



# CITY OF FIREBAUGH

## OVERSIGHT BOARD FOR SUCCESSOR AGENCY TO THE CITY OF FIREBAUGH REDEVELOPMENT AGENCY

### MEETING AGENDA

---

**Location of Meeting:** Firebaugh Community Center  
1655 13<sup>th</sup>, Firebaugh, CA 93622

**Date/Time:** April 16, 2015/11:00 a.m.

#### CALL TO ORDER

**ROLL CALL** Ken McDonald, Employee of Former RDA (City) Representative  
Elsa Lopez, County Board of Supervisor Representative  
Craig Knight, County Board of Supervisor Representative  
Jack Minnite, City of Firebaugh Mayor's Appointed Representative  
Becky Cline, Special District Representative  
Russell Freitas, County Superintendent of Schools Representative  
Ken Stoppenbrink, Chancellor of Ca Community College Representative

#### PLEDGE OF ALLEGIANCE

#### CONSENT CALENDAR

1. APPROVAL OF MINUTES – The Oversight Board meeting on February 19, 2015.

#### BUSINESS ITEMS

2. RESOLUTION NO. OB 15-04 - A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE FIREBAUGH REDEVELOPMENT AGENCY APPROVE AN AGREEMENT WITH COLLIERS INTERNATIONAL FOR EXCLUSIVE RIGHT TO REPRESENT OWNER FOR SALE OF REAL PROPERTY FOR DISPOSITION OF SUCCESSOR AGENCY PROPERTIES.

**Recommended Action:**

Oversight Board approves resolution OB 15-04.

#### ADJOURNMENT

**Certification of posting the Agenda**

I declare under penalty of perjury that I am employed by the City of Firebaugh and that I posted this agenda on the bulletin boards at City Hall, April 10, 2015 at 11:00 a.m. by Rita Lozano, Deputy City Clerk.



**CITY OF FIREBAUGH**  
**OVERSIGHT BOARD FOR SUCCESSOR AGENCY**  
**TO THE CITY OF FIREBAUGH REDEVELOPMENT AGENCY**  
**MEETING MINUTES**

---

**Location of Meeting:** Firebaugh City Hall, Conference Room  
11133 "P" Street, Firebaugh, CA 93622  
**Date/Time:** February 19, 2014/11:00 a.m.

**CALL TO ORDER** Meeting called to order at 11:05 a.m.

**ROLL CALL - PRESENT:** Becky Cline, Special District Representative  
Kenneth McDonald, City Manager  
Craig Knight, County Board of Supervisor Representative  
Elsa Lopez, County Board of Supervisor Representative

**ABSENT:** Ken Stoppenbrink, Chancellor of CA Community College Representative  
Russell Freitas, County Superintendent of Schools Representative  
Jack Minnite, City of Firebaugh Mayor's Appointed Representative

**PLEDGE OF ALLEGIANCE:** *Pledge of Allegiance was led by Board Member Cline.*

**CONSENT CALENDAR**

**1. APPROVAL OF MINUTES – The Oversight Board meeting on December 18, 2014.**

*Motion to approve minutes by Knight, seconded by Lopez; passed by 4-0 roll-call vote.*

**BUSINESS ITEMS**

**2. RESOLUTION NO. OB 15-01 - A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FIREBAUGH REDEVELOPMENT AGENCY APPROVING A CONTRACT WITH ROSENOW SPEVACEK GROUP, INC. TO PROVIDE CONSULTING SERVICES TO THE SUCCESSOR AGENCY IN FISCAL YEAR 2015-16.**

*Motion to approve Resolution No OB 15-01 by Board Member Lopez, second by Board Member Knight, motion passed by 4-0 roll-call vote.*

**3. RESOLUTION NO. OB 15-02 - A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE FIREBAUGH REDEVELOPMENT AGENCY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR JULY THROUGH DECEMBER 2015 AND AUTHORIZING ITS TRANSMITTAL.**

*Motion to approve Resolution No OB 15-02 by Board Member McDonald, second by Board Member Knight, motion passed by 4-0 roll-call vote.*

**4. RESOLUTION NO. OB 15-03 - A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE FIREBAUGH REDEVELOPMENT AGENCY APPROVING THE SUCCESSOR AGENCY'S ADMINISTRATIVE BUDGET FOR FISCAL YEAR 2015-16 PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177(i).**

*Motion to approve Resolution No OB 15-03 by Board Member McDonald, second by Board Member Knight, motion passed by 4-0 roll-call vote.*

**ADJOURNMENT:**

*Motion to adjourn by Board Member Knight, second by Board Member McDonald; passed by 4-0 roll-call vote, meeting adjourned at 11:31 a.m.*



## STAFF REPORT

---

TO: Oversight Board  
FROM: Kenneth McDonald, City Manager  
DATE: April 16, 2015  
SUBJECT: Approval of Agreement with Colliers International to Dispose of Successor Agency Property

---

### **RECOMMENDATION:**

Staff recommends that the Oversight Board to the Successor Agency to the Firebaugh Redevelopment Agency adopt the attached resolution approving, with advice and approval from legal counsel, an agreement with Colliers International regarding disposition of each of the Successor Agency's remaining five (5) properties.

### **HISTORY / DISCUSSION:**

The Successor Agency to the Firebaugh Redevelopment Agency ("Successor Agency") is the owner on record of seven properties. Assembly Bill 1484 ("AB 1484") enacted in June of 2012 requires successor agencies to former redevelopment agencies that owned property at the time of redevelopment dissolution to prepare a Long Range Property Management Plan ("LRPMP"), which addresses the use and disposition of all property held by the Successor Agency. The Firebaugh LRPMP was approved by the Department of Finance ("DOF") on February 10, 2014. Since that time, the Successor Agency has been actively trying to sell properties. Two properties are in the process of being sold to the Fresno County Housing Authority to build affordable housing, leaving five properties for disposition. A map showing the five properties is included as Attachment 1 of the attached Resolution.

The five properties remaining are all commercial properties scattered throughout the City's downtown. Their marketability and value vary depending on their size, location, and development potential. In August, 2014, the Successor Agency issued a Request for Proposals (RFP) to try to sell two attractive commercial properties on N Street. After some back and forth, which included obtaining an appraisal on the properties, the Council on March 2, 2015, acting as the Successor Agency Board, decided to reject all proposals received for the properties at 1284 and 1320 N Street. The Council also acted to direct Successor Agency staff to create a new RFP to solicit proposals for each property individually and request a minimum investment of \$150,000 pledged to the purchase if paid at fair market value of the appraisal. At the City Council Meeting on March 16, 2015, Council changed direction and decided to forego the RFP and move forward with enlisting the help of a commercial realtor. The Council requested a listing agreement be drafted and presented at the April 6, 2015 meeting.

Colliers Tingey International Inc. ("Colliers International") prepared an agreement for Exclusive Right to Represent Owner for Sale of Real Property to dispose of the remaining five Successor Agency properties, included as Attachment 2 to the attached Resolution, which was approved by the Successor

Agency on April 6, 2015. Colliers International would be responsible for all the marketing, outreach, and negotiations involved with selling properties. The Successor Agency's consultant, Rosenow-Spevacek Group, Inc. ("RSG") is available to assist with the disposition process beyond that point, including but not limited to presenting purchase offers to the Successor Agency and Oversight Board and seeking final approval of a sale from DOF.

Colliers International would be paid a commission out of the proceeds from the sale of any property. According to dissolution law, proceeds from the sale of property must be divided amongst the taxing entities, so all taxing entities would share in the cost of the broker commission, including the City. RSG has an existing consulting contract with the Successor Agency.

It is important to facilitate a plan for disposition of the properties now, so that the properties can be disposed of efficiently and effectively. Pursuant to AB 1484, the Firebaugh Oversight Board, as well as all local Oversight Boards throughout the State, will be dissolved as of July 1, 2016 and replaced with single County Oversight Board. Afterwards, all property disposition actions will be subject to County Oversight Board approval, a body that may not be familiar with, or sympathetic to Firebaugh's specific needs and challenges, and will not be subject to the adopted Disposition Procedures. The Successor Agency believes enlisting the help of a commercial broker/sales agent would be the most efficient and effective way to dispose of the properties. As such, the Successor Agency recommends the Oversight Board approve the agreement with Colliers International.

**FISCAL IMPACT:**

The fiscal impact to the City varies depending on the final sales price achieved by each property. As previously mentioned, the broker's commission of 6% would be paid out of sale proceeds with the cost shared amongst all the affected taxing entities.

**ATTACHMENTS:**

Resolution Approving an Agreement with Colliers International

**RESOLUTION NO. OB 15-04**

**A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE FIREBAUGH REDEVELOPMENT AGENCY APPROVE AN AGREEMENT WITH COLLIERS INTERNATIONAL FOR EXCLUSIVE RIGHT TO REPRESENT OWNER FOR SALE OF REAL PROPERTY FOR DISPOSITION OF SUCCESSOR AGENCY PROPERTIES**

**WHEREAS**, the Oversight Board to the Successor Agency to the Firebaugh Redevelopment Agency ("Oversight Board") has been established to direct the Successor Agency to the Firebaugh Redevelopment Agency ("Successor Agency") to take certain actions to wind down the affairs of the Redevelopment Agency in accordance with the California Health and Safety Code; and

**WHEREAS**, among the duties of successor agencies under the Dissolution Act is the preparation of a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency for consideration by a local oversight board and the California Department of Finance ("DOF"); and

**WHEREAS**, the Long-Range Property Management Plan for the Firebaugh Successor Agency was approved by the Oversight Board on September 19, 2013 and by DOF on February 10, 2014; and

**WHEREAS**, the Long-Range Property Management Plan identified five commercial properties located in the City's downtown as assets of the Successor Agency that the Successor Agency wishes to sell, including the properties located at: (1) 1415 14th Street, (2) 1185 N Street, (3) 1284 N Street, (4) 1320 N Street, and (5) 1458 11th Street (collectively, "Properties"); and

**WHEREAS**, a map identifying the Properties is included as Attachment 1 to this Resolution; and

**WHEREAS**, the Successor Agency desires to expeditiously dispose of the Properties by entering into an agreement with Colliers Tingey International, Inc. (dba, Colliers International) to provide real estate brokerage services to the Successor Agency for the Properties; and

**WHEREAS**, Health & Safety Code Section 34177(j)(3) requires proposals for arrangements for administrative and operations services provided by a city, county, or other entity to be submitted to the oversight board for its approval; and

**WHEREAS**, Health & Safety Code Section 34177.3(b) states that successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency, including acquiring necessary professional administrative services; and

**WHEREAS**, the Successor Agency approved the proposed Colliers International Agreement on April 6, 2015.

**NOW, THEREFORE, THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FIREBAUGH REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The Recitals set forth above are true and correct and incorporated herein by reference.

**SECTION 2.** The Successor Agency is still the owner on record of five commercial properties in the City's downtown area.

**SECTION 3.** The Oversight Board approves, with advice and approval from legal counsel, an agreement with Colliers International to represent the Successor Agency regarding disposition of the Properties, which agreement shall be subject to review and approval by the Department of Finance.

**SECTION 4.** The Oversight Board authorizes the City Manager to execute all documents necessary regarding disposition of the Properties.

**SECTION 5.** The Oversight Board Secretary shall certify to the adoption of this Resolution.

**PASSED, APPROVED and ADOPTED** at a regular meeting of the Oversight Board to the Successor Agency to the City of Firebaugh Redevelopment Agency held this 16<sup>th</sup> day of April, 2015 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

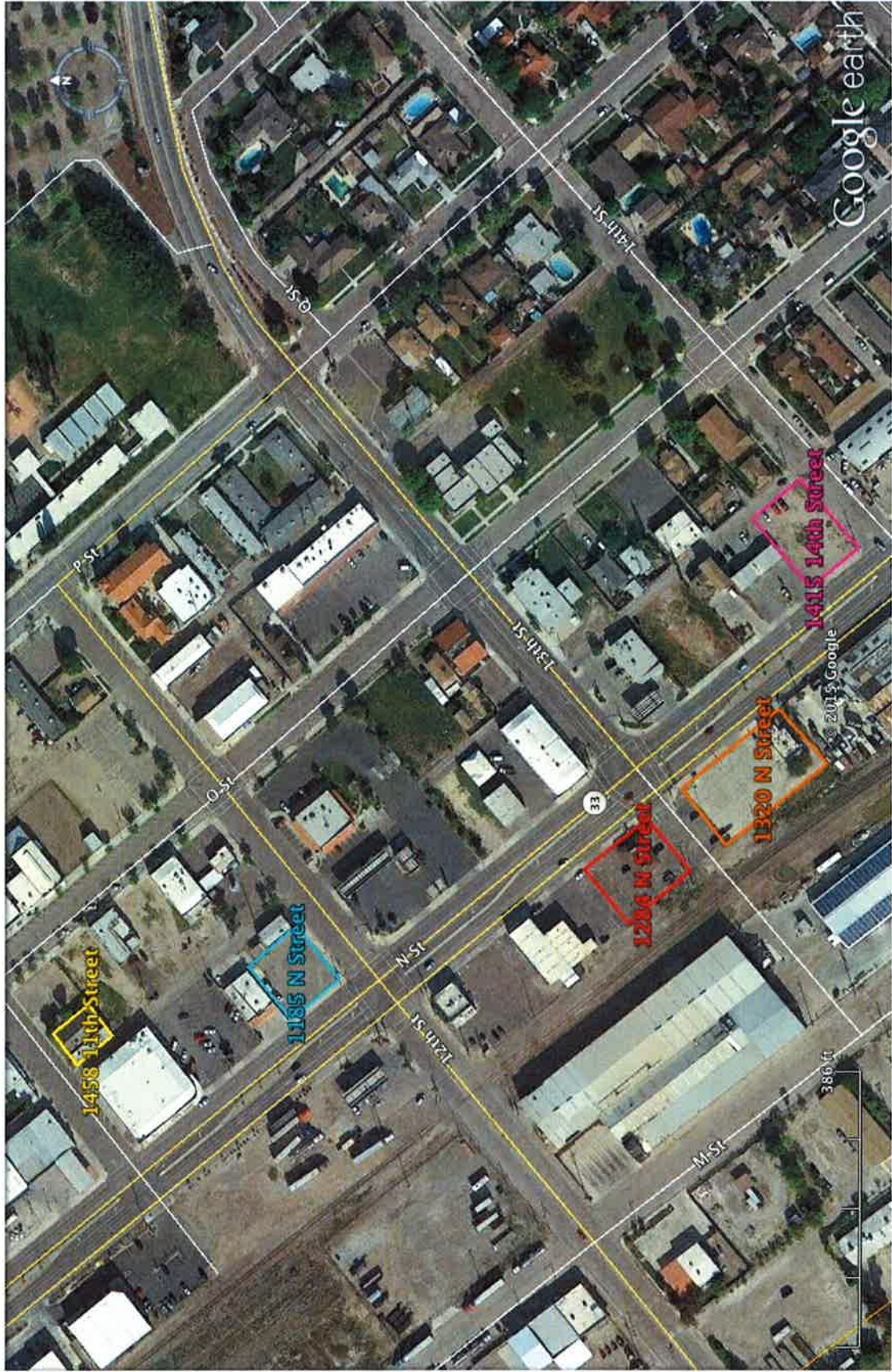
Chairperson Oversight Board

---

ATTEST:

Oversight Board Secretary

**ATTACHMENT 1  
MAP OF SUCCESSOR AGENCY PROPERTIES**



**ATTACHMENT 2**  
**COLLIERS INTERNATIONAL AGREEMENT**





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

AIR COMMERCIAL REAL ESTATE ASSOCIATION

**1. BASIC PROVISIONS ("BASIC PROVISIONS").**

1.1 **Parties:** This agency Agreement ("Agreement"), dated for reference purposes only March 30, 2015, is made by and between City of Firebaugh whose address is 1133 P. Street, Firebaugh CA 93622 telephone number (559) 659-2043 Fax No. ( ) ("Owner"), and Colliers Tingey International, Inc. dba Colliers International whose address is 7485 N. Palm Ave, Fresno CA 93711 telephone number (559) 221-1271 Fax No. (559) 222-8744 ("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 1415 14th Street, Firebaugh CA (APN 008-132-07); 1185 N Street, Firebaugh CA (APN 008-074-10); 1284 N Street, Firebaugh CA (APN 008-080-42); 1320 N Street, Firebaugh CA (APN 008-140-35); 1458 11th Street, Firebaugh CA (APN 008-074-01) located in the City of Firebaugh County of Fresno State of California and generally described as (describe briefly the nature of the property): Two separate Non-improved parcels and Three separate buildings with adjacent land/parking. ("Property"). (See also Paragraph 3).

1.3 **Term of Agreement:** The term of this Agreement shall commence on April 1, 2015 and expire at 5:00 p.m. on March 31, 2016, 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: 1415 14th Street: \$42,000; 1185 N Street: \$46,000; 1284 N Street: \$100,000; 1320 N Street: \$95,000; 1458 11th Street: \$6,000 or terms and conditions acceptable to Owners/Sellers. 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)  ~~A lease or other tenancy for the following rent and terms: square foot, Modified Gross whereas Lessee/Tenant is responsible for all utilities and janitorial. All other terms and conditions to be acceptable to Lessor 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.

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"). A Cooperating Broker may, as a third-party beneficiary hereof, enforce the terms of this Agreement against Owner or Agent.

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

INITIALS

INITIALS

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 six percent (6%)

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) a buyer is procured who is ready, willing and able to buy the Property at the price and on the terms stated herein, or on any other price and terms agreeable to Owner; (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, (i) a lease of the Property, or a portion thereof is executed, or (ii) a lessee is procured who is ready, willing and able to lease the Property on the terms stated herein, or on any other rent and/or terms agreeable to Owner; 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.

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;

(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 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 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.

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  \_\_\_\_\_ 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.

\_\_\_\_\_  
Owner's Initials

\_\_\_\_\_  
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. 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.

(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.

**"OWNER"**

**"AGENT"**

City of Firebaugh

Colliers Tingey International, Inc. dba

Colliers International

By: \_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Name Printed: Mike Schuh

Title: \_\_\_\_\_

Title: Senior Vice President / Principal

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

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

DRAFT

By: \_\_\_\_\_  
Name Printed: **Brett Todd**  
Title: **Sales Associate**  
Date: \_\_\_\_\_  
**BRE # 01912244**

Broker Review:  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

**Brian Decker**  
**President / Principal**  
**BRE # 01029450 / 00452468**

**NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.**

DRAFT

DRAFT

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS