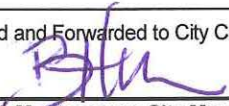


STAFF REPORT

Date: Tuesday, December 8, 2015
To: Bryan H. Montgomery, City Manager
From: Dwayne Dalman, Economic Development Manager
SUBJECT: **Authorization to Execute a Purchase Agreement and Childcare Grant Agreement with Cemo Commercial, Inc. for the Sale of Property at 1137-1311 Neroly Road, also known as Parcel 3 within the Neroly Commercial Center.**

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Summary and Background

The Neroly Commercial Center was approved in 2007 and anchored by the Diamond Hills Sports Club and Spa, which was developed on Parcel 1 (see attached map). In 2011, the City purchased the two remaining parcels in the Center to help facilitate the development of the site and the economic development goals for the City. The two parcels consisted of Parcel 3 (2.36 acres) and Parcel 2 (4.6 acres)

In April 2013, staff released an Invitation to Bid for Parcel 3 within the Center. A bid was received and accepted from Seeker Development to purchase part of the site to develop a 10,000 square foot child care facility with associated play area. On June 10, 2013 the Oakley City Council approved the Tentative Parcel Map, Conditional Use Permit and Design Review for the project. The project was scheduled to start construction in summer 2014; however, Seeker Development was unable to perform under the terms of the Purchase Agreement and that Agreement terminated.

On May 23, 2014 staff released an Invitation to Bid for Parcel 2 within the center. A bid was received and accepted from Glenn & Robin Moffatt of East Bay Workwear to purchase the southern portion of the parcel, (24,960 square feet) to develop a 6,000 square foot building with associated parking. It is anticipated that they will begin construction of their project prior to year end.

On September 10, 2015 staff released an Invitation to Bid for Parcel 3, located at 1137-1311 Neroly Road. Two bids for the property were received. One bid was received from Vijay and Rishu Khare for an amount of \$695,675. The Khare's are franchise operators for Kiddie Academy Child Care Centers and have experience owning and operating Kiddie Academy Centers in Vacaville and Livermore.

The highest bid was received from Cemo Commercial, Inc. in the amount of \$730,458 or \$7.08 per square foot. Staff recommended accepting the bid from Cemo at the October 27th Council meeting. The item was continued to the November 10th Council meeting, at which time the Council approved the bid.

Cemo Commercial, Inc.

Cemo Commercial, Inc. was founded in 1964, and has developed over 4,000 acres of office and industrial parks throughout the greater Sacramento region. They have also developed over 4,000,000 square feet of office, flex and retail buildings, including 20 child care facilities.

Cemo's child care development experience includes ten build-to-suits for The Phoenix Schools, Little Blossom Montessori and The Learning Experience. They have also acquired and renovated six child care facilities for a variety of users and have brokered deals for four child care facilities.

Cemo is proposing to build a child care center that is approximately 10,000 square feet, with a playground that is between 12-14,000 square feet. In addition to the child care facility, Cemo is proposing to develop the remaining land into a medical/professional office building(s). They feel that this type of product is largely unavailable to local businesses and that this project could best serve the market need.

Cemo Commercial has relationships with a number of child care operators and has already begun outreach to them for this project. Part of that outreach includes discussions with Vijay and Rishu Khare, who also submitted a bid. The Khare's intended to be the operator for the Seeker Development project and have made significant headway on the operations of a child care facility in this location. However, in a typical build-to-suit relationship, Cemo determines the amount of rent that an operator will need to pay, based on the overall cost of the project, including land. As these costs have not yet been finalized, Cemo has only had preliminary discussions with operators and has not completed an agreement at this time.

Purchase Agreement

The Purchase Agreement contains the terms for the purchase of the property. The purchase price is \$730,458.75, with a \$20,000 deposit. Within 9 months from the date of the agreement, Cemo will close escrow and deposit the remaining \$710,458.75 funds. Prior to close of escrow, Cemo will complete the final parcel map, obtain all necessary project approvals and a building permit for the child care project. They are required to start construction on the child care project within 15 months of the date of the agreement and complete the child care project within 24 months from the close of escrow.

In addition, Cemo is required to start construction on the proposed office project within 24 months of close of escrow and finish construction within 36 months of close of escrow. If these time frames are not met, the City has the option to repurchase the

land for the office project at the same purchase price that Cemo paid (\$7.08 per square foot).

Childcare Grant Agreement

In years past, the City of Oakley has collected Child Care Impact fees from new development for the specific purpose of mitigating new development's impact on child care. While the City no longer collects this particular impact fee, approximately \$525,000 is available as grant funds to assist with the overall construction of this project. In addition, the City is pursuing the unspent child care grant funds that were disbursed to Seeker Development. The Childcare Grant Agreement contains the terms for the disbursement of grant funds.

The Childcare Grant Agreement outlines the same time frames for building the child care center that are contained in the Purchase Agreement. The grant funds will be disbursed to Cemo if they complete the child care facility and obtain a certificate of occupancy prior to 24 months from the close of escrow.

Fiscal Impact

The City will realize \$730,458 in sales proceeds as revenue to the General Fund and will gain a child care center that will provide approximately 180 child care slots for Oakley families and the surrounding community. In addition, the recommended developers propose a medical/professional office building that will meet a market need that is underserved in Oakley. The improvements to the parcel are anticipated to be valued at approximately \$5.0 million. With these improvements, there will be an overall increase in property tax revenue of \$50,000 per year (City's share roughly \$3,500). Also, it is anticipated that the new development will provide a catalyst to stimulate further development in the center, as well as provide local employment opportunities.

Recommendation

Staff recommends that the Council adopt the resolution approving the Real Property Purchase Agreement and Childcare Grant Agreement for the sale of Parcel 3 within the Neroly Commercial Center (APN 034-040-017-5) to Cemo Commercial, Inc.

Attachments

- 1) Site Map
- 2) Resolution
- 3) Real Property Purchase Agreement
- 4) Childcare Grant Agreement

RESOLUTION NO. _____-10

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY
PURCHASE AGREEMENT AND CHILDCARE GRANT AGREEMENT WITH
CEMO COMMERCIAL, INC. FOR THE PURCHASE OF PROPERTY LOCATED
AT 1137-1311 NEROLY ROAD**

BE IT RESOLVED by the City Council of the City of Oakley that the City Manager is hereby authorized and directed to sign on behalf of the City that certain Real Property Purchase Agreement and Childcare Grant Agreement between the City and Cemo Commercial, Inc. for the purchase of real property known as Parcel 3 within the Neroly Commercial Center located at 1137-1311 Neroly Road.

The foregoing resolution was introduced at a regular meeting of the Oakley City held on the 8th day of December 2015, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

REAL PROPERTY PURCHASE AGREEMENT
1137-1311 Neroly Road, Oakley, California
APN 034-040-017-5

THIS AGREEMENT is entered into this ____ day of _____, 2015 by and between the City of Oakley, a municipal corporation ("SELLER") and Cemo Commercial, Inc., a California corporation and/or its permitted assignee ("BUYER").

Recitals

- A. SELLER owns real property generally described as 1137-1311 Neroly Road, Oakley, California, being APN 034-040-017-5, consisting of approximately 2.366 acres, and as legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The term "Property" as used in this Agreement shall include all rights, privileges, easements and appurtenances owned by SELLER benefiting such real property, including, without limitation, all mineral and water rights and all easements, rights-of-way and other appurtenances used in or connected with the beneficial use of such real property. This property is surplus to the SELLER's needs and SELLER has published a notice inviting bids for the purchase of all, or a portion, of the Property.
- B. BUYER wishes to purchase the Property, all as generally depicted on the SELLER's Offer to Purchase Form, attached as Exhibit "B" hereto. Upon recordation of the Final Parcel Map (as defined below), the Property shall consist of Parcel A and Parcel B as shown on the Tentative Parcel Map, attached hereto as Exhibit "C".
- C. The Tentative Parcel Map (Exhibit "C") has been approved on the site, delineating the land required for a child care facility shown as Parcel A, and the excess land for additional development shown as Parcel B.
- D. BUYER wishes to purchase the Property and to construct thereon (i) an approximately 10,000 square foot child care facility on Parcel A (the "Child Care Project"), and (ii) a proposed medical/professional office building or any other project meeting City requirements on Parcel B (the "Parcel B Project").
- E. As used in this Agreement, the term "Effective Date" shall mean the date upon which Escrow Holder (as defined below) has received a fully executed copy of this Agreement as confirmed in writing by Escrow Holder.

Wherefore, the parties agree as follows:

1. The purchase price of the Property shall be Seven Hundred Thirty Thousand Four Hundred Fifty-Eight Dollars and 75 Cents (\$730,458.75) (the "Purchase Price").

2. Within three (3) business days following the Effective Date, the parties will open an escrow account with Old Republic Title Company, 1000 Burnett Avenue, Suite 400, Concord, California 945520 (Attention: Jennifer Quigley) ("Escrow Holder" and/or "Title Company"). Title Company has issued a preliminary title report under Order Number 0147013267-JQ (the "Title Report"), and BUYER hereby acknowledges receipt of the Title Report.
3. BUYER will commission and submit a parcel map or line lot adjustment (the "Final Parcel Map") to validly create Parcels A and B that fit the requirements of the Child Care Project and the Parcel B Project as determined by BUYER, and this Agreement and BUYER's obligation to purchase the Property is subject to and conditioned upon the approval and recording of said Final Parcel Map, which approval shall not be unreasonably withheld. SELLER shall cause its planning/building department to review, comment and thereafter approve the Final Parcel Map on an expedited basis.
4. The parties acknowledge that BUYER has provided SELLER the sum of Twenty Thousand Dollars (\$20,000.00) (the "Deposit") with the submission of its proposal. Within three (3) business days from the Effective Date, the Deposit shall be deposited by SELLER into the escrow opened by Escrow Holder in a federally-insured interest-bearing demand account and credited toward the Purchase Price; however, this Deposit shall be nonrefundable if BUYER does not close escrow unless the transaction contemplated by this Agreement is not consummated solely as the result of SELLER's default or a failure of a condition precedent to BUYER's obligation to close. Notwithstanding any provision set forth in this Agreement, One Hundred Dollars (\$100.00) of the Deposit shall be non-refundable in all events (other than SELLER's default) and shall be paid to SELLER in the event that this Agreement is terminated (other than due to SELLER's default) at any time prior to the Close of Escrow (the "Independent Consideration"). The Independent Consideration shall serve as consideration for the granting of the time periods herein contained for BUYER to exercise BUYER's right to satisfy and approve all of the Close of Escrow Conditions (as defined below). The Independent Consideration shall be not applicable to the Purchase Price at the Close of Escrow (as defined below).
5. Prior to the Close of Escrow (as defined below), BUYER shall prepare building plans for the construction of the Child Care Project (the "Child Care Project Plans"), all in compliance with City requirements and the existing Declaration of Covenants, Conditions and Restrictions for Neroly Commercial Center, and in conformity with the requirements of BUYER's intended end-user of the Child Care Project. SELLER shall cause its planning/building department to review, comment and thereafter approve the Child Care Project Plans on an expedited basis. SELLER acknowledges (i) that BUYER will be submitting the Child Care Project Plans for approval prior to the Close of Escrow and without BUYER then owning fee title to the Property, and (ii) that the City's timely approval of the Child Care Project Plans is a condition precedent to BUYER's obligations hereunder to purchase the Property.

6. Subject to and conditioned upon (i) the approval and recording of said Final Parcel Map, (ii) the approval of the Child Care Project Plans by SELLER, and (iii) the issuance of the building permit for the Child Care Project, and (iv) all other conditions required for the Close of Escrow as set forth in this Agreement are satisfied (collectively, the "Close of Escrow Conditions"), BUYER will deposit the remaining \$710,458.75 of the Purchase Price into escrow. Upon the Close of Escrow, the Purchase Price shall be disbursed to SELLER.
7. Close of Escrow: Buyer and Seller agree to execute and deliver to Escrow Holder, in a timely manner, all escrow instructions necessary to consummate the transaction contemplated by this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control. For the purpose of this Agreement, the "Close of Escrow" shall be defined as the date that the Grant Deed (as defined in Section 7, below) is recorded in the Official Records of the County. The Close of Escrow shall occur on or before nine (9) months from the Effective Date (the "Escrow Period"). BUYER may elect to close the escrow at any time prior to the expiration of the Escrow Period, but subject to the satisfaction of the Close of Escrow Conditions. If BUYER is unable to satisfy all of the Close of Escrow Conditions prior to the expiration of the Escrow Period for reasons beyond the reasonable control of BUYER, then (i) Buyer may elect to terminate this Agreement and receive the Deposit from Escrow Holder, or (ii) BUYER may elect to seek an extension of the Escrow Period under such terms and conditions as may be approved by both BUYER and SELLER, with each party acting in good faith.
6. The parties are concurrently entering into a Child Care Grant Agreement which specifies the disbursement of child care grant funds ("Grant Funds") to BUYER. The Child Care Grant Agreement specifies (i) that BUYER shall begin construction of the Child Care Project no later than fifteen (15) months from the Effective Date, and (ii) that BUYER shall complete construction and obtain a Certificate of Occupancy for the Child Care Project within twenty-four (24) months from the Close of Escrow of the Property (collectively, the "Conditions to Disbursement of Grant Funds"). If the Conditions to Disbursement of Grant Funds are not timely satisfied by BUYER, SELLER shall not be obligated to disburse the Grant Funds to BUYER.
7. The Property shall be conveyed to BUYER by SELLER by a grant deed, in the form customarily used by Escrow Holder in the County ("Grant Deed"), subject only to (a) a lien to secure payment of real estate taxes and assessments; and (b) such other title matters affecting the Property as set forth in the Title Report (collectively, "Approved Conditions of Title").
8. As a condition to the Close of Escrow, title to the Property shall be evidenced by Escrow Holder's title insurance underwriter ("Title Company") issuing its standard California Land Title Association ("CLTA") Owner's Policy of Title Insurance to BUYER in an amount equal to the Purchase Price, showing title to the Property

vested in BUYER, subject only to the Approved Conditions of Title ("Title Policy"). SELLER shall pay the cost of the CLTA Title Policy. If BUYER elects to have Escrow Holder issue its American Land Title Association ("ALTA") Extended Coverage Owner's Policy of Title Insurance, BUYER shall pay for the expense of such ALTA premium increment and any ALTA survey costs. BUYER shall pay for any endorsements to the Title Policy.

9. Subject to SELLER's obligation to pay the cost of the CLTA policy as set forth above, BUYER and SELLER shall equally share all escrow fees and closing costs of this transaction.
10. BUYER has had an opportunity to inspect the property and has determined to proceed with the purchase, but subject to the conditions set forth in this Agreement. SELLER is not aware of any hazardous materials or contamination on the property. BUYER holds the SELLER harmless from any cost, claim or liability associated with any hazardous materials or contamination that may exist. SELLER to provide BUYER within five (5) business days of escrow opening any documents in its possession relating to the Property including but not limited to phase 1 studies, existing development plans, etc.
11. SELLER does not warrant the suitability of the property for BUYER's intended use and BUYER relies upon its own judgment regarding the suitability of the Property and its economic viability when developed with the Child Care Project.
12. Because the Grant Funds (made available from CITY's Childcare Mitigation account) will be used to help construct the Child Care Project on Parcel A, BUYER will be required, pursuant to California Labor Code Sec. 1771 *et seq.* to require workers in the design, preconstruction and construction phases that are paid by BUYER's use of Grant Funds herein to be paid prevailing wages, as defined and required by the Labor Code. BUYER shall comply with all requirements of the Labor Code for the payment and documentation of prevailing wages. BUYER shall notify all bidders that prevailing wages are required for the Child Care Project. The Parcel B Project to be developed on Parcel B will also be subject to the recorded Project Labor Agreement which exists with the Plumbers & Steamfitters Union, Local 159, the International Brotherhood of Electrical Workers, Local 302, and the Sheet Metal Workers, Local 104.
13. BUYER (i) shall begin construction of the Parcel B Project no later than twenty-four (24) months from the Close of Escrow of the Property, and (ii) BUYER shall complete construction and obtain a Certificate of Occupancy for the Parcel B Project within thirty-six (36) months from the Close of Escrow of the Property (collectively, the "Conditions to Repurchase Option Rights"). If the Conditions to Repurchase Option Rights are not timely satisfied by BUYER, CITY shall have the option to repurchase Parcel B (the "Repurchase Option"), provided that (i) such Repurchase Option shall be exercised by CITY within thirty (30) days from the non-satisfaction of any of the two Conditions to Repurchase Option Rights, (ii) upon the timely

exercise of the Repurchase Option, and escrow shall be open and such escrow shall close within thirty (30) days thereafter, (iii) the CITY shall pay to BUYER a purchase price of \$7.08 per square foot of Parcel B upon the close of escrow, and (iv) title to Parcel B shall be conveyed to CITY free of any liens generated by BUYER. If the Repurchase Option is not timely exercised, the Repurchase Option shall become null and void and of no further force or effect. Notwithstanding the above, BUYER may request an extension of time from City for performance of the Conditions to Repurchase Option Rights to meet circumstances that were unforeseen or out of the BUYER's control. Such extension will be executed by both parties after approval by CITY.

14. There is no broker, attorney, real estate commission due or payable to any person or entity as part of this Agreement.
15. Upon the Close of Escrow, SELLER shall deliver to BUYER good and clear title, with no encumbrances, deed of trust, or liens. Any assessments attributable to the Property shall be paid in the proportion then due by SELLER. The Property is currently exempt from real property tax, but will become subject to property taxes upon the completion of this transaction, which shall then become the responsibility of BUYER.
16. Both parties have had the opportunity to have this Agreement reviewed by their attorneys, who have had the opportunity to comment upon the drafting and wording of this Agreement. Therefore, no interpretation shall be given to the terms of the Agreement which would favor or disfavor the drafter of the Agreement.
17. Neither the Oakley City Council, its officers, agents or employees shall have any personal liability associated with this transaction.
18. Assignability: Cemo Commercial (BUYER) reserves the right to transfer and or assign this Agreement and all of BUYER's rights under it to an entity in which BUYER and/or its shareholders, directors, officers and affiliates have a direct or indirect ownership interest or otherwise control, subject to the terms of this Agreement.
19. Litigation Costs: If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs, in addition to any other relief to which such party may be entitled.
20. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery, including delivery by facsimile and/or Portable Document Format (pdf) email transmission, and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the

same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. Signatures transmitted via facsimile or e-mail shall be considered authentic and binding.

[SIGNATURES ON FOLLOWING PAGE]

CITY
City of Oakley, a municipal corporation

DEVELOPER/BUYER

By: _____
Bryan H. Montgomery
City Manager

By: _____
Cemo Commercial, Inc.

ATTEST:

Libby Vreonis
City Clerk

APPROVED AS TO FORM:

Derek P. Cole
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

The land referred to in this Agreement is situated in the State of California, County of Contra Costa, City of Oakley, and is described as follows:

PARCEL 3, AS SHOWN ON THE PARCEL MAP MS 507-96, FILED NOVEMBER 14, 2007, IN BOOK 201 OF PARCEL MAPS, PAGE 28, CONTRA COSTA COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, AND MINERAL RIGHTS 500 FEET BELOW THE SURFACE OF THE PROPERTY, WHICH ARE RESERVED BY APRICOT LAND COMPANY, A CALIFORNIA GENERAL PARTNERSHIP AND SHALL EXCLUDE THE RIGHT OF SURFACE ENTRY AS RESERVED IN DEED RECORDED DECEMBER 28, 2004 AS INSTRUMENT NO. 2004-0497318 OFFICIAL RECORDS.

APN: 034-040-017-5

EXHIBIT "B"

SELLER'S OFFER TO PURCHASE FORM

[Attached]



OFFER OF PURCHASE FORM

On this date and in accordance with the terms and conditions set forth in the Invitation to Bid, this offer is submitted to purchase all or a portion of the real property known as APN 034-040-017-5 located at 1420-1480 Neroly Road in Oakley, Contra Costa County, California.


Amount:	\$ 625,000.00
Written Amount:	Six Hundred Twenty Five Thousand Dollars
Square footage of proposed purchase:	102,801

Also, as required by the terms of the offering, a bid surety in the amount of Ten Thousand Dollars (\$10,000) in the form of a cashier's or certified check made payable to "The City of Oakley" is enclosed.

REQUIRED: *Attach to this form a description of no more than seven (7) pages that details what your plans are to develop the property for a child care facility and that outlines a timeline for those improvements. You may include company information and references and any other information that demonstrate your capacity to successfully complete the development proposal.*

This offer is made and surety submitted on behalf of:

Name of Individual, Business, or Corporation: Cemo Commercial, Inc
 Address: 950 Glenn Drive, Suite 250
 City, State, Zip Code Folsom, Ca. 95630
 Telephone Number: (916) 933-2300
 Email: doug@cemocommercial.com



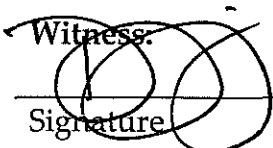
 Signature

 October 6, 2015

 Date

Sammy F. Cemo

 Printed Name

Witness:


 Signature

Douglas J. Quiroz

 Printed Name



October 14, 2015

City of Oakley
Attn: Dwayne Dalman
3231 Main Street
Oakley, Ca. 94561

RE: 1420 Neroly Road Invitation to Bid – Increase in Bid Amount

Dear Mr. Dalman:

This letter is to serve as notice that Cemo Commercial, Inc. intends to increase their bid amount from \$625,000 to \$730,458.75 for the purpose of developing an early childcare facility located at the property referenced above.

Sincerely,

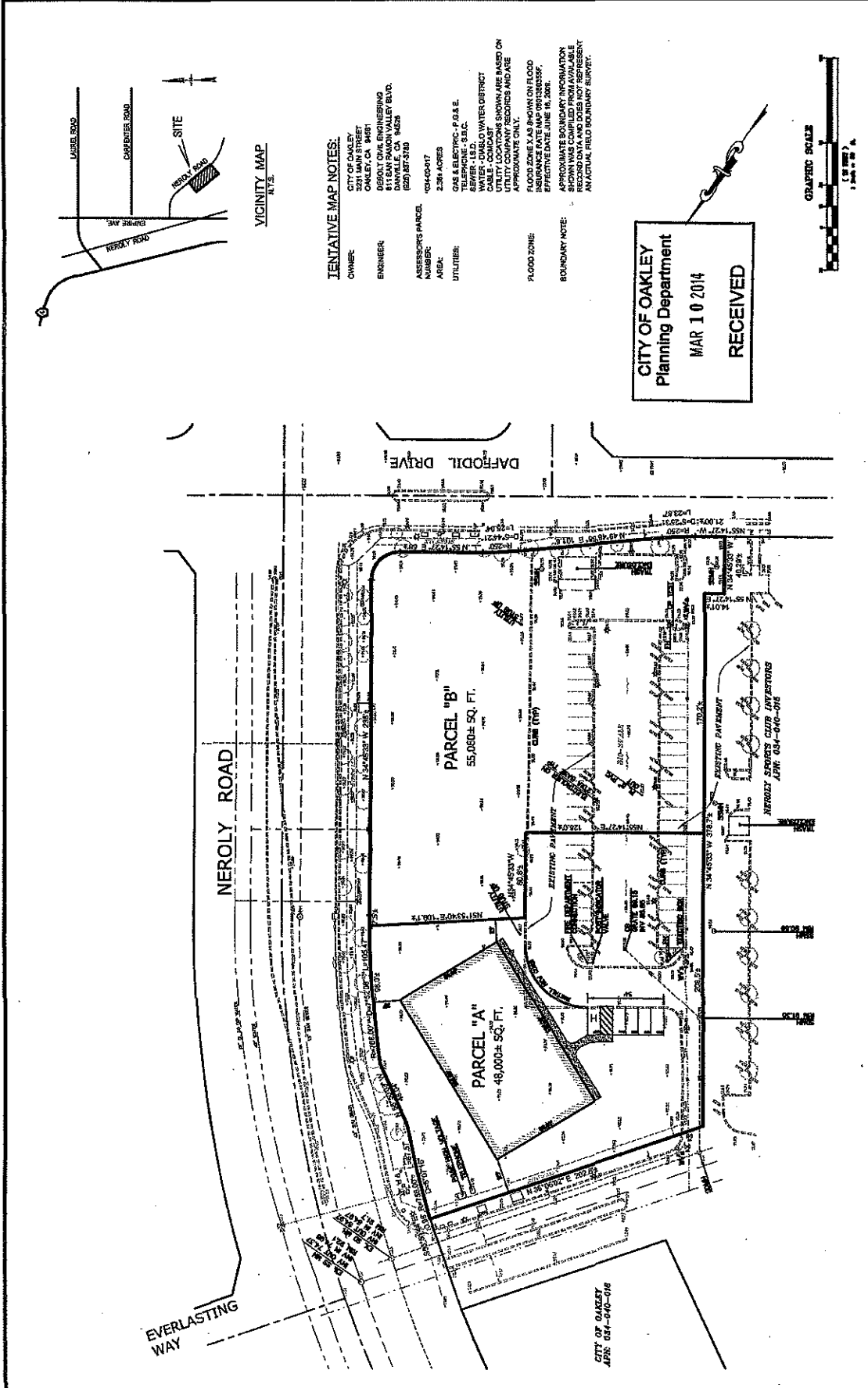
A handwritten signature in black ink, appearing to read 'Douglas J. Quiroz', is written over a circular stamp or watermark.

Douglas J. Quiroz
President, Broker
Cemo Commercial, Inc

EXHIBIT "C"

TENTATIVE PARCEL MAP

[Attached]



CITY OF OAKLEY
 Planning Department
 MAR 10 2014
 RECEIVED

03-13 TENTATIVE MAP		NEROLY CHILD CARE		CITY OF OAKLEY CONTRA COSTA COUNTY CALIFORNIA	
REVISIONS # _____ DATE _____		SHEET NO. _____ TOTAL SHEETS _____		DRAWN BY: _____ CHECKED BY: _____ DATE: _____	
DEBOIT CIVIL ENGINEERING 811 SAN RAMON VALLEY BOULEVARD DANVILLE, CA 94526 TEL: 925-837-5780 FAX: 925-837-4878 WWW.DBOITCIVIL.COM					

CHILDCARE GRANT AGREEMENT

City of Oakley/ Cemo Commercial

THIS CHILDCARE GRANT AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2015 by and between the City of Oakley, a municipal corporation ("CITY") and Cemo Commercial, Inc., a California corporation ("DEVELOPER").

Recitals

- A. The parties to this Agreement are concurrently entering into a Real Property Purchase Agreement of even date herewith (the "Purchase and Sale Agreement") for the purchase and sale of an approximately 2.366-acre parcel of land owned by CITY generally located at 1137-1311 Neroly Road, Oakley, California, APN 034-040-017-5.
- B. Capitalized terms and definitions contained in the Purchase and Sale Agreement shall have the same meaning in this Agreement.
- C. DEVELOPER intends to improve and construct upon a portion of the subject property a commercial Child Care Project. CITY has in its possession funds collected from housing developers to mitigate the lack of childcare facilities within the Oakley area. CITY wishes to grant to DEVELOPER, and DEVELOPER wishes to receive from CITY, funds from the childcare mitigation fee account for the purpose of constructing a Child Care Project, all as specified in this Agreement.

The parties agree as follows:

- 1. CITY hereby makes available to DEVELOPER, on terms specified herein, the amount of (i) Five Hundred Twenty-five Thousand Dollars (\$525,000.00), and (ii) the net Disputed Grant Funds (as defined below) that may be recovered by CITY as set forth in Section 7 below (collectively, the "Grant Funds") for the construction of the Child Care Project.
- 2. The Child Care Project development shall be subject to all of the usual and customary CITY land use laws and regulations, and nothing herein grants approval of any particular design of the Child Care Project, although the CITY warrants that the size and scope of a Child Care Project specified herein does comply with uses allowed at the subject location by its General Plan and Zoning Ordinance.

3. Attached hereto are an Invitation to Bid from the CITY (Exhibit "1") and DEVELOPER's Offer of Purchase (Exhibit "2"), both of which explain the intention of the proposed project. The project and its terms and conditions shall be as stated in the Invitation and the Offer, unless contradicted by this Agreement.
4. The Child Care Project to be constructed by DEVELOPER shall be approximately 10,000 square feet in size with a playground that is approximately 12,000 - 14,000 square feet in size. In addition to the secure playground, the Child Care Project shall have open space amenities and landscaping as required by the State of California Childcare Licensing Authority and as approved by the City in its Design Review Permit.
5. It is contemplated that the Child Care Project will be operated by a third party childcare provider ("THIRD PARTY PROVIDER"). DEVELOPER will require such THIRD PARTY PROVIDER to abide by and obey the operational requirements of this Agreement. The CITY is hereby designated a Third Party Beneficiary of the agreement between the DEVELOPER and the THIRD PARTY PROVIDER for the limited purpose of enforcing the operational requirements specified herein.
6. Because the Grant Funds (made available from CITY's Childcare Mitigation account) will be used to help construct the Child Care Project, DEVELOPER will be required, pursuant to California Labor Code Sec. 1771 *et seq.* to require workers in the design, preconstruction and construction phases that are paid by DEVELOPER's use of grant funds herein to be paid prevailing wages, as defined and required by the Labor Code. DEVELOPER shall comply with all requirements of the Labor Code for the payment and documentation of prevailing wages. DEVELOPER shall notify all bidders that prevailing wages are required for the Child Care Project. The Parcel B Project to be developed on Parcel B will also be subject to the recorded Project Labor Agreement which exists with the Plumbers & Steamfitters Union, Local 159, the International Brotherhood of Electrical Workers, Local 302, and the Sheet Metal Workers, Local 104.
7. The Grant funds can be drawn down by DEVELOPER under the terms and conditions found below. The parties understand that no Grant Funds may be used for paying the Purchase Price of the Property. Grant Funds may be used only for design, engineering and planning pre-construction work and actual construction costs for the Child Care Project.
 - A. \$525,000 shall be disbursed to DEVELOPER upon CITY granting a Certificate of Occupancy for the Child Care Project, which shall not be unreasonably held.

- B. CITY may elect (in the sole discretion of CITY) to legally pursue the collection of grant funds initially delivered to and received by a prior developer (the "Disputed Grant Funds"). If and when recovered by CITY, the Disputed Grant Funds, less the amount of costs and fees incurred by the CITY to collect the Disputed Grant Funds shall be disbursed to DEVELOPER by CITY provided that all Conditions to Disbursement of Grant Funds have been satisfied.
8. DEVELOPER (i) shall begin construction of the Child Care Project no later than fifteen (15) months from the full execution of the Purchase and Sale Agreement, and (ii) DEVELOPER shall complete construction and obtain a Certificate of Occupancy for the Child Care Project within twenty-four (24) months from the Close of Escrow of the Property (collectively, the "Conditions to Disbursement of Grant Funds"). If the Conditions to Disbursement of Grant Funds are not timely satisfied by DEVELOPER, CITY shall not be obligated to disburse the Grant Funds to DEVELOPER; provided, however DEVELOPER may request an extension of time from City for performance of the Conditions to Disbursement of Grant Funds to meet circumstances that were unforeseen or out of the DEVELOPERS control. Such extension will be executed by both parties after approval by CITY. Unless an extension is granted by CITY, if DEVELOPER does not timely satisfy the Conditions to Disbursement of Grant Funds, the Grant Funds will not be disbursed at any future time for the Child Care Project on this site and the Grant Funds will be reallocated to another site.
9. Prior to receipt of the Grant Fund drawdown, DEVELOPER shall submit to CITY evidence that the THIRD PARTY PROVIDER is legally bound to provide childcare services for at least five years from the date of issuance of the certificate of occupancy. Additionally, DEVELOPER covenants that neither DEVELOPER, or its successors or assigns, will convert the Child Care Project for uses other than childcare for at least five (5) years from issuance of the certificate of occupancy. Failure to do so will cause a lien to be placed on the Child Care Project property (Parcel A) in an amount equal to the Grant Funds disbursed for the Child Care Project.
10. DEVELOPER and CITY do not have any equity or partnership relationship and their obligations are solely as specified herein. CITY shall have no liability or responsibility for any injury or death to any worker on the construction project, nor to any person or entity claiming that they have not been paid, or been underpaid, for work performed in the pre-construction and/or construction of the Child Care Project. DEVELOPER shall indemnify and hold harmless the CITY, its officers, agents and employees, for any such claim. DEVELOPER shall also obtain from the THIRD PARTY PROVIDER a hold harmless and indemnify agreement protecting the CITY, its offices, agents and employees.

11. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.
12. Both parties have had the opportunity to have this Agreement reviewed by their attorneys, who have had the opportunity to comment upon the drafting and wording of this Agreement. Therefore, no interpretation shall be given to the terms of this Agreement which would favor or disfavor the drafter of this Agreement.
13. Litigation Costs: If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs, in addition to any other relief to which such party may be entitled.
14. Assignability: Cemo Commercial (DEVELOPER) reserves the right to transfer and or assign this Agreement and all of DEVELOPER 's rights under it to an entity in which DEVELOPER and/or its shareholders, directors, officers and affiliates have a direct or indirect ownership interest or otherwise control, subject to the terms of this Agreement.
15. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery, including delivery by facsimile and/or Portable Document Format (pdf) email transmission, and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. Signatures transmitted via facsimile or e-mail shall be considered authentic and binding.

[SIGNATURES ON FOLLOWING PAGE]

CITY

DEVELOPER

City of Oakley, a municipal corporation

By: _____
Bryan H. Montgomery
City Manager

By: _____
Cemo Commercial, Inc.

ATTEST:

Libby Vreonis
City Clerk

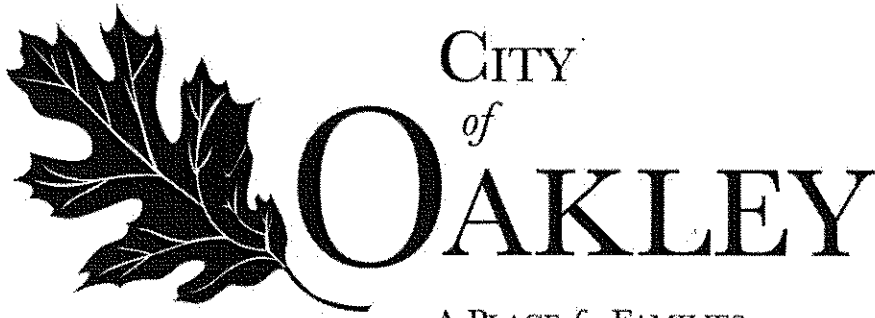
APPROVED AS TO FORM:

Derek P. Cole
City Attorney

EXHIBIT "1"

INVITATION TO BID FROM THE CITY

[Attached]

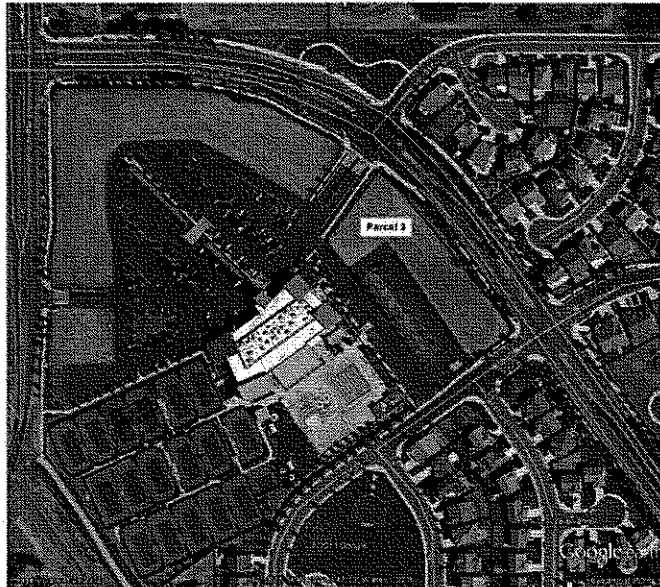


A PLACE *for* FAMILIES
in the HEART *of the* DELTA

INVITATION TO BID PACKET

*for the Purchase of Property to
Develop a Child Care Facility at*

1420-1480 Neroly Road
(APN 034-040-017-5)





INVITATION TO BID ON PROPERTY

The City of Oakley invites sealed bids for the purchase of real property located at 1420-1480 Neroly Road in Oakley, Contra Costa County, California (APN 034-040-017-5) adjacent to the Diamond Hills Sports Club for the purpose of developing a Child Care Facility. Grant funds in the amount of \$525,000 are available to assist with the project. The property includes 2.366 acres; however, bids will be accepted for all or part of the parcel.

The bid packet that includes a vicinity map and other relevant information can be obtained by contacting Dwayne Dalman at dalman@ci.oakley.ca.us.

Bids must be received at 3231 Main Street, Oakley, CA 94561 **no later than 2:00 pm. October 9, 2015** at which time they will be publicly opened by the City Clerk.

The City of Oakley, at its sole discretion, reserves the right to reject any and all bids.



DESCRIPTION OF THE PROPERTY

The City of Oakley offers for purchase up to 2.366 acres located at 1420-1480 Neroly Road, just north of the Diamond Hills Sports Club, in Oakley, Contra Costa County, California. The subject property is identified in the Contra Costa County Tax Assessor's Records as APN 034-040-017-5 (see Exhibit "A").

Site improvements

The vacant parcel is a part of the Neroly Commercial Center site that has adjacent frontage improvements including curb, gutter, sidewalk and landscaping improvements on the west, north and east sides. The southern portion of the property has some asphalt parking (see aerial photograph as Exhibit "B").

Utilities

Utilities including water, sewer, electricity, natural gas, and telephone are available on or adjacent to the site (see Exhibit "C"). Coordination with the specific utilities is recommended to determine what final connections, extensions and development fees would be required for the bidder's project. A site visit to the property is strongly encouraged.

Zoning

The parcel is within a P-1 Planned Unit Development (The Neroly Commercial Center) with the uses conditioned to follow the "commercial" regulations of the zoning code. A Conditional Use Permit has already been granted on the property for a child care facility. This Conditional Use Permit will expire on June 10, 2016 and substantial construction must commence prior to that time.

Tentative Parcel Map

A Tentative Parcel Map (see Exhibit "D") has already been approved on the site; however, adjustments to this parcel map will be considered. (It is most likely that the child care facility would only need one of the identified parcels in the Tentative Map).

Design Review

There is also Design Review approval on the site (see the approved elevations in Exhibit "E"). Modifications to this design will be considered.

CHILD CARE GRANT FUNDS

In years past the City of Oakley has collected Child Care Impact Fee funds from new development for the specific purpose of mitigating new development's impact on child care. While the City no longer collects this particular impact fee, approximately five hundred and twenty-five thousand dollars (\$525,000) are available as grant funds to assist with the overall costs of the construction of the child care facility project contemplated with this Invitation to Bid. (These funds are not eligible for use as operational funds, but can be used to defray the design and construction of the actual child care facility).

SPECIAL CONDITIONS

1. The subject property will be sold "as is."
2. The City will pay no broker's fee, finder's fee, commission, or other compensation to any party claiming to counsel or represent any proposer regarding the sale of the subject property or consummation of the lease hereinafter described.
3. No representations will or have been made by the City that the subject property meets all the ordinances, regulations or laws governing bidders' proposed development of the property.
4. Any adjustments to the Tentative Parcel Map or lot line adjustment to adjust the size of the proposed parcels would be done at Buyers' expense.
5. Because the City's Child Care Impact Fee funds will be used to help construct the project, the selected developer will be required, pursuant to California Labor Code Sec. 1771 et seq. to require workers in the design, preconstruction and construction phases that are paid by developer's use of grant funds herein to be paid prevailing wages, as defined and required by the Labor Code. Developer shall comply with all requirements of the Labor Code for the payment and documentation of prevailing wages. The selected developer must notify all bidders that prevailing wages are required for this project.
6. The site also has a recorded Project Labor Agreement which requires coordination with the Plumbers & Steamfitters Union, Local 159, the International Brotherhood of Electrical Workers, Local 302, and the Sheet Metal Workers, Local 104 on those three trades as part of the overall construction of the project.
7. Any use of the subject property will be in compliance with all relevant laws and regulations, including Title VI of the Federal Civil Right Act of 1964, as amended, i.e., without discrimination as to race, color, or national origin.
8. No billboard, sign, or other outdoor advertising devices shall be erected upon the subject property other than those indicating ownership or on-premise advertising

and shall be subject to reasonable restrictions with respect to number, size, location, and design by regulation of the City of Oakley, subject to local zoning ordinances.

9. Any public utilities or municipalities having facilities under, over, or through the subject property as of the date of its conveyance to the selected bidder shall have the right and easement to continue to maintain, operate, and renew their facilities within the subject property.
10. This Invitation to Bid is based upon the requirements of Title 2 Article 8 of the Oakley Municipal Code.
11. Sale of this property is subject to and contingent upon the execution of a Purchase Agreement and a Child Care with the City of Oakley.
12. Eventual owner of the property will be subject to common area maintenance (CAM) charges that include the upkeep and maintenance of the parking lot, landscaping and lighting. The fee has been approximately \$600 per month for the entire Parcel 3.
13. The child care facility contemplated with this Invitation to Bid must be substantially complete within 18 months of closing on the property.

INSTRUCTIONS TO BIDDERS

General

Sealed bids will be accepted no later than **2:00 pm. on October 9, 2015**. Emailed or faxed bids will *not* be accepted. All bids must be delivered in a sealed envelope and *clearly marked* as follows:

City of Oakley
Attn: Dwayne Dalman
3231 Main Street
Oakley, CA 94561
"Neroly Child Care Facility"

While no minimum bid is set forth, the Contra Costa County Assessor has placed a value of approximately seven dollars (\$7) per square foot, which is believed to be *considerably below* its market value due to its location and the existing improvements. It should be noted that if a bid is for only a portion of the parcel, the location of the desired portion would likely justify a higher per square foot bid than if the entire parcel is to be purchased. The City reserves the right to reject any and all bids and for any reason.

The City may consider a long-term lease; however, the preference is to sell all or a portion of the property for the proposed child care facility. It is important to note that the City does not desire to sell any of the land for "speculation," but only for impending vertical development. In other words, it is not likely that the City will sell more any portion of the parcel that is not needed for the actual child care facility).

Bid Surety and Closing

The bid must be accompanied by the enclosed Offer to Purchase form, duly executed, and a cashier's or certified check in the amount of Ten Thousand Dollars (\$10,000) made payable to the "City of Oakley" as a good faith deposit to be credited towards the final purchase price. This check will be forfeited if the winning bidder fails to execute a Purchase and Sales Agreement with the City of Oakley within forty-five (45) days from the date the winning bidder is notified in writing that the bid was accepted by the City Council. Should the City Council reject the bids, the bidders' deposit checks will be promptly returned.

Development Plans and Timeline for Improvements

In addition to the proposed purchase price, the City shall evaluate and consider the bid and proposal that best meets the City's desire for a successful, attractive development at the property after the sale. *The purpose of this sale is not for buyers' land speculation, but for some near-term (completion within 18 months) vertical development of a child care facility.* Restated, the City Council intends on awarding a contract to the bidder with the highest price offered *but also that* closest meets the City's expectations of quality economic development. A bidder's qualifications and experience are important factors.

Questions and Information

Any questions or requests for additional information *must be submitted by email* to dalman@ci.oakley.ca.us by October 7, 2015. Responses will be distributed to all parties who requested bid packets by 5:00pm on October 8, 2015.

Bid Deadline

Any Bids must be received at 3231 Main Street, Oakley, CA 94561 **no later than 2:00 pm. October 9, 2015** at which time they will be publicly opened by the City Clerk.

**THANK YOU FOR YOUR INTEREST
IN THIS DEVELOPMENT OPPORTUNITY !!!**



OFFER OF PURCHASE FORM

On this date and in accordance with the terms and conditions set forth in the Invitation to Bid, this offer is submitted to purchase all or a portion of the real property known as APN 034-040-017-5 located at 1420-1480 Neroly Road in Oakley, Contra Costa County, California.

Amount:	\$
Written Amount:	
Square footage of proposed purchase:	

Also, as required by the terms of the offering, a bid surety in the amount of Ten Thousand Dollars (\$10,000) in the form of a cashier's or certified check made payable to "The City of Oakley" is enclosed.

REQUIRED: *Attach to this form a description of no more than seven (7) pages that details what your plans are to develop the property for a child care facility and that outlines a timeline for those improvements. You may include company information and references and any other information that demonstrate your capacity to successfully complete the development proposal.*

This offer is made and surety submitted on behalf of:

Name of Individual, Business, or Corporation: _____
 Address: _____
 City, State, Zip Code _____
 Telephone Number: _____
 Email: _____

 Signature

 Printed Name

 Date

Witness:

 Signature

 Printed Name

EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of Oakley, County of Contra Costa, State of California, described as follows:

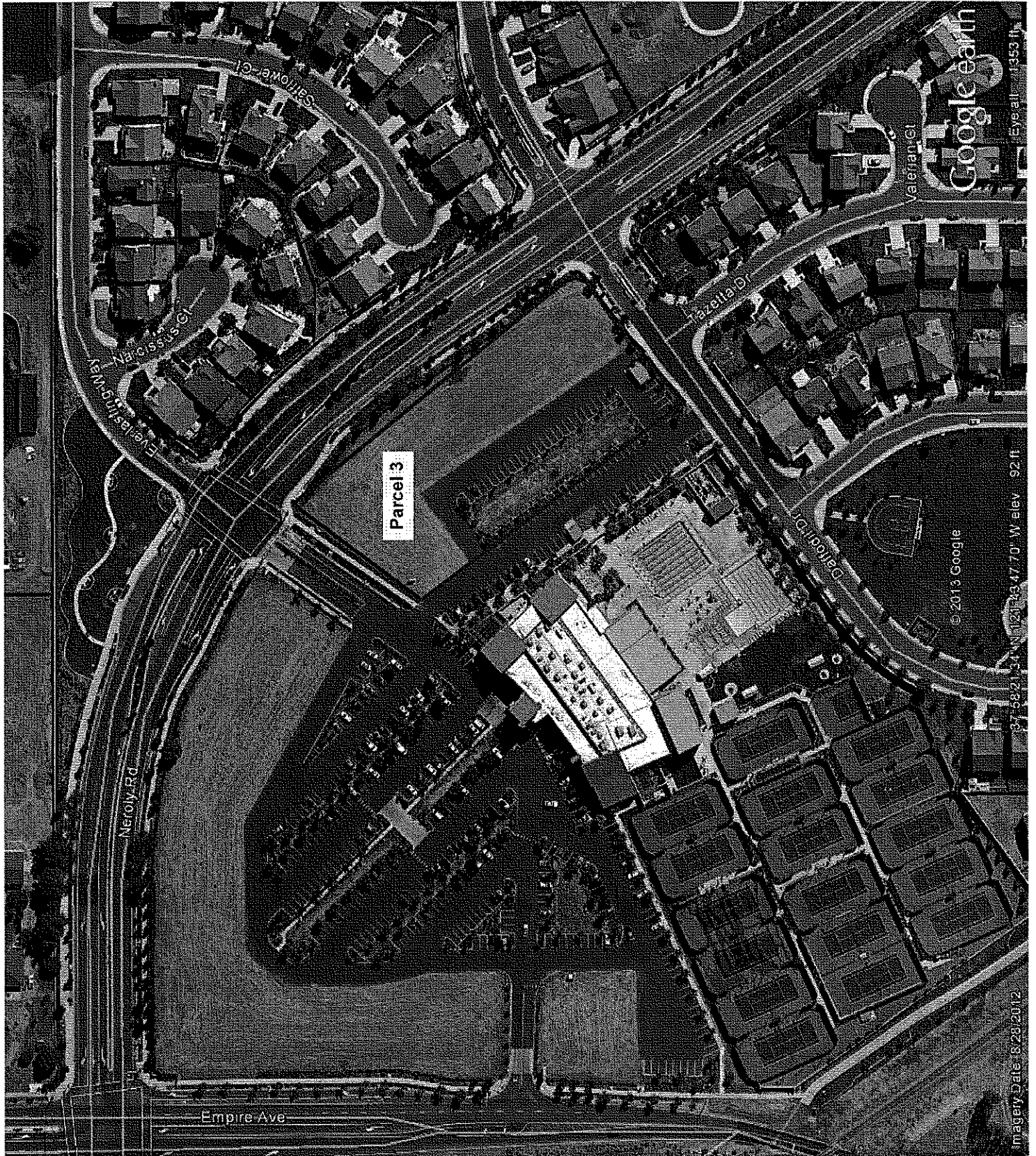
PARCEL 3 IS THE 2.366 ACRE PARCEL AS SHOWN ON THE PARCEL MAP MS 07-976, FILED NOVEMBER 14, 2007, IN BOOK 201 OF PARCEL MAPS PAGE 28, CONTRA COSTA COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS RIGHTS 500 FEET BELOW THE SURFACE OF THE PROPERTY, WHICH RIGHTS ARE RESERVED BY APRICOT LAND COMPANY, A CALIFORNIA GENERAL PARTNERSHIP AND SHALL EXCLUDE THE RIGHT OF SURFACE ENTRY AS RESERVED IN DEED RECORDED DECEMBER 24, 2004 AS INSTRUMENT NO. 2004-0497318 OFFICIAL RECORDS.

APN: 034-040-017-5

See attached Parcel Subdivision Map MS 07-976 and Assessors Parcel Map

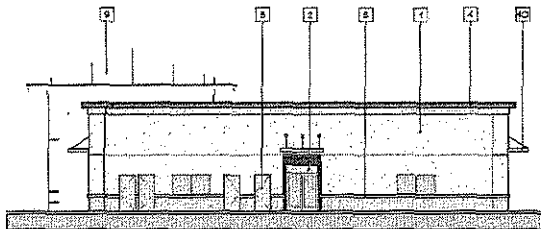
EXHIBIT B



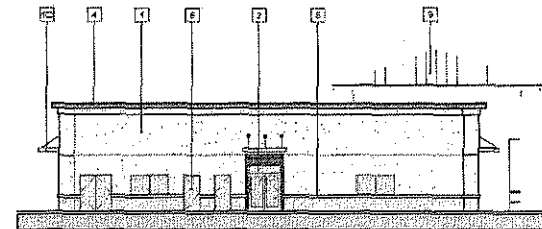


North Elevation

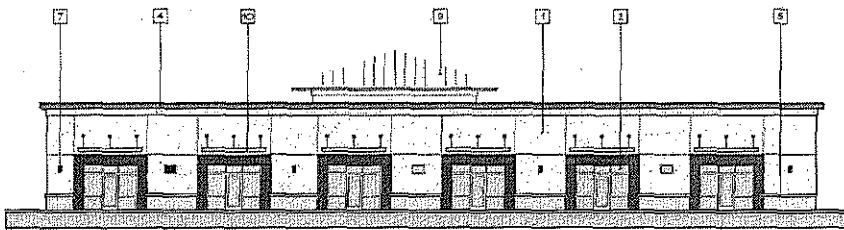
TYPICAL KEY NOTES	
1	PAINTED TEXTURE CEMENT PLASTER FINISH - LIGHT SAND TEXTURE
2	CLEAR ANODIZED ALUMINUM - BLUE-GREEN GLASS
3	STANDING SEAM METAL ROOF SERRIGE - ZINC GRAY
4	CORNICE ELEMENT
5	INTERMEDIATE CORNICE ELEMENT
6	METAL HIGH-DOOR
7	DECORATIVE LIGHT FIXTURE
8	SEWAGE LOCATION
9	ROOF SYSTEM
10	METAL CANOPY



West Elevation



East Elevation



South Elevation

Child Care Center
 Neroly Road & Empire Ave.
 Oakley, California

EXHIBIT E

PERKINS, WILLIAMS & COTTEBELL
A-R-C-H-I-T-E-C-T-S
 1640 WHITE ROCK BL, MILPITAS CALIFORNIA, CA 95035
 408.861.1000 FAX 408.861.1000
 www.perkinswilliams.com

Elevations
 Child Care Center

Project: SEEKER DEVELOPMENT
 Job No. 14352 Date: 4-14-2014
 Scale: AS NOTED

A10

EXHIBIT "2"

DEVELOPER'S OFFER OF PURCHASE

[Attached]



OFFER OF PURCHASE FORM

On this date and in accordance with the terms and conditions set forth in the Invitation to Bid, this offer is submitted to purchase all or a portion of the real property known as APN 034-040-017-5 located at 1420-1480 Neroly Road in Oakley, Contra Costa County, California.


Amount:	\$ 625,000.00
Written Amount:	Six Hundred Twenty Five Thousand Dollars
Square footage of proposed purchase:	102,801

Also, as required by the terms of the offering, a bid surety in the amount of Ten Thousand Dollars (\$10,000) in the form of a cashier's or certified check made payable to "The City of Oakley" is enclosed.

REQUIRED: *Attach to this form a description of no more than seven (7) pages that details what your plans are to develop the property for a child care facility and that outlines a timeline for those improvements. You may include company information and references and any other information that demonstrate your capacity to successfully complete the development proposal.*

This offer is made and surety submitted on behalf of:

Name of Individual, Business, or Corporation: Cemo Commercial, Inc
 Address: 950 Glenn Drive, Suite 250
 City, State, Zip Code Folsom, Ca. 95630
 Telephone Number: (916) 933-2300
 Email: doug@cemocommercial.com

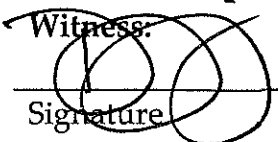


 Signature
 October 6, 2015

 Date

Sammy F. Cemo

 Printed Name

Witness:


 Signature

Douglas J. Quiroz

 Printed Name



October 14, 2015

City of Oakley
Attn: Dwayne Dalman
3231 Main Street
Oakley, Ca. 94561

RE: 1420 Neroly Road Invitation to Bid – Increase in Bid Amount

Dear Mr. Dalman:

This letter is to serve as notice that Cemo Commercial, Inc. intends to increase their bid amount from \$625,000 to \$730,458.75 for the purpose of developing an early childcare facility located at the property referenced above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Douglas J. Quiroz', is written over a circular stamp or watermark.

Douglas J. Quiroz
President, Broker
Cemo Commercial, Inc