company or another Project-specific single purpose entity to hold the Properties upon execution of the ground lease, identify the entity that will provide any necessary completion or financing guarantees. These entity descriptions shall show entity liability throughout the life of the development (i.e., pre-development, construction and asset management). Provide an organizational chart that denotes the proposed ownership structure and associated cash flow.

## 6. Business Model

For the market rate component of the Project, provide an estimate on how long the development entity anticipates holding the Project (or phases of the Project) after completion and provide the basis for this estimate (company business model and/or history with previous projects of this nature).

## 7. Performance Guarantees

Describe the team's commitment to timely development, including any recommended metrics that could be used to evaluate whether external factors might create a reasonable delay in the Project. Identify any financial or other terms to guarantee delivery of project milestones on schedule. These terms will not be binding at this point but will offer a sense of how the selected Developer Team can work with the County in the execution of an Exclusive Negotiating Agreement.

## L. **EXCLUSIVE NEGOTIATING AGREEMENT**

A draft Exclusive Negotiating Agreement can be found in **Appendix E**. Please provide a review copy (in Word) on the submitted flash drive with any suggested changes highlighted. Please also complete the Performance Schedule with proposed dates. All changes to the Exclusive Negotiating Agreement are subject to the approval of the County and dates for the Performance Schedule will be subject to negotiation between the County and the selected development team.

# III. SUBMITTAL PROCESS

## A. **INQUIRIES AND ADDENDA**

Following the release of the RFP on November 10, 2020, respondents may submit written inquiries via e-mail to Stuart Cook, the County's lead on this solicitation. Addenda will be released regularly to all teams to answer any written questions received. All questions must be

received no later than **January 5, 2021** and the County will issue a final addendum responding to all teams with answers to these questions by **January 19, 2021**. If questions and comments are deemed to result in a substantial change to what is requested in the RFP, County staff may consider issuing an addendum that also extends the due date of the proposals.

## **B. SUBMITTAL DUE DATE AND DEPOSIT**

Proposals will be due by **4:00 PM, January 28, 2021**. Please submit **ten (10)** hard bound copies, one unbound copy and one digital copy of the proposals (flash drive). Proposals should be delivered to:

Stuart Cook  
Alameda County Community Development Agency  
224 W. Winton Ave., Room 110  
Hayward, CA 94544  
Stuart.cook@acgov.org  
(510) 670-6534

Additionally, the County will require each respondent to submit a deposit check for \$25,000, **for each Property**, payable to “County of Alameda” with your proposal, to secure the team’s position as an eligible respondent. The deposit check will be securely retained by the Community Development Agency and the check of the chosen team, if any, will be deposited while other checks will be voided and returned once the Board of Supervisors approves the selection of the development team or teams. If the County decides to forego the opportunity to develop prior to execution of the ENA, the deposit will be returned to the chosen team. Otherwise the deposit will be put towards the \$50,000 ENA deposit due **for each Property** as a condition to the County executing the ENA.

## **IV. EVALUATION CRITERIA AND SCORING**

An Evaluation Committee, selected by the County Administrative Officer and composed of County staff and potentially other stakeholders with expertise in real estate and affordable housing development, will evaluate the submitted proposals. The Evaluation Committee will also conduct interviews (via Zoom) with the development teams to further clarify any aspects of the proposals.

Submitted proposals for each Property, as clarified by interviews, will be evaluated in accordance with the following criteria with the proposal or proposals with the highest points being selected:

**Project Team/Personnel**

**(10 possible points)**

Does the Project Team have relevant experience with similar projects?

**Development Program and Urban Design**

**(35 possible points)**

Does the proposed project program and design meet or exceed the County's and City's development and design objectives?

**Community Engagement, Entitlements and Community Benefits**

**(25 possible points)**

What is the plan to engage the community and stakeholders and develop support for the proposed project? How will the project be maintained and managed? Does the proposal include goals for local and disadvantaged hiring and small, local and minority owned businesses? What extra community benefits are being proposed and how will they be funded? What is the plan and timeline for seeking entitlement approvals for the proposed project?

**Financial**

**(30 possible points)**

Is the proposed project feasible under current/projected market conditions? Is the development timeline and phasing plan reasonable? Is the pro forma consistent with the proposed project description and phasing plan, and are the assumptions reasonable? What are the plans for ownership/management? What is the projected return to the County? What is the proposed lease term/options structure and lease terms?

In addition to the 100 points achievable through the written proposal, up to 30 additional points may be awarded based on performance during the oral interviews.

## **V. RFP SELECTION PROCESS AND PROJECT DEVELOPMENT**

Following interviews and scoring of the proposals, one or two development teams will be selected for one or both Properties and, County staff and legal counsel will engage with the selected Developer or Developers in negotiating and executing the ENA(s). When a development team or teams are selected, the County will issue a Notice of Intent to Award/Non-Award to all respondents identifying the selected development teams. If the negotiations are unsuccessful, the County may move to the next most qualified Respondent, reissue the RFP, terminate the process entirely, or take any other measure it deems appropriate, as determined in its sole discretion. County staff will present the recommendation for the selected development team or teams and the negotiated ENAs to the Board of Supervisors for its approval simultaneously. The ENA will only be effective after approved by the Board of Supervisors and executed by the County.

The exclusive negotiations period will include pre-development work by the Developer and the County to refine the proposed Project, engage the community and other stakeholders, and develop a term sheet for the proposed Lease Disposition and Development Agreement (LDDA) and ground lease. The negotiated non-binding term sheet will be presented to the Board of Supervisors for its approval. If the Board of Supervisors fails to approve the term sheet, the County may elect to continue negotiations toward an acceptable term sheet, move to the next qualified Respondent, reissue the RFP, terminate the process entirely, or take any other measure it deems appropriate, as determined in its sole discretion.

Upon successful completion of exclusive negotiations and approval by the Board of Supervisors of the LDDA and Ground Lease, the County and selected Developer will enter into a LDDA. If the negotiations are unsuccessful, the County may move to the next most qualified Respondent, reissue the RFP or terminate the RFP process, or take any other measure it deems appropriate, as determined in its sole discretion. In electing to so terminate the RFP process, the County shall have no liability or obligation to any Respondent for the costs or effort expended in addressing and responding to the RFP through such date of termination.

Following completion and certification of the appropriate California Environmental Quality Act (CEQA) review, the Board of Supervisors will review and consider approval of the negotiated LDDA and ground lease.

Upon satisfaction of all conditions precedent in the LDDA, the County and Developer will execute the ground lease and the Project development will commence. The County will be actively monitoring the development and asset management phases of the Project to ensure Project compliance with the applicable LDDA and ground lease terms.

## **VI. GENERAL INFORMATION**

### **A. RIGHTS OF THE COUNTY**

This RFP does not obligate the County to select any development team, nor does it commit the County to enter into an ENA. Costs incurred in preparation and submission of proposals are the sole responsibility of the proposers.

The County may require additional evidence or qualifications to perform the services described in this RFP.

The County reserves the right to:

- Reject any or all proposals or to advertise for new proposals.
- Modify the RFP process (with appropriate notice to respondents).
- Postpone interviews or the evaluation process for its own convenience.
- Remedy technical errors in the RFP process.
- Approve or disapprove the use of particular partners/subcontractors.

- Waive weaknesses, informalities and minor irregularities in proposals, permit corrections, and seek and receive clarifications to a proposal.
- Hold meetings, conduct discussions and communicate with the teams responding to this RFP to seek an improved understanding and evaluation of the proposals.
- Solicit best and final offers at the discretion of the County before final scoring..
- To select separate respondents for each of the Broadway Properties, or to select one respondent to develop both Broadway Properties.
- Evaluate and select a team on the basis of information other than financial terms.
- Negotiate with any, all or none of the respondents.
- Terminate negotiations with the selected respondent(s) at any time and in the County's sole discretion, prior to the County's execution of the ENA.

The County's waiver of minor irregularities shall in no way modify this RFP or excuse the respondent from full compliance with requirements if the respondent is selected for negotiation. The County will have full and sole discretion to determine the criteria and process of evaluation for this RFP, which (if any) respondent will be selected for negotiation of a LDDA and ground lease, or whether or not a LDDA and ground lease will ever be awarded as a result of this RFP.

## **B. SUBMISSION CONFIDENTIALITY**

The California Public Records Act (California Government Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the material submitted in response to this RFQ may be made available to the public. Development teams should not submit material that they desire to remain confidential.

All information regarding the proposals, including the proposals, will be held as confidential until such time as the County Selection Committee has completed its evaluation, a recommendation to award has been made by the County Selection Committee, and the ENA has been fully negotiated with the recommended awardee(s) named in the Notice of Intent to Award/Non-Award. The submitted proposals shall be made available upon request no later than five calendar days before the recommendation to award and enter into the ENA is scheduled to be heard by the Board of Supervisors. All respondents submitting proposals will be sent the Notice of Intent to Award/Non-Award, which will include the name of the respondent to be recommended for award of this project.

## **C. NO WARRANTY**

Respondents are required to examine this RFP, including all appendices and all public records relating to the Properties carefully. Failure to do so will be at the respondent's own risk. It is assumed that the respondent has made full investigation so as to be fully informed of the extent and character of the services requested, the requirements of this RFP and any laws or regulations

that may affect its ability to carry out the Project. No warranty is made or implied as to the accuracy and/or completeness of any of the information, descriptions, opinions or legal references contained in this RFP (or otherwise provided by County staff, consultants, officers or agents) and respondents are required to do their own due diligence as to all matters discussed herein and in their proposals.

#### **D. EXPENSES AND USE OF SUBMITTALS**

All expenses involved with preparation and submission of responses to this RFP, including costs for attending any associated site visit, oral presentation, interview or other pre-award activities, will be borne by the respondent. All proposals submitted in response to this RFP become the property of the County and may be used without restriction or liability by the County. A respondent may request the return of its proposal upon cancellation of the RFP by the County. The County may grant or deny a request to return a proposal at its sole discretion.

#### **E. DISQUALIFICATION**

To be considered for selection, the respondent and any firms identified as team members must have all necessary licenses, registration, and credentials required for the services they will perform.

The County, in its sole discretion, may disqualify a respondent or proposal if it becomes aware, or has credible evidence, of any of the following:

- Contact regarding this RFP between any respondent or any agent of respondent with any County official, Board Member, or employee, outside of a properly noticed County public meeting, except for those contacts listed in Section III.A (as it may be updated by the County) from the time of issuance of this RFP until the County Board of Supervisors approves selection of a developer for ENA negotiations.
- Collusion, either directly or indirectly, amongst respondents with regard to any key terms of this RFP.
- Improperly attempting to influence any County official or employee throughout the RFP process with regard to development specifications, evaluation process or final selection.
- Offering gifts or souvenirs, even of minimal value, to any County official or employee.
- Omissions, misrepresentations, or false information that may impact the County's accurate and fair evaluation of the proposals.
- The proposal's failure to meet conditions of any mandatory proposal submission requirements set forth in this RFP.
- Respondent's or a member of respondent's team's inability to complete or perform the work described in the proposal.
- Financial insolvency of respondent or any member of Respondent's team.

- The default of Respondent or of any member of Respondent's team under any agreement with the County.

Furthermore, a Respondent's failure to provide complete and/or accurate information in response to this RFP may disqualify the Respondent from further participation in this selection process as determined in the County's sole discretion. A response may be corrected, modified, or withdrawn, provided that a written request by Respondent is received by the County contact (listed above) prior to the date and time designated in the RFP for receipt of proposals.

## **F. PROTESTS**

The County prides itself on the establishment of fair and competitive contracting procedures and the commitment made to following those procedures. The following is provided in the event that respondents wish to protest the RFP process or appeal the recommendation to award once the Notices of Intent to Award/Non-Award have been issued. Protests submitted prior to issuance of the Notices of Intent to Award/Non-Award will not be accepted by the County.

1. Any protest by any respondent regarding any other proposal must be submitted in writing to Stuart Cook, Alameda County Community Development Agency, 224 W. Winton Ave., Room 110, Hayward, CA 94544, before 5:00 p.m. of the FIFTH (5th) business day following the date of issuance of the Notice of Intent to Award/Non-Award, not the date received by the respondent. A protest received after 5:00 p.m. is considered received as of the next business day
  - a. The protest must contain a complete statement of the reasons and facts for the protest.
  - b. The protest must refer to the specific portions of all documents that form the basis for the protest.
  - c. The protest must include the name, address, email address, fax number and telephone number of the person representing the protesting party.
  - d. The County will notify all respondents of the protest as soon as possible.
2. Upon receipt of written protest, the Alameda County Community Development Agency ("CDA"), or designee, will review and evaluate the protest and issue a written decision. CDA, may, at its discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or schedule a meeting(s) with the protesting respondent and others (as appropriate) to discuss the protest. The decision on the protest will be issued at least ten (10) business days prior to the Board hearing date. The decision will be communicated by e-mail, fax, or US Postal Service mail, and will inform the bidder whether or not the recommendation to the Board of Supervisors in the Notice of Intent to Award/Non-Award is going to change. A copy of the decision will be furnished to all respondents affected by the decision. As used in this paragraph, a respondent is affected by the decision on a protest if a decision on the

protest could have resulted in the respondent not being the apparent successful respondent.

3. The decision of CDA on the protest may be appealed to the Auditor-Controller's Office of Contract Compliance & Reporting (OCCR) located at 1221 Oak St., Room 249, Oakland, CA 94612, Fax: (510) 272-6502 unless the OCCR determines that it has a conflict of interest in which case an alternate will be identified to hear the appeal and all steps to be taken by OCCR will be performed by the alternate. The respondent whose proposal is the subject of the protest, all respondents affected by CDA's decision on the protest, and the protestor have the right to appeal if not satisfied with CDA's decision. All appeals to the Auditor-Controller's OCCR shall be in writing and submitted within five (5) business days following the issuance of the decision by CDA, not the date received by the respondent. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the FIFTH (5th) business day following the date of issuance of the decision by CDA shall not be considered under any circumstances by CDA or the Auditor-Controller OCCR.
  - a. The appeal shall specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal.
  - b. In reviewing protest appeals, the OCCR will not re-judge the proposal(s). The appeal to the OCCR shall be limited to review of the RFP process to determine if CDA materially erred in following the terms of the RFP process or, where appropriate, County policies or other laws and regulations.
  - c. The appeal to the OCCR also shall be limited to the grounds raised in the original protest and the decision by the CDA. As such, a respondent is prohibited from stating new grounds for a protest in its appeal. The Auditor-Controller (OCCR) shall only review the materials and conclusions reached by CDA or department designee and will determine whether to uphold or overturn the protest decision.
  - d. The Auditor's Office may overturn the results of an RFP process for ethical violations by CDA staff, County Selection Committee members, subject matter experts, or any other County staff managing or participating in the competitive process, regardless of timing or the contents of a protest
  - e. The decision of the Auditor-Controller's OCCR is the final step of the appeal process. A copy of the decision of the Auditor-Controller's OCCR will be furnished to the protestor, the respondent whose proposal is the subject of the protest, and all respondents affected by the decision.
4. The County will complete the protest/appeal procedures set forth in this paragraph before a recommendation to award is considered by the Board of Supervisor.
5. The procedures and time limits set forth in this paragraph are mandatory and are each respondent's sole and exclusive remedy in the event of a Protest. A respondent's failure to timely complete both the protest and appeal procedures shall be deemed a failure to

exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, shall constitute a waiver of any right to further pursue the protest, including filing a Government Code Claim or legal proceedings.

## **G. ACKNOWLEDGEMENTS**

Respondents expressly acknowledge that they are aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), County will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Respondent may be subject to criminal prosecution.

In submitting a proposal, each Respondent certifies that it is not, at the time of submission, on the California Department of General Services (DGS) list of persons determined to be engaged in investment activities in Iran or otherwise in violation of the Iran Contracting Act of 2010 (Public Contract Code Section 2200-2208).

In submitting a proposal, each Respondent, its principal and named subcontractors are not identified on the list of Federally debarred, suspended or other excluded parties located at [www.sam.gov](http://www.sam.gov). Each Respondent agrees to be bound by the County’s Debarment/Suspension policy, which can be found here:

Debarment / Suspension Policy

[<http://www.acgov.org/gsa/departments/purchasing/policy/debar.htm>]