

RESOLUTION NO. 2016 - 07 (OVERSIGHT BOARD)

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY APPROVING THE SELECTION OF EASTDIL SECURED TO ACT AS BROKER FOR THE SALE OF THE GATEWAY PARCEL 2 PROPERTY, AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO A CONTRACT WITH THE BROKER CONSISTENT WITH THE TERMS PRESENTED, AUTHORIZING THE SUCCESSOR AGENCY TO INCUR CERTAIN COSTS NECESSARY FOR THE SALE OF THE GATEWAY PROPERTY, INCLUDING SECURING DUE DILIGENCE AND DISCLOSURE REPORTS, WHICH COSTS WILL BE REIMBURSED FROM SALE PROCEEDS AND AUTHORIZING THE EVALUATION TEAM TO DETERMINE THE PROCEDURES FOR SALE OF THE GATEWAY PROPERTY IN CONSULTATION WITH THE BROKER PLAN

BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the California Legislature enacted Part 1.85 of the Health and Safety Code, Sections 34170 et seq. (the “Dissolution Law”) to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.);

WHEREAS, pursuant to Health and Safety Code section 34173, the City Council of the City of Santa Clara (the “City Council”) declared that the City of Santa Clara, a charter city (the “City”), would act as successor agency (the “Successor Agency”) for the dissolved City of Santa Clara Redevelopment Agency (the “RDA”) effective February 1, 2012;

WHEREAS, on February 1, 2012, the RDA was dissolved pursuant to Health and Safety Code Section 34172;

WHEREAS, prior to dissolution of the RDA, the RDA owned certain properties which have subsequently been transferred to the Successor Agency; and

WHEREAS, in accordance with the Dissolution Law, the Oversight Board and the Department of Finance have approved a Long Range Property Management Plan (“LRPMP”) providing for the disposition of the former RDA properties; and

WHEREAS, the Oversight Board pursuant to Resolution No. 2016-03 approved the appointment of an Evaluation Team consisting of members of the Oversight Board to work with the Successor Agency with regards to the sale of the former RDA properties in accordance with the LRPMP; and

WHEREAS, the Evaluation Team recommended to the Oversight Board that the Successor Agency engage the services of a real estate broker for the sale of the Gateway Parcel 2 property and pursuant to Resolution No. 2016-06 the Oversight Board directed the Evaluation Team to solicit proposals for a real estate broker and to make a recommendation to the Oversight Board for the selection of a broker including a sales commission structure for such broker; and

WHEREAS, the Successor Agency solicited proposals for brokerage services from real estate brokers with the required experience and received five proposals; and

WHEREAS, the Evaluation Team reviewed the proposals received and interviewed two brokerage firms; and

WHEREAS, based on the criteria set forth in Resolution 2016-06 and the information provided by the brokerage firms in their proposals and in the interviews, the Evaluation Team has determined that Eastdil Secured has the necessary qualifications to provide the brokerage services that will maximize the sales proceeds from the sale of the Gateway Parcel 2; and

WHEREAS, the Evaluation Team has determined that the commission structure proposed by Eastdil Secured as set forth in their proposal is a fair and reasonable commission; and

WHEREAS, in order to maximize the sales proceeds from the Gateway Parcel 2 property, the broker is recommending that certain disclosure and due diligence reports be prepared by the Successor Agency prior to solicitations; and

WHEREAS, the Oversight Board, pursuant to Resolution No. 2016-04 established procedures for the sale of the properties identified in the LRPMP to be sold; and

WHEREAS, the Evaluation Team has determined based on information received from Eastdil Secured as well as from the other brokers interviewed that alternative procedure for the sale of the Gateway Parcel 2 property from the procedures identified in Resolution No. 2016-04 may maximize the sales proceeds received for the property.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The Oversight Board hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff, Oversight Board members, and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

SECTION 2. The Oversight Board hereby approves the Evaluation Team's recommendation that the Successor Agency hire Eastdil Secured to act as the real estate broker for the sale of Gateway Parcel 2 and authorizes the Successor Agency to enter into a brokerage agreement with Eastdil Secured that provides for a commission to be paid to Eastdil Secured consistent with the commission structure set forth in the Eastdil Secured Proposal dated July 28, 2016 and attached

to this Resolution as Exhibit A. The commission and any costs incurred by Eastdil Secured that are required to be reimbursed by the Successor Agency shall be paid from the sale proceeds received for Gateway Parcel 2 prior to use of such sales proceeds to pay the Successor Agency's enforceable obligations or distribution of the sales proceeds to the taxing entities.

SECTION 3. The Oversight Board hereby authorizes the Successor Agency to enter into contracts and obtain services necessary to complete disclosure and due diligence reports recommended by Eastdil Secured, including, but not limited to, environmental reports, geological reports, title reports, provided that the Evaluation Team has approved the scope of services of such contracts. The Successor Agency shall be reimbursed for any costs incurred related to such contracts and services from the Successor Agency property sales proceeds prior to use of such sales proceeds to pay the Successor Agency enforceable obligations or distribution of such sales proceeds to the taxing entities.

SECTION 4. The Oversight Board hereby authorizes the Evaluation Team to approve the sales process for the Gateway Parcel 2 based on recommendations from Eastdil Secured, notwithstanding the sales process approved by the Oversight Board pursuant to Resolution No. 2016-4.

SECTION 5. This resolution shall take effect immediately in accordance with Health and Safety Code Section 34191.5(f).

SECTION 6. Severability. If any provision or clause of this Resolution or the application thereof is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or application; and to this end, the provisions of this Resolution are declared to be severable.

CERTIFICATION

I HEREBY CERTIFY THE FORGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AT A SPECIAL MEETING THEREOF HELD ON 29th DAY OF JULY 2016, BY THE FOLLOWING VOTE:

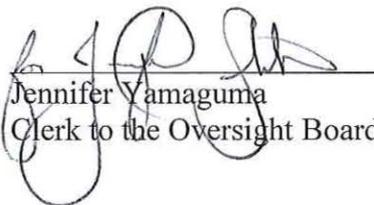
AYES:	BOARD MEMBERS:	Ameling, Cauble, O'Neill, Zaderey, Williams, and Vice-Chair Maduli
NOES:	BOARD MEMBERS:	None
ABSTAIN:	BOARD MEMBERS:	None
ABSENT:	BOARD MEMBERS:	Chairperson Gage

APPROVE:



Don F. Gage
Chairperson

ATTEST:



Jennifer Yamaguma
Clerk to the Oversight Board



160 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TEL 408 533 9200 FAX 408 533 9205

July 28, 2016

Ms. Ruth Shikada
Successor Agency to the Former Redevelopment
Agency of the City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Gateway Property Parcel #2, Santa Clara, California

Dear Ruth:

The purpose of this letter is to describe the terms and conditions under which Eastdil Secured Broker Services, Inc. (the "Broker") is authorized to arrange the sale of the fee interest in the Gateway Property Parcel #2 located at 5451 Great America Parkway, in Santa Clara, California (the "Property") on behalf of Successor Agency to the former Redevelopment Agency of the City of Santa Clara (the "Owner").

1. Grant. The Owner hereby grants to Broker the exclusive right to sell the Property for a period commencing on the date hereof and continuing through and including January 31, 2017 (the "Exclusive Period").

If the Owner should enter into a written agreement for the sale of the Property before the termination of the Exclusive Period, but the closing does not occur until after the termination of such period, Broker shall be entitled to be paid the compensation in accordance with the terms of this agreement whenever the closing occurs.

If the Owner sells the Property to a party with whom Broker dealt during the Exclusive Period and a closing of the sale with such party, or any affiliate or subsidiary thereof, takes place within 6 months after the termination of the Exclusive Period, Broker shall be entitled to the compensation provided for in this agreement. The provisions of this paragraph shall in no way be deemed to limit Broker's right in the previous paragraph.

2. Compensation. Owner agrees to pay Broker, and Broker agrees to accept from Owner, compensation for arranging the sale of the Property in an amount equal to \$50,000 plus 1.5% of the that portion of the gross sale price of the Property that exceeds \$90,000,000 but is less than \$120,000,000 plus 0.85% the that portion of the gross sale price of the Property that equals or exceeds \$120,000,000. In each case, gross sale price shall (i) include, without limitation, any cash consideration paid or payable in connection with a sale, the then outstanding principal balances of any mortgages or deeds of trust constituting a lien on the Property assumed,

or to which the Property is taken subject, by the purchaser, the face amount of any seller financing provided by the Owner and the fair market value of all other consideration payable (including, without limitation, insurance proceeds) in connection with the sale of the Property, without deduction for closing expenses, adjustments or costs of any kind. Said compensation shall be earned by and payable to Broker as, if and when the closing of the sale occurs. Broker, in all events, shall be entitled to the aforesaid compensation if the Owner consummates the sale of the Property or signs a written agreement for the sale of the Property during the Exclusive Period whether or not the Owner utilizes Broker's services.

Notwithstanding anything contained herein to the contrary, if a sale of the Property should not close due to the Owner's willful default in any of its obligations under any contract that may be signed for the sale of the Property, Broker shall be entitled to the compensation set forth in this agreement on the date of such default, provided that Broker would have been entitled to receive the compensation provided in this agreement if the sale of the Property had actually closed on such date.

Broker shall also be entitled to the compensation set forth in this agreement if the Owner elects to enter into an exchange, assignment or other transfer option or refinance ("Alternative Transaction"), so long as a purchase offer or offer to enter into an Alternative Transaction was accepted by the Owner prior to the end of the Exclusive Period. In the event of an exchange, assignment or other transfer, the compensation will be based on the fair market value of the Property that is being exchanged, assigned or transferred. In the event of a refinancing, the compensation shall be based on the gross financing commitment, including the amount of any earnout or holdback. To the extent Broker only arranges mezzanine debt, the gross financing commitment shall be the aggregate of the mezzanine debt plus the amount of the underlying first mortgage debt that remains on the Property.

3. Expenses. In the event Owner determines not to sell the Property, then, Broker shall be entitled to reimbursement for its out-of-pocket expenses, including, but not limited to, airfare, meals, transportation and all costs incurred in the preparation of marketing materials (e.g., photography, cartography, graphic arts, reproductions, printing, etc.) ("Standard Expenses"). Included within Standard Expenses subject to reimbursement only if the Owner elects not to sell the Property, will be amounts to cover the costs to be incurred in connection with Broker's internal graphic design and production of marketing materials for the Property, and to cover the cost to maintain a "virtual war" room for the Property. In the event Broker is entitled to reimbursement, Owner shall promptly reimburse Broker for any such expenses incurred upon Owner's receipt of an invoice from Broker.

4. Due Diligence Expenses. Owner has requested that Broker obtain certain reports and disclosures related to the Property including, but not limited to, a Phase 1 environmental assessment of the Property and a geotechnical report on the Property ("Due Diligence Reports"). Broker agrees to obtain such Due Diligence Reports as Owner may request, provided, that prior to entering into any contract for any Due Diligence Report, Broker obtains the consent of the Owner to the scope and payment terms of such Contract. Owner agrees to reimburse the Broker for any costs incurred by the Broker in obtaining the Due

Diligence Reports at the close of the sale of the Property, provided, however, if the Property has not closed during the Exclusivity Period for whatever reason, the Owner agrees to pay the Broker the costs incurred for the Due Diligence Reports at the expiration of the Exclusive Period. Broker shall provide the Owner with copies of the Due Diligence Reports and all such reports shall be the property of the Owner and Owner shall be entitled to rely upon the information provided in the reports as if the Owner had commissioned the Due Diligence Reports.

5. **Information.** The Owner shall make available to Broker the documents and other information in the Owner's possession which in the reasonable judgment of Broker are necessary or appropriate for the fulfillment of its assignment hereunder and the proper marketing of the Property. All documents and information supplied to Broker by the Owner shall, to the best of the Owner's knowledge, be complete and accurate and the Owner shall correct any information which it learns is incomplete or inaccurate. The Owner may designate certain information as confidential, and Broker will so treat such information. The Owner understands that the information provided to Broker may be used in the preparation of marketing materials that will be distributed to prospective purchasers. The Owner will be asked to approve all marketing materials in advance of their use. The Owner acknowledges and agrees that, as between Broker and the Owner, the Owner is responsible for the accuracy and completeness of all information regarding the Property that is provided by or at the direction of the Owner. Additionally, Owner agrees to provide to Broker a copy of the final form of the closing or settlement statement(s) prepared in connection with the closing and settlement of the sale transaction(s).

6. **Analysis.** To the extent that Broker prepares any analysis, valuation, appraisal or other report ("Analysis") regarding the economic value of the Property or Owner's interest therein, Owner acknowledges and agrees that any such Analysis will be an estimate only and will not constitute a representation, warranty, covenant or guaranty, either expressed or implied, regarding future events or performance. The Owner represents that the Analysis will be used for its internal purposes only, and will not be disseminated to any third party without the written consent of Broker.

7. **Reporting.** Broker shall keep the Owner current as to the progress of its marketing efforts and the Owner shall refer promptly to Broker all inquiries concerning the Property. To the extent that Owner fails to refer any such inquiry to Broker, or prevents or requests Broker to refrain from contacting, or delivering a marketing brochure to any such party, such party shall be deemed to be a party with whom Broker dealt for all purposes of this agreement. The Owner shall provide Broker, within 15 days of executing this agreement, a list of the names of all parties with whom the Owner had discussed the sale of the Property prior to the date hereof.

8. **Insurance.** Broker will provide to the Successor Agency evidence of insurance as described in Exhibit A attached.

9. **Owner's Authority.** The Owner is the Successor Agency to the former Redevelopment Agency of the City of Santa Clara. As such, in accordance with State law, any sale of the Property is required to be approved by the governing board of the Successor Agency

and the Oversight Board to the Successor Agency, and both entities retain discretion to accept or reject any offer for the acquisition of the Property.

10. Purchaser Representation. Owner acknowledges and agrees that the potential purchaser of the Property may request Broker to act as its financial advisor to arrange financing for the purchase of the Property. Owner agrees that Broker may assist such purchaser in arranging financing to complete the acquisition of such Property and that Broker may be paid a fee by such purchaser for arranging any such financing and such fee shall in no event reduce, or be credited against, any fee payable hereunder.

11. Attorney's Fees. In the event that any action, suit or other proceeding in law or in equity is brought in connection with any term or provision in this agreement, and such action results in the award of a judgment for money damages or in the granting of any injunction or restraining order, all expenses (including reasonable attorneys' fees) of the prevailing party in such action, suit or other proceeding shall be paid promptly by the non-prevailing party.

12. Limitations. The Owner also understands that Broker will not advise it as to the legal or tax effects of any transaction, and that the Owner should, if it has not done so already, promptly engage legal and tax professionals to advise it as to all such matters during the course of this engagement and any transaction that may result. Broker shall also have no obligation to investigate conditions on or the condition of the Property, except to the extent that the Owner has requested the Broker to obtain the Due Diligence Reports, nor the financial stability or capability of any prospective purchaser. The Owner should engage technical staff and other analytical personnel to advise and assist it in each of these areas.

13. Assignment. Neither party shall assign this agreement or any right or obligation hereunder without the prior written consent of the other party.

14. Arbitration. Any claim or dispute arising out of or in any way relating to this agreement or its alleged breach shall be determined in a binding arbitration by a single arbitrator that is a retired State or Federal court judge. The arbitration shall be administered by the American Arbitration Association under its commercial dispute resolution procedures which are in effect at the time of the arbitration. The arbitration shall take place in San Jose, California. The parties may seek, from a court of competent jurisdiction, provisional remedies or injunctive relief in support of their respective rights and remedies hereunder without waiving their right to arbitration. However, the merits of the action that involves such provisional remedies or injunctive relief, including without limitation, the terms of any permanent injunction, shall be determined by arbitration under this section. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

15. Disclaimer. Owner acknowledges that (i) Broker is an affiliate of Wells Fargo & Company, (ii) other affiliates of Wells Fargo & Company including Wells Fargo Bank, N.A. and Wachovia Bank, N.A. ("Other Affiliates") may now or hereafter have an interest in debt directly or indirectly related to the Property ("Related Debt"), and (iii) Broker has no control over, and will not seek to influence decisions, actions or forbearances on the part of any Other Affiliate with regard to Owner, the Property or Related Debt.

Broker will not disclose any nonpublic information relating to the proposed transaction, the Property or Owner to any party (including an Other Affiliate) actually known by Broker to have an interest in any Related Debt, unless Owner authorizes such disclosure in writing and agrees to participate in any discussion between Broker and such party.

16. Advertisement. Owner hereby consents to Broker using its name and logo in any "tombstone" or other advertisement announcing the successful consummation of any of the transactions contemplated hereunder.

17. Miscellaneous. The party executing this agreement on behalf of the Owner represents and warrants that he is duly authorized to bind the Owner with respect to the terms and conditions of this agreement.

This agreement contains the entire agreement of the parties hereto and replaces any prior agreements or understandings with respect to the subject matter hereof. It may not be changed, amended or modified except by an instrument in writing signed by the parties hereto.

Provided the terms and conditions of this agreement meet with your approval, please evidence your agreement by executing this letter on behalf of the Owner, and return it to me.

Sincerely,
EASTDIL SECURED BROKER SERVICES, INC.

By: _____
Name: Greg Cloth
Title: Managing Director

AGREED AND ACCEPTED:

Successor Agency to the former Redevelopment
Agency of the City of Santa Clara

By: _____
Name:
Title:

Dated: _____

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE
SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA
AND
EASTDIL SECURED BROKER SERVICES**

EXHIBIT A

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Broker (Contractor)'s indemnification of the Successor Agency, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

COMMERCIAL GENERAL LIABILITY INSURANCE

- A. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
1. \$1,000,000 Each Occurrence
 \$2,000,000 General Aggregate
 \$2,000,000 Products/Completed Operations aggregate
 \$1,000,000 Personal Injury
 2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
 3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the Successor Agency to the Former Redevelopment Agency of the City of Santa Clara, its Agency Board, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The Successor Agency to the Former Redevelopment Agency of the City of Santa Clara, its Agency Board, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for Agency, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance

as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and Agency agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by Agency, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Agency for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Agency or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.

