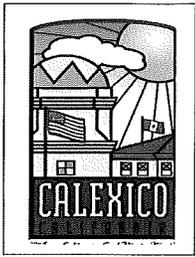


**AGENDA
ITEM**

16



AGENDA STAFF REPORT (Successor Agency)

DATE: January 23, 2019

TO: Successor Agency Board Members

APPROVED BY: David B. Dale, City Manager/Executive Director *DD*

PREPARED BY: Miguel Figueroa, Community and Economic Development Director

SUBJECT: Adopt Resolution of the Successor Agency to the Community Redevelopment Agency of the City of Calexico Approving an Agreement Between the Successor Agency and Faris Lee Investments, Inc. to List and Sell Certain Real Property Assets of the Successor Agency and Approving Certain Related Actions

=====

Recommendation:

Adopt a resolution approving a Listing Agreement between the Successor Agency to the Community Redevelopment Agency of the City of Calexico and Faris Lee Investments, Inc. to list and sell certain real property assets of the Successor Agency and approving certain related actions

Background:

Pursuant to Health and Safety Code (the "HSC") § 34172 (a) (1), the Community Redevelopment Agency of the City of Calexico was dissolved on February 1, 2012. Consistent with the provisions of the HSC, on January 10, 2012, the City Council of the City of Calexico elected to serve in the capacity of the Successor Agency to the Community Redevelopment Agency of the City of Calexico (the "Successor Agency"). The Imperial County Wide Oversight Board (the "CWOB") was established effective July 1, 2018 pursuant to HSC § 34179 (j) to assist in the wind-down of dissolved redevelopment agencies within the County of Imperial. All of the local oversight boards in California were dissolved on June 30, 2018 by operation of law.

Discussion & Analysis:

Pursuant to HSC § 34191.5 (b) and (c), the Successor Agency prepared and filed its Long-Range Property Management Plan (the "LRPMP") with California Department of Finance ("DOF") to address the disposition and use of the real property assets held by the Successor Agency. In its June 17, 2015 letter, DOF formally approved the Successor Agency's LRPMP, notifying the

AGENDA ITEM 16

Successor Agency that pursuant to HSC § 34191.3, the approved LRPMP shall govern and supersede all other provisions of the HSC relating to the disposition and use of all the real property assets of the former redevelopment agency.

The approved LRPMP includes 9 parcels of land grouped into six (6) separate sites, of which four (4) sites have already been sold or transferred to the City, leaving two (2) sites (one site zoned Industrial and one site zoned Commercial Highway) to be sold pursuant to the approved LRPMP (the "Successor Agency Property").

To begin the disposition process, on May 29, 2018, the Successor Agency issued an open invitation to real estate brokers to list and sell its remaining two (2) sites (a listing of the two (2) sites is included as Exhibit "A" to the attached Resolution). The invitation was mailed to twenty-nine (29) local and specialty commercial brokers, for which two (2) brokers submitted proposals by the July 31, 2018 deadline. A four-member review panel carefully reviewed each proposal received and on October 31, 2018, interviewed the two (2) prospective brokers. Based on the aforementioned process, the four-member review panel unanimously concluded that Faris Lee Investments, Inc. ("Faris Lee"), based on their proposal and interview, will best meet the Successor Agency's needs. The other responding broker was invited to participate in the purchase and sale process through Faris Lee's commission sharing program by bringing forward potential buyers once the Successor Agency Property is listed to be sold.

Approval of the attached Resolution will: i) approve a Listing Agreement (the "Agreement") with Faris Lee, a copy of which is included as Exhibit "B" to the attached to the Resolution, for the listing and sale of the Successor Agency Property; and ii) authorize the City Manager, in the capacity as Executive Director to the Successor Agency, to execute the Agreement.

Fiscal Impact:

Pursuant to the agreement with Faris lee, Faris Lee will be entitled to a contingent sales commission consistent with the commission rates described within the agreement. The payment of the commission will be funded from land sales proceeds and will be paid through the purchase and sale escrow. Neither the City nor the Successor Agency is obligated to pay Faris Lee any fees other than the fees stated in the agreement. In addition, upon sale and close of escrow with respect to the Successor Agency Property, the Successor Agency will transfer the net purchase price to the Imperial County Auditor-Controller that will in turn divide and pay over the net purchase price to the affected taxing entities in proportion to the respective shares of the 1% general tax levy, which will include the City.

Coordinated With:

Steven H. Dukett, Managing Director, Urban Futures, Inc.
Kathleen Robles, Senior Project Manager, Urban Futures, Inc.

Attachment:

Resolution (including its Exhibits A and B, as referenced above).

RESOLUTION NO. 2019 - _____

RESOLUTION OF THE SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO APPROVING AN AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND FARIS LEE INVESTMENTS, INC. TO LIST AND SELL CERTAIN REAL PROPERTY ASSETS OF THE SUCCESSOR AGENCY AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, pursuant to Health and Safety Code (the "HSC") § 34172 (a) (1), the Community Redevelopment Agency of the City of Calexico was dissolved February 1, 2012; and

WHEREAS, consistent with the provisions of the HSC, on January 10, 2012, the City Council of the City of Calexico elected to serve as the Successor Agency to the Community Redevelopment Agency of the City of Calexico (the "Successor Agency"); and

WHEREAS, the Imperial County Wide Oversight Board (the "CWOB") was established effective July 1, 2018 pursuant to HSC § 34179 (j) to assist in the wind-down of dissolved redevelopment agencies within the County of Imperia; all of the local oversight boards in California were dissolved on June 30, 2018 by operation of law; and

WHEREAS, on October 3, 2013, the Successor Agency received its Finding of Completion (the "FOC") from the California Department of Finance ("DOF") pursuant to HSC § 34179.7; and

WHEREAS, pursuant to HSC § 34191.5 (b) and (c), the Successor Agency prepared and filed its Long-Range Property Management Plan (the "LRPMP") with DOF to address the disposition and use of the real property assets held by the Successor Agency; and

WHEREAS, in its June 17, 2015 letter, DOF formally approved the Successor Agency's LRPMP and notified the Successor Agency that pursuant to HSC § 34191.3, the approved LRPMP shall govern and supersede all other provisions of the HSC relating to the disposition and use of all the real property assets of the former redevelopment agency; and

WHEREAS, the approved LRPMP includes 9 parcels of land grouped into six (6) separate sites, of which four (4) sites have already been sold or transferred to the City, leaving two (2) sites (one site zoned Industrial and one site zoned Commercial Highway) to be sold pursuant to the approved LRPMP (the "Successor Agency Property"); and

WHEREAS, to begin the disposition process, on May 29, 2018, the Successor Agency issued an open invitation to real estate brokers to list and sell its remaining two (2) sites (a listing of the two (2) sites is included as Exhibit "A" to this Resolution; and

WHEREAS, the invitation was mailed to twenty-nine (29) local and specialty commercial brokers, for which two (2) brokers submitted proposals by the July 31, 2018 deadline; and

WHEREAS, a four-member review panel carefully reviewed each proposal received and on October 31, 2018, interviewed the two (2) prospective brokers; and

WHEREAS, based on the aforementioned process, the four-member review panel unanimously concluded that Faris Lee Investments, Inc. (“Faris Lee”), based on their proposal and interview, will best meet the Successor Agency’s needs; and

WHEREAS, the other responding broker was invited to participate in the purchase and sale process through Faris Lee’s commission sharing program by bringing forward potential buyers once the Successor Agency Property is listed to be sold; and

WHEREAS, approval of this Resolution will: i) approve a Listing Agreement (the “Agreement”) with Faris Lee, a copy of which is included as Exhibit “B” to this Resolution, for the listing and sale of the Successor Agency Property; and ii) authorize the City Manager, in the capacity as Executive Director to the Successor Agency, to execute the Agreement; and

WHEREAS, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act (the “CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, § 15000 *et seq.*, hereafter the “Guidelines”), and the City’s environmental guidelines; and

WHEREAS, this Resolution does not constitute a “project” for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378 (b) (5) of the Guidelines; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Successor Agency to the Community Redevelopment Agency of the City of Calexico, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Listing Agreement with Faris Lee, a copy of which is included as Exhibit “B” to this Resolution for the listing and sale of the Successor Agency Property, is approved.
- Section 3.** The City Manager, in the capacity as Executive Director of the Successor Agency, or designee, is authorized and directed to execute the Agreement with Faris Lee.
- Section 4.** This Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Resolution is an organizational

or administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378 (b) (5) of the Guidelines.

Section 5. This Resolution shall take effect immediately upon the date of its adoption.

PASSED, APPROVED AND ADOPTED this ___ day of _____ 2019.

Lewis Pacheco, Chairman
Successor Agency to the Community
Redevelopment Agency of the City of
Calexico

ATTEST:

Gabriela T. Garcia, Secretary to the
Successor Agency to the Community
Redevelopment Agency of the City of Calexico

APPROVED AS TO LEGAL FORM:

City Attorney

CERTIFICATION:

I, Gabriela T. Garcia, Secretary for the Successor Agency to the Community Redevelopment Agency of the City of Calexico, do hereby certify that the foregoing Resolution No. 2019-__ was duly adopted by the Successor Agency to the Community Redevelopment Agency of the City of Calexico at a meeting thereof held on the _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gabriela T. Garcia, Secretary to the
Successor Agency to the Community
Redevelopment Agency of the City of
Calexico

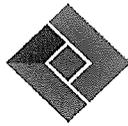
EXHIBIT "A"

LIST OF SUCCESSOR AGENCY PROPERTY TO BE LISTED AND SOLD

LIST OF SUCCESSOR AGENCY PROPERTY TO BE LISTED AND SOLD						
LRPMP Site No.	Site Reference	Address	APN	Zoning	Lot Size (ac)	Listing Price
3	Avenida Campillo Vacant Industrial Property	220 Avenida Campillo	058-061-009	Industrial	1.0	\$163,350
6	Metropolitan Theater Property	2441 Scaroni Road	059-010-067	Commercial Highway	4.86	\$4,822,000
			059-010-068			
			059-010-069			

EXHIBIT "B"

**AGREEMENT
FARIS LEE INVESTMENTS, INC.**



Faris • Lee INVESTMENTS

EXCLUSIVE LISTING AGREEMENT FOR COMMERCIAL REAL PROPERTY

This Exclusive Listing Agreement for Commercial Real Property (the "*Agreement*") is entered into by and between The Successor Agency to the Community Redevelopment Agency of the City of Calexico ("*Seller*") and Faris Lee Investments, Inc., a California corporation ("*Agent*") with regard to the two (2) real properties located at (i): 2441 Scaroni Road, Calexico, California 92231 and generally described as: Metropolitan Theatre / APN: 059-010-067, 059-010-068, 059-010-069, Land Size: 4.86 Acres, Rentable Area: 35,000 Square Feet, and (ii): 220 Avenida Campillo, Calexico, California 92231 and generally described as: Vacant Industrial Land / APN: 058-061-009, Land Size: 1-Acre (the "*Properties*"), and grants to Agent, for a term beginning on _____ and ending at midnight Pacific Standard Time, (4) months after mutual execution of this agreement, the exclusive and irrevocable right and authority to sell the Property, on the Terms and Conditions stated below.

TERMS AND CONDITIONS

1. Terms of Sale of Property. Seller agrees to accept an offer to sell the Property on the following terms and conditions:

(a) Sale Price. Metropolitan Theatre: (\$4,822,000) Dollars, or other price acceptable to Seller.
Vacant Industrial Land: (\$163,350) Dollars, or other price acceptable to Seller.

(b) Deposit. Seller and any prospective buyer of the Property ("*Prospective Buyer*") shall agree on a minimum deposit of earnest money (the "*Deposit*") credited to the purchase price of the Property ("*Purchase Price*") at the close of escrow (the "*Closing*").

(c) Additional Terms. Unless otherwise provided herein, the terms of sale of the Property shall be at the option of the Prospective Buyer, either cash or cash to any existing loan. Any offer may contain normal and customary contingencies such as those relating to the condition of the Property, title report, and timing of the Closing. **See Exhibit "A"**

2. Exclusive Employment of Agent. Agent shall be the sole and exclusive agent to represent Seller in the sale of the Property during the Term, and Agent shall use its best efforts to affect the sale. The term "*Sale*" includes a Prospective Buyer's purchase of the Property or an exchange of the Property. Seller represents and warrants to Agent that the Property is not currently subject to any other agreement to sell or transfer with any real estate broker or agent that has not already been disclosed to Agent, in writing. All negotiations with a Prospective Buyer or its agent(s) shall be conducted by Agent. Seller shall cooperate with Agent and immediately refer to Agent all inquiries about the Property. Agent is authorized to advertise and market the Property if, in Agent's opinion, such activity might facilitate a Sale of the Property. Agent is permitted to distribute information pertaining to the Property to potential purchasers through various means.

3. Agent's Commission.

(a) General. In consideration for the services provided by Agent, Seller shall pay Agent a commission equal to (4%) of the Purchase Price for the Metropolitan Theatre, and (8%) of the Purchase Price for the Vacant Industrial Land ("*Agent's Commission*"), paid in lawful U.S. currency. Agent's Commission shall be paid in connection with any of the following events:

(i) The Property is sold to a buyer procured by Agent, Seller or anyone else;

(ii) A sale, exchange or other conveyance of the Property is made within 180 calendar days after the expiration of the Term, or any extension thereof, to a person or entity with whom Agent has negotiated, provided that the name of any such person or entity (including a similar entity which that person or entity represents or in which it holds an ownership or beneficial interest) has been submitted to Seller by delivery in writing of a list of such names or by delivery of a written offer or letter of intent or interest to purchase the Property within fifteen (15) calendar days following such expiration. Agent is authorized to continue negotiations with such persons or entities;

4. Nondiscrimination. It is illegal for either Seller or Agent to refuse to display or sell the Property to any person because of race, color, religion, national origin, sex, marital status, physical disability or any other class protected by applicable federal, state or local law.

~~5. Dual Agency. Seller acknowledges that Agent is a brokerage firm and that in some cases it may represent prospective purchasers.~~

6. Cooperating Brokers. Agent may cooperate with other real estate brokers in the sale of the Property (each a "Cooperating Broker"). If a Cooperating Broker locates a Prospective Buyer, Agent shall act as agent for Seller only and the Cooperating Broker shall act as agent for the Prospective Buyer. In such case, the Cooperating Broker shall not be Seller's agent even though Cooperating Broker may share in Agent's Commission through a separate arrangement.

7. Seller's Obligations. Seller shall provide Agent with copies of all leases, subleases, rental agreements, option rights, rights of first refusal, and all other documents regarding any limitations on Seller's right and ability to sell the Property. Seller shall disclose to Agent and to any prospective purchasers and tenants any and all information which Seller has regarding the condition of the Property, including but not limited to, present and future zoning and environmental matters affecting the Property and information regarding the condition of the Property, including but not limited to structural, mechanical, and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on, or about the Property. Seller agrees that Agent may disclose all such information to prospective purchasers and tenants. Seller further agrees that Agent and its representatives shall have the right to enter upon and inspect the interior and exterior of the Property during business hours, by appointment.

8. Indemnity. Seller agrees to indemnify, defend and hold Agent harmless from any and all liability, damages, losses, causes of action, or other claims (including attorney's fees and other defense costs) arising from or associated with any incomplete or inaccurate information provided by Seller, or any material information concerning the Property which Seller has failed to disclose. Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Seller's sole responsibility.

9. Warranty of Ownership; FIRPTA Disclosure. ~~Seller represents that he/she/it is the legal owner of the Property and has the full right, power and authority, without the consent or approval of any other person or entity to transfer the Property and to perform Seller's obligations under this Agreement. Moreover, the individual(s) executing this Agreement on behalf of Seller has/have full right, power and authority to do so.~~ Except as may be set forth in an addendum attached hereto, no person or entity who has an ownership interest in the Property is a foreign person as defined in the Foreign Investment in Real Property Tax Act ("FIRPTA"). Neither Seller nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding. Seller has no notice or knowledge that any lessee or sublessee of the Property is the subject of a bankruptcy or insolvency proceeding. 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 Seller's right, ability, and capacity to consummate a Sale of the Property.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Limitation on Actions. Seller agrees that no arbitration, 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. Seller further agrees that the liability (including court costs and attorneys' fees) of Agent with respect to any such arbitration, lawsuit, or legal

proceeding, shall not exceed any sum 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.

12. Arbitration of Disputes. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the County of Imperial, State of California, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings in the State of California. The arbitrator shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar type damages.

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.

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.

Seller's Initials

Agent's Initials

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

13. Attorneys' Fees. In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and all reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

14. Entire Agreement. This Agreement constitutes the entire Agreement between Seller and Agent and supersedes all prior discussions, negotiations and agreements whether oral or written. No amendment or alteration of this Agreement shall be valid or binding unless made in writing and signed by both Seller and Agent. Any purported amendment or modification which is oral shall be void and of no effect whatsoever. This Agreement shall be binding upon the heirs, successors and assignees of the parties. In the event any clause, provision, section or term of this Agreement shall be deemed to be unenforceable or void based on any controlling state or federal law, the remaining provisions hereof, and each part, shall remain unaffected and shall continue in full force and effect.

15. Seller's Acknowledgments. Seller acknowledges that he/she/it has been advised by Agent to consult and retain experts to advise Seller concerning the legal and tax effects of this Agreement and the sale of the Property, 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 has no obligation to investigate any such matters

unless expressly agreed to in writing by Seller and Agent. Seller further acknowledges that in determining the financial soundness of any Prospective Buyer, lessee, or security offered, Seller will rely on Seller's own investigation, notwithstanding Agent's assistance in gathering such information. Seller and its counsel will be solely responsible for determining the legal sufficiency of a purchase and sale agreement and other documents relating to any transaction contemplated by this Agreement.

IN WITNESS WHEREOF, Agent and Seller have executed this Exclusive Listing Agreement for Commercial Real Property dated for reference _____, 2019, and Seller acknowledges receipt of an executed copy hereof.

AGENT

Faris Lee Investments, Inc.,
a California Corporation
State of California
DRE License No. 01209944

By: _____
Richard Chichester, President & CEO

By: _____
Jeff Conover, Senior Managing Director

Address for Notice:

Faris Lee Investments, Inc.
Attn: Patty Chin
18301 Von Karman, Suite 800
Irvine, California 92612
Phone: (949) 221-1800
Fax: (949) 221-1830

SELLER

The Successor Agency to the
Community Redevelopment Agency of the
City of Calexico

By: _____

Its: _____

Address for Notice:

Phone: _____
Email: _____

EXHIBIT "A"

I. SUPPLEMENTAL TERMS AND CONDITIONS

TRANSACTION AND SPECIAL CONDITIONS.

- (a) The nature of the transaction concerning the Property for which Broker is employed ("Transaction") is to sell, during the Listing Period or under the circumstances described, the real property described in Section II of this Exhibit "A" at the price and terms agreeable to Owner, acting in its sole and absolute discretion.
- (b) With respect to Section II of this Exhibit "A," no other property is subject to this Agreement and the Successor Agency retains full discretion with respect to how, when and with whom it will deal with any other Successor Agency property of its choosing.
- (c) The listing prices specified within Section II of this Exhibit "A" are based on a Broker's Opinion of Value, reviewed and signed by Broker, as validated as reasonable by Owner. The Parties concur that the real property for sale may ultimately sell at, over or under the listing price as market conditions may support. Any adjustments to the listing prices must be approved by Owner in advance, acting in its sole and absolute discretion. The listing price as shown for each Site shall apply to that Site.
- (d) For those Sites listed which consist of more than one parcel, the entire site shall be sold together and will not be sold in less than the whole Site.
- (e) All offers shall be made in writing, vetted by Broker for the prospective buyer's ability to acquire a site without any financing conditions, and presented to the Owner, as received. In the event of multiple offers, Broker will provide a competitive analysis of such offers. In addition to the written offer(s), a stand-alone Broker's Opinion of Value and justification must be provided, supporting the purchase/sale price.
- (f) All proposed sales are subject to the review and approval by the appropriate governing body i.e., the Successor Agency and the Oversight Board and the California Department of Finance ("DOF"). The listing agent shall disclose this contingency to all prospective buyers. The Owner is responsible for all correspondence with the Oversight Board and DOF.
- (g) The Owner does not provide any assurance that the Oversight Board or the DOF will agree to the sale price or other terms of sale.
- (h) All sales shall be for cash only and no sale shall be conditioned upon buyer obtaining financing.
- (i) Owner shall provide the purchase and sale agreement for each real property being sold. A Broker provided purchase and sale agreement shall not be used. In connection with any sale, the Owner-provided purchase and sale agreement shall require the prospective buyer to pay to Owner the "Independent Consideration" of One Hundred Dollars (\$100.00); such amount shall be nonrefundable and shall be retained by Owner as its property unless the sole reason a sale fails to close is the wrongful refusal of Owner to execute a deed or the failure by the Oversight Board or the DOF to approve the sale. If a sale closes, Buyer shall receive a credit against the

purchase price for any amount theretofore paid to Owner as Independent Consideration.

- (k) The Broker's compensation described in Section 3 of the Listing Agreement is not payable unless a sale is completed, as evidenced by the close of escrow related to a Property. Said compensation shall be for all of Broker's services pursuant to the Listing Agreement. There shall not be any additional payments due Broker for any reason.
- (l) Owner shall be responsible for designating the escrow holder and title insurer. Broker and/or Buyer may recommend services providers.
- (m) There shall be no lock box. Access to any Site shall be by appointment only, with staff of the Owner and, as applicable, broker.

NO OTHER BROKERS.

Owner represents that no other broker has been engaged to represent Owner with respect to the sale of the Property.

ACCEPTANCE OF DEPOSITS.

Broker shall not accept deposits on behalf of the Owner from potential buyers. The deposit in connection with the Independent Consideration shall be governed by the terms of a purchase and sale agreement.

NO DUAL AGENCY.

The Broker shall not represent any third party with respect to the Transaction. In that regard, dual agency is prohibited. A Cooperating Broker shall not be an agent or subagent of Broker. However, any Faris Lee franchise holder, other than Faris Lee-Irvine, is excluded from this provision.

EXTENSION OF LISTING PERIOD.

If the sale Transaction is not consummated for any reason after Owner accepts an offer to purchase the Property ("Sale Agreement"), then any extension of the expiration date of the Listing Period of this Agreement may be extended at the sole discretion of Owner; provided that in no event shall the Listing Period of this Agreement be extended past a date which is the earlier to occur of: i) the number of days between the date the Sale Agreement is entered into and the time at which Sale Agreement is terminated or escrow is terminated (whichever shall earlier occur); or ii) the first anniversary of this Agreement.

COURTESY TO THIRD-PARTY BROKERS.

Broker is authorized to cooperate and compensate brokers who represent a prospective buyer(s) that actually purchase a listed property and closes escrow at a fee/commission equal to 50 percent (50%) of the Broker's Compensation, as described in Section 3 of this Agreement (a broker's participation through a multiple listing service(s) is not a prerequisite to receiving payments pursuant to this section).

POLICE POWER.

The City of Calexico shall retain its regulatory authority over the Property, and nothing herein shall be construed as a waiver or exercise of such regulatory authority.

INDEMNITY.

Subject to the limitations herein, each Party agrees to and shall indemnify and hold the other, its elected officials (if applicable), employees, agents, subcontractors, and/or representatives free and harmless from all claims, actions, damages and liabilities of any kind and nature arising from bodily injury, including death, or property damage, based or asserted upon any actual or alleged act or omission of the indemnifying party, its elected officials (if applicable), employees, agents, representatives, or subcontractors, relating to or in any way connected with the accomplishment of the work or performance of services under this Agreement, unless the bodily injury or property damage was actually caused by the sole negligence of the indemnifying party, its elected officials (if applicable), employees, agents, representatives, or subcontractors.

INSURANCE.

While not restricting or limiting the foregoing, during the Listing Period of this Agreement, Broker shall maintain in effect policies of comprehensive public, general and automobile liability insurance, in the amount of \$1,000,000.00 combined single limit, and statutory worker's compensation coverage, and shall file copies of said policies with the Owner's Risk Manager prior to undertaking any work under this Agreement. Owner shall be set forth as an additional named insured in each policy of insurance provided hereunder. The Certificate of Insurance furnished to the Owner shall require the insurer to notify Owner of any change or termination in the policy.

NON-DISCRIMINATION.

In the performance of this Agreement and in the hiring and recruitment of employees, Broker shall not engage in, nor permit its officers, employees or agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, mental or physical disability, medical condition, marital status, sexual gender, sexual orientation, or any other status protected by law, except as permitted pursuant to Section 12940 of the California Government Code.

INDEPENDENT CONTRACTOR.

Broker shall perform work tasks provided by this Agreement. But for all intents and purposes, Broker shall be an independent contractor and not an agent or employee of the Owner. Broker shall secure, at its expense, and be responsible for, any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Broker and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

BUSINESS REGISTRATION CERTIFICATE AND OTHER REQUIREMENTS.

Broker warrants that it possesses or shall obtain, and maintain a City of Calexico business registration certificate and any other licenses, permits, qualifications, insurance and approval of whatever nature that are legally required of Broker to practice its business or profession.

ASSIGNMENT.

Broker shall not voluntarily or by operation of law assign, transfer, or encumber all or any part of the Broker's interest in this Agreement without the Owner's prior written consent. Any attempted assignment, transfer, or encumbrance shall be void and shall constitute a breach of this Agreement and cause for the termination of this Agreement. Regardless of Owner's consent, no assignment

Broker's Initials () ()

Owner's Initials () ()

shall release Broker of Broker's obligation to perform all other obligations to be performed by Broker hereunder for the Listing Period of this Agreement.

VENUE.

The Parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated either in the State courts located in the County of Imperial, State of California or the U.S. District Court for the Central District of California, Riverside Division. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature.

GOVERNING LAW.

This Agreement shall be governed by the laws of the State of California.

SUCCESSORS AND ASSIGNS.

This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective heirs, representatives, successors, and assigns.

SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance, and the remaining provisions of this Agreement shall remain in full force and effect.

REMEDIES; WAIVER

All remedies available to either Party for one or more breaches by the other Party are and shall be deemed cumulative and may be exercised separately or concurrently without waiver of any other remedies. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by the Party against whom enforcement is sought.

II. SITES TO BE LISTED AND SOLD

LIST OF SUCCESSOR AGENCY PROPERTY TO BE LISTED AND SOLD						
LRPMP Site No.	Site Reference	Address	APN	Zoning	Lot Size (ac)	Listing Price
3	Avenida Campillo Vacant Industrial Property	220 Avenida Campillo	058-061-009	Industrial	1.0	\$163,350
6	Metropolitan Theater Property	2441 Scaroni Road	059-010-067	Commercial Highway	4.86	\$4,822,000
			059-010-068			
			059-010-069			

Broker's Initials () ()

Owner's Initials () ()