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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, Chief Governance Officer
Tadashi Nakadegawa, Deputy Chief, Division of Facilities Planning and Management

Meeting Date August 10, 2022

Subject AIRCRE Disclosure Regarding Real Estate Agency Relationship, AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property, and Addendum to AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property - 4551 Steele Street, Oakland, CA (Former Tilden CDC) - DCG Strategies, Inc.

Ask of the Board Approval by the Board of Education of AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property, Addendum to AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property, and AIRCRE Disclosure Regarding Real Estate Agency Relationship, by and between the District and DCG Strategies, Inc., Dublin, California, for the latter to provide the District with real estate listing services and granting the latter exclusive right to represent the District for sale or lease of real property located at 4551 Steele Street, Oakland, California, commonly known as the former Tilden CDC site

Background & Discussion District staff previously prepared and circulated a Request for Qualifications and Proposals (“RFQP”). Five firms submitted responses and were evaluated in accordance with the criteria established by the District in the RFQP. The Board of Education approved five firms as a Qualified Pool of providers for Asset Management and Real Property Services at the regularly scheduled Board Meeting on June 24, 2020. DCG Strategies, Inc. (“DCG”) was selected as one of the qualified firms and has a deep experience in community-based processes for site re-use.

On August 12, 2020 the Board approved an Agreement with DCG in an amount not to exceed \$35,500 for services regarding site disposition of two surplus properties.

On December 9, 2020, the Board approved an Amendment No. 1 to the Agreement to extend the scope of work to include: (1) the development and management of a database of District properties for re-use; (2) coordinate the database with District's Research Assessment and Data department to add property valuations and reuse recommendations based upon community input, data trends, and the District's Citywide Plan; and (3) ensure property valuations and identified preferred reuse options are integrated into the Facilities Master Plan. Amendment No. 1 included a change of price not to exceed \$64,500, for a total not to exceed Agreement price of \$100,000.

On June 30, 2021, the Board approved a second amendment to the Agreement to expand the scope of work to include supplemental consulting services for the former Tilden CDC site and the former Edward Shands Adult Education Center site. Amendment No. 2 included a change of price not to exceed \$15,000, for a total not to exceed Agreement price of \$115,000.

On March 23, 2023, the Board approved an Amendment No. 3 to the Agreement to extend the term of the Agreement from December 31, 2021 to June 30, 2023.

In connection with the Agreement (and included as part of DCG's proposal to the District), but not expressly included in the scope of the Agreement (even as amended), DCG's services were also needed to provide the District with real estate listing services. District staff entered into an AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property, Addendum to AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property, and AIRCRE Disclosure Regarding Real Estate Agency Relationship, by and between the District and DCG ("Listing Agreement"), for the latter to provide the District with real estate listing services and granting the latter exclusive right to represent the District for sale or lease of real property located at 4551 Steele Street, Oakland, California. The term of the Listing Agreement was to commence on October 5, 2020 and expire on October 5, 2021. It was thought that it had gone to Board but it had not.

DCG did represent OUSD and fulfill its obligations under the Listing Agreement. On June 30, 2021, the Board approved the Long Term Ground Lease with Eagle Environmental Construction & Development for Affordable and Workforce Housing at the Former Tilden Child Development Center.

Fiscal Impact As explained in greater details in the Listing Agreement, Owner (i.e., OUSD) shall pay Agent (i.e., DCG) a commission in the amount of 5% of lease revenue ("Commission") received over the initial term of the lease agreement between the lessee (i.e., Eagle Environmental Construction & Development)

and OUSD. Owner will pay Agent 50% of the Commission within 60 days of the mutual execution of a lease agreement between Owner and lessee. The remaining 50% of the Commission is due within sixty (60) days of the earlier of either lessee's rent commencement or occupancy of the property. In the event the lessee defaults, Agent shall not have any claim for a commission or other compensation with respect to amounts paid to and retained by Owner as liquidated damages under the lease agreement. The funding source of any Commission paid would be the General Fund, Fund 40 (Special Reserve for Capital Facilities), or any other legally available funding source.

- Attachments**
- AIRCRE Disclosure Regarding Real Estate Agency Relationship, AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property, and Addendum to AIRCRE Exclusive Right to Represent Owner for Sale or Lease of Real Property (for Tilden)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

Buyer Seller [X] Lessor [] Lessee [Signature] SIGN HERE Date: 10/05/2020
Oakland Unified School District

Buyer Seller [] Lessor [] Lessee [] Date: []

Agent DCG Strategies Inc. DRE Lic. #01521674
Real Estate Broker (Firm)

By: [Signature] DRE Lic. #01461409 Date: 10/05/2020
(Salesperson or Broker-Associate) Landis Graden

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

[Signature] INITIAL HERE

[Signature] INITIALS

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AD-3.01, Revised 06-10-2019

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether "Seller" means the transferor in a real property transaction and includes an owner is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows:

(a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(C) CONFIRMATION: The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm **DO NOT COMPLETE, SAMPLE ONLY** License Number _____

Is the broker of (check one): the seller; or both the buyer and seller. (dual agent)

Seller's Agent **DO NOT COMPLETE, SAMPLE ONLY** License Number _____

Is (check one): the Seller's Agent. (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm **DO NOT COMPLETE, SAMPLE ONLY** License Number _____

Is the broker of (check one): the buyer; or both the buyer and seller. (dual agent)

Buyer's Agent **DO NOT COMPLETE, SAMPLE ONLY** License Number _____

Is (check one): the Buyer's Agent. (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

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2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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AD-3.01, Revised 06-10-2019



EXCLUSIVE RIGHT TO REPRESENT OWNER
FOR SALE OR LEASE OF REAL PROPERTY
(Non-Residential)

1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 Parties: This agency Agreement ("Agreement"), dated for reference purposes only October 5, 2020, is made by and between Oakland Unified School District, whose address is 1000 Broadway STE 300, Oakland, CA 94607, telephone number (510)879-8200, Fax No. (510)879-4282 ("Owner"), and DCG Strategies, Inc., whose address is 7600 Dublin Ave, Suite 275, Dublin, CA 94568, telephone number (925)479-1350, Fax No. (925)241-4212 ("Agent").

1.2 Property/Premises: The real property, or a portion thereof, which is the subject of this Agreement is commonly known by the street address of 4551 Steele St., located in the City of Oakland, County of Alameda, State of CA, and generally described as (describe briefly the nature of the property): Approximately 0.71 Acres with building improvements South portion of APN: 037-2552-001-00 ("Property"). (See also Paragraph 3).

1.3 Term of Agreement: The term of this Agreement shall commence on October 5, 2020 and expire at 5:00 p.m. on October 5, 2021, except as it may be extended ("Term"). (See also paragraph 4)

1.4 Transaction: The nature of the transaction concerning the Property for which Agent is employed ("Transaction") is (check the appropriate box(es)):

(a) [] A sale for the following sale price and terms:

and other additional standard terms reasonably similar to those contained in the "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE" published by the AIR Commercial Real Estate Association ("AIR"), or for such other price and terms agreeable to Owner;

(b) [X] A lease or other tenancy for the following rent and terms: See addendum

and other additional standard terms reasonably similar to those contained in the appropriate AIR lease form or for such other rent and terms agreeable to Owner.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Owner hereby employs Agent as Owner's sole and exclusive agent to represent Owner in the Transaction and to find buyers or lessees/tenants ("lessees"), as the case may be, for the Property. Agent shall use reasonably diligent efforts to find such buyers or lessees. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Owner. Owner shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Owner from any source regarding a possible Transaction.

2.2 Owner authorizes Agent to:

- (a) Place advertising signs on the Property;
(b) Place a lock box on the Property if vacant;
(c) Accept deposits from potential buyers or lessees; and
(d) Distribute information regarding the Property to participants in THE MULTIPLE ("MULTIPLE") of the AIR and/or any other

appropriate local commercial multiple listing service, to other brokers, and to potential buyers or lessees of the Property. Owner shall identify as "confidential" any information provided to Agent that Owner considers confidential and does not want disclosed. All other information provided by Owner may be disclosed as Agent may deem appropriate or necessary. After consummation of a Transaction, Agent may publicize the terms of such Transaction.

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2.3 Agent shall comply with the Rules of Professional Conduct of the AIR, if a member or if not, the Rules of Professional Conduct of the Society of Industrial and Office Realtors, and shall submit the Property to the MULTIPLE. Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other real estate brokers (collectively "**Cooperating Broker**").

~~2.4 If the Transaction is a sale and Agent finds a prospective buyer for the Property, or if the Transaction is a lease and Agent finds a prospective lessee for the Property, Owner hereby authorizes Agent also to represent and act as the agent for such buyer or lessee, and Owner consents to such dual agency. If a Cooperating Broker finds such a buyer or lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the buyer or lessee only, and the Cooperating Broker shall not be Owner's agent, even though the Cooperating Broker may share in the commission paid by Owner to Agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.~~

2.5 Owner agrees that Agent may, during the ordinary and normal course of marketing the Property, respond to inquiries on the Property by showing and providing information on the Property, as well as on other competing properties, to prospective buyers and lessees and that such activities may result in the payment of a commission to Agent by a third party.

3. PROPERTY.

3.1 The term "Property" shall include all of the following which are currently located on the Property and owned by Owner: permanent improvements, electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures, etc.), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, built-ins such as cabinets, and NONE

(if there are no additional items write "NONE"). If the Transaction is a sale, the term "Property" shall additionally include, to the extent owned by Owner, oil and mineral rights, leases and other agreements which will continue in effect after Owner's transfer of title to the Property.

3.2 Within five business days after the commencement of the Term hereof, Owner shall provide Agent with the following:

- (a) A duly completed and fully executed Property Information Sheet on the most current form published by the AIR;
- (b) Copies of all leases, subleases, rental agreements, option rights, rights of first refusal, rights of first offer, or other documents containing any other limitations on Owner's right, ability and capacity to consummate a Transaction, and
- (c) If available to Owner, copies of building plans, and if the Transaction is a sale, title reports, boundary surveys, and existing notes and trust deeds which will continue to affect the Property after consummation of a sale.

3.3 Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Owner's sole responsibility. Unless caused by Agent's gross negligence, Agent shall not be liable for any loss, damage, or injury to the person or property of Owner, any lessees of the Property, any buyer, prospective buyer, lessee, or prospective lessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.

4. EXTENSION OF TERM. If the Transaction is a sale, and a sale is not consummated for any reason after Owner accepts an offer to purchase the Property ("**Sale Agreement**"), then the expiration date of the Term of this Agreement shall be extended by the number of days that elapsed between the date Owner entered into the Sale Agreement and the later of the date on which the Sale Agreement is terminated or the date Owner is able to convey title to a new buyer free and clear of any claims by the prior buyer of the Property; provided, however, in no event shall the Term be so extended beyond one year from the date the Term would have otherwise expired.

5. COMMISSION.

5.1 Owner shall pay Agent a commission in the amount of _____ in accordance with the commission schedule attached hereto ("**Agreed Commission**"), for a Transaction, whether such Transaction is consummated as a result of the efforts of Agent, Owner, or some other person or entity. Agent shall also be entitled to the Agreed Commission if any of the Owner's representations and warranties described in paragraph 8 are shown to be false. Such Agreed Commission is payable:

- (a) If the Transaction is a sale, (i) the Property is sold; (ii) Owner breaches or repudiates any Sale Agreement, escrow instructions or other documents executed by Owner regarding the sale of the Property; (iii) the Property or any interest therein is voluntarily or involuntarily sold, conveyed, contributed or transferred; (iv) the Property or any interest therein is taken under the power of Eminent Domain or sold under threat of condemnation, or (v) if Owner is a partnership, joint venture, limited liability company, corporation, trust or other entity, and any interest in Owner is voluntarily or involuntarily sold, contributed, conveyed or transferred to another person or entity that, as of the date hereof, does not have any ownership interest in Owner;
- (b) If the Transaction is a lease and a lease of the Property, or a portion thereof is executed; or
- (c) If Owner (i) removes or withdraws the Property from a Transaction or the market; (ii) acts as if the Property is not available for a Transaction; (iii) treats the Property as not available for a Transaction; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; or (vi) changes the status of the Property's title, leases, agreements, physical condition or other aspects thereof, which such change adversely impacts the value, use, desirability or marketability of the Property.
- (d) If earnest money or similar deposits made by a prospective purchaser or tenant are forfeited Agent shall be entitled to one-half (½) thereof, but not to exceed the total amount of the commission that would have been payable had the sale or lease transaction been consummated.

5.2 If the Transaction is a sale, the purchase agreement and/or escrow instructions to be entered into by and between Owner and a buyer of the Property shall provide that:

- (a) Owner irrevocably instructs the escrow holder to pay from Owner's proceeds accruing to the account of Owner at the close of escrow the Agreed Commission to Agent;

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(b) A contingency to the consummation of the sale shall be the payment of the Agreed Commission to Agent at or prior to close of the escrow; and

(c) No change shall be made by Owner or buyer with respect to the time of, amount of, or the conditions to payment of the Agreed Commission, without Agent's written consent.

6. ALTERNATIVE TRANSACTION. If the Transaction changes to any other transaction, including, but not limited to, a sale, exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease (collectively "**Alternative Transaction**"), then Agent shall automatically be Owner's sole and exclusive Agent for such Alternative Transaction and represent Owner in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Owner shall pay Agent the Agreed Commission.

7. EXCLUDED AND REGISTERED PERSONS.

7.1 Owner shall, within 5 business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Owner by any other broker under any prior agreement concerning the Property ("**Excluded Persons**", see paragraph 7.5). Owner shall also specify for each Excluded Person the type of transaction the consummation of which during the Term of this Agreement entitles such other broker to any compensation ("**Excluded Transaction**"). Agent may within 10 days of receiving such written list, either (a) accept the Excluded Persons and Excluded Transactions, (b) cancel this Agreement, or (c) attempt to renegotiate this portion of the Agreement with Owner. Once accepted by Agent, the written list shall automatically become an exhibit to this Agreement. If Owner timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then the Agreed Commission paid to Agent with respect to consummation of such an Excluded Transaction with an Excluded Person shall be limited as follows: if such Excluded Transaction is concluded within the first 30 days of the commencement of the Term hereof, then Agent shall be paid a commission equal to the reasonable out-of-pocket expenses incurred by Agent in the marketing of the Property during said 30 days; or if such Excluded Transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to a commission equal to one-half of the Agreed Commission. If the specified information concerning Excluded Persons and Transactions is not provided as set forth herein, then it shall be conclusively deemed that there are no Excluded Persons.

7.2 Agent shall, within 5 business days after the expiration of the Term hereof, provide Owner, in writing, with the name of those persons or entities with whom Agent either directly or through another broker had negotiated during the Term hereof ("**Registered Persons**", see paragraph 7.5), and specify the type of transaction of the Property for which such negotiations were conducted ("**Registered Transaction**"). Those persons or entities who submitted written offers or letters of intent shall, however, automatically be deemed to be Registered Persons for the type of transaction which was the subject of such offer or letter of intent. If Agent fails to timely notify Owner of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. A person or entity shall not be a Registered Person if Agent fails to timely specify a Registered Transaction for such person or entity. The parties are aware that the registration of certain individuals and/or entities might create a Dual Agency, and Owner hereby consents to any such Dual Agency.

7.3 If, within 180 days after the expiration of the Term hereof, Owner enters into a contract with a Registered Person for consummation of a Registered Transaction, then Owner shall, upon consummation of such Registered Transaction, pay Agent the Agreed Commission for the Registered Transaction.

7.4 If, within 180 days after the expiration of the Term hereof, Owner enters into another owner-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Owner shall provide to Owner's new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such new agreement that the new broker shall not be entitled to receive any of the compensation payable to Agent hereunder for consummation of a Registered Transaction with a Registered Person.

7.5 In order to qualify to be an Excluded Person or a Registered Person the individual or entity must have: toured the Property, submitted a letter of interest or intent, and/or made an offer to buy or lease the Property. In addition, Excluded Persons may only be registered by a broker who previously had a valid listing agreement covering the Property, and such broker may only register individuals and entities actually procured by such listing broker.

8. OWNER'S REPRESENTATIONS.

Owner represents and warrants that:

(a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as or on behalf of Owner;

(b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;

(c) Neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding;

(d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;

(e) There are no effective, valid or enforceable option rights, rights of first refusal, rights of first offer or any other restrictions, impediments or limitations on Owner's right, ability and capacity to consummate a Transaction, except as disclosed in writing pursuant to Paragraph 3.2(b).

(f) That as of the date of this Agreement the asking sales price is not less than the total of all monetary encumbrances on the Property.

9. OWNER'S ACKNOWLEDGMENTS. Owner acknowledges that it has been advised by Agent to consult and retain experts to advise and represent it concerning the legal and tax effects of this Agreement and consummation of a Transaction or Alternative Transaction, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title and

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environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Agent. Owner further acknowledges that in determining the financial soundness of any prospective buyer, lessee or security offered, Owner will rely solely upon Owner's own investigation, notwithstanding Agent's assistance in gathering such information.

10. MISCELLANEOUS.

10.1 This Agreement shall not be construed either for or against Owner or Agent, but shall be interpreted, construed and enforced in accordance with the mutual intent of the parties ascertainable from the language of this Agreement. Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.

10.2 All payments by Owner to Agent shall be made in lawful United States currency. If Owner fails to pay to Agent any amount when due under this Agreement, then such amount shall bear interest at the rate of 15% per annum or the maximum rate allowed by law, whichever is less.

10.3 In the event of litigation or arbitration between Owner and Agent arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term, "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorney's fees reasonably incurred in good faith.

10.4 Owner agrees to indemnify, defend (with counsel reasonably acceptable to Agent), and hold Agent harmless from and against any claim or liability asserted against Agent as a result of the failure of Owner to make a full and complete disclosure pursuant to law and paragraph 3.2(a) or as a result of the fact that any of the representations made by Owner (see paragraph 8) were not true at the time that this Agreement was signed.

10.5 Owner hereby releases and relieves Agent, and waives Owner's entire right of recovery against Agent, for direct or consequential loss or damage arising out of or incident to the perils covered by insurance carried by Owner, whether or not due to the negligence of Agent.

10.6 In the event that the Transaction is not an outright sale, Owner agrees that if Agent is not paid the Agreed Commission provided for herein within thirty days of the date due, that Agent shall have a lien in the amount of such commission, and may record a notice of such lien, against the Property.

10.7 Owner agrees that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to the services to be performed by Agent pursuant to this Agreement may be brought against Agent more than one year after the expiration of the Term of this Agreement (see paragraph 1.3) and that the liability (including court costs and attorney's fees) of Agent with respect to any such lawsuit and/or legal proceeding shall not exceed any fee received by Agent pursuant to this Agreement; provided, however, that the foregoing limitation on liability shall not be applicable to any gross negligence or willful misconduct of Agent.

11. ARBITRATION OF DISPUTES.

11.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY: THE AMERICAN ARBITRATION ASSOCIATION OR NONE USING THE COMMERCIAL RULES ESTABLISHED BY SUCH ORGANIZATION OR IF NONE THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

11.2 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

11.3 WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

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Owner's Initials

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[Signature]
Agent's Initials

11.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 11.3.

12. **Additional Provisions:** Additional provisions of this Agreement are set forth in the following blank lines or in an addendum attached hereto and made a part hereof consisting of paragraphs NONE through NONE (if there are no additional provisions write "NONE"):

13. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.** When entering into an agreement with a real estate agent an Owner should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

(i) *Owner's Agent.* An Owner's agent may act as an agent for the Owner only. An Owner's agent or subagent has the following affirmative obligations: *To the Owner:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. *To a potential buyer/lessee and the Owner:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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(ii) *Agent Representing Both Parties.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both Parties in a transaction, but only with the knowledge and consent of the Parties. In a dual agency situation, the agent has the following affirmative obligations to both Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Party. b. Other duties to the Owner as stated above in subparagraph (i). When representing both Parties, an agent may not without the express permission of the respective Party, disclose to the other Party that the Owner will accept rent/purchase price in an amount less than that indicated in the listing or that the buyer/lessee is willing to pay a higher rent/purchase price than that offered.

The above duties of the Agent do not relieve Owner from the responsibility to protect its own interests. Owner should carefully read all agreements to assure that they adequately express its understanding of the transaction.

Date: 10/7/2020 Date: 10/7/2020

OWNER

Oakland Unified School District

AGENT

DCG Strategies, Inc.

By: 



By: 

Name Printed: Tadashi Nakadegawa
Title: Deputy Chief Facilities

Name Printed: Landis Graden
Title: Chief Executive Offer

Agent DRE License #: 01461409

Address: 7600 Dublin Ave, Suite 275


Dublin, CA 94568

Phone: (925)479-1350


Fax: (925)241-4212

Email: lgraden@dcgstrategies.com

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**ADDENDUM
TO
AIRCRES EXCLUSIVE RIGHT TO REPRESENT
OWNER FOR SALE OR LEASE OF REAL PROPERTY**

This ADDENDUM TO THE AIRCRE EXCLUSIVE RIGHT TO REPRESENT OWNER FOR SALE OR LEASE OF REAL PROPERTY (this "Addendum") is entered into as of October _____, 2020 ("Effective Date"), by and between Oakland Unified School District (Owner) and DCG Strategies, Inc. (Agent). If there is any conflict between this Addendum and the AIRCRE Exclusive Right To Represent Owner For Sale Or Lease Of Real Property, the terms and conditions of this Addendum will govern and control.

RECITALS

- A. Oakland Unified School District is the Owner of approximately 0.71 acres of land including existing building improvements located at 4551 Steele St. Oakland, CA with the Assessor's Parcel Number 037-2552-001-00 (the "Property").
- B. Oakland Unified School District (Owner) and DCG Strategies, Inc. (Agent) mutually executed that certain AIRCRE Exclusive Right To Represent Owner For Sale Or Lease Of Real Property on October _____, 2020.
- C. Owner and Agent desire to enter into this Addendum for the purpose of, among other things, modifying and amending the terms to the AIRCRE Exclusive Right To Represent Owner For Sale Or Lease Of Real Property.
- D. Upon mutual execution, this Addendum is attached and made part of the AIRCRE Exclusive Right To Represent Owner For Sale Or Lease Of Real Property hereinafter collectively referred to as the "Agreement" or "Listing Agreement."
- E. All capitalized terms not otherwise defined herein shall have the same meanings utilized in the AIRCRE Exclusive Right To Represent Owner For Sale Or Lease Of Real Property; provided, however, that to the extent any capitalized term is defined in this Addendum differently from the definition given in the AIRCRE Exclusive Right To Represent Owner For Sale Or Lease Of Real Property, the definition utilized in this Addendum shall be controlling.

NOW, THEREFORE, the Owner and Agent agree to the following regarding the Listing Agreement:

- 1. Page 1, Section 1.4(b). Insert the following paragraph in place of "See Addendum":

1.4(b) A lease for the following lease price and terms: To be determined in writing by Owner. Owner may elect to market property with no publicly listed Asking Price and other additional terms and conditions in a written lease agreement satisfactory in all respects to Owner in its sole and absolute discretion.



2. Page 2, Section 2.3. Insert the following at the end of the second sentence:

The Cooperating Broker shall be engaged solely on Lessee's behalf and at its sole cost and expense and shall have no direct or indirect contractual relationship with Owner or Agent. All listings or other writings indicating the availability for sale or lease of the Property delivered or otherwise made available or directed to any Cooperating Broker shall contain a statement to the effect that Lessee shall be solely liable for any commissions, fees or other compensation due a Cooperating Broker.

3. Page 2, Section 2.4. This clause is deleted and replaced with the following paragraph:

If Agent finds a prospective Lessee for the Property, prior to Agent acting in a dual agency role by also representing and acting as the agent for such Lessee, Agent must receive the written consent of Owner to such dual agency. If a Cooperating Broker finds such a Lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the Lessee only, and the Cooperating Broker shall not be Owner's agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.

4. Page 2, insert the following paragraph as new Section. 2.6:

2.6 Agent shall have no authority to bind Owner in any manner whatsoever and shall neither hold itself out nor avail itself of any opportunity or circumstance to the contrary. Without limiting the generality of the foregoing, Agent shall not have the authority to make or enter into any sale agreement, offer to purchase, purchase agreement or other agreement of whatsoever kind or nature on behalf of Owner.

5. Page 2, Section 5.1. This clause is deleted and replaced with the following paragraph:

Owner shall pay Agent a commission in the amount of 5% of lease revenue received over the initial term of the lease agreement ("Agreed Commission"), for a Transaction if and when a written lease agreement for the Property, satisfactory in all respects to Owner in its sole and absolute discretion, is executed and delivered by and between a lessee and Owner. Agreed Commission shall be considered earned up the mutual execution of a lease agreement between Owner and lessee. Owner will pay to Agent the Agreed Commission in accordance with following. Fifty percent (50%) of the Agreed Commission shall be due within sixty (60) days of the mutual execution of a lease agreement between Owner and lessee. The remaining fifty percent (50%) of the Agreed Commission shall be due within sixty (60) days of the earlier of either lessee's rent commencement or occupancy of the Property. The Agreed Commission shall be contingent on the mutual execution of a lease agreement occurring within the Term of this Agreement, notwithstanding anything to the contrary in Section 4 or Section 7 and its subsections. Such Term shall not be extended for more than one year from the date that the Owner accepts a lease proposal absent the mutual agreement of Owner and Agent. Notwithstanding anything to the contrary above, if Owner has received non-refundable deposits from the lessee, Agent shall be entitled to 5% of the non-refundable funds received by the Owner as determined by Lease agreement between Owner and Lessee. In the event the prospective lessee defaults thereunder, Owner shall not be obligated to commence any action whatsoever for damages or specific performance against such lessee, and Agent shall not have any claim for a commission or other compensation with respect to amounts paid to and retained by Owner as liquidated damages under the lease agreement. If, for any

reason, a written lease agreement shall not be entered into between Owner and a prospective lessee of the Property in form and substance acceptable to Owner in its sole and absolute discretion, then no commission shall be deemed to be due or earned nor shall it be paid to Agent or any other Agent by Owner, and Owner is and shall be relieved from all liability for the payment of any and all commissions, claims, fees, compensation or charges whatsoever with respect thereto. Owner shall have the unqualified right, in its sole and absolute discretion, to refuse to enter into any lease agreement with any person or entity for any reason whatsoever without incurring any obligation to Agent or any other person or entity for the payment of commissions or otherwise.

6. Page 4, insert the following paragraph as new Section 10.8:

10.8 Agent shall not assign this Agreement or any right hereunder without prior written consent of Owner, which may be withheld in Owner's sole and absolute discretion. Any attempted assignment without such consent shall be null and void.


IN WITNESS WHEREOF, the Owner and Agent hereto have executed and agree to the terms of this Addendum.

OWNER:

Oakland Unified School District

Name (Print): Tadashi Nakadegawa

Title: Deputy Chief Facilities

Signature: 

Date: 10/7/2020

AGENT:

DCG Strategies, Inc.

Name (Print): Landis Graden

Title: Chief Executive Officer

Signature: 

Date: 10/7/2020

