

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN EXCLUSIVE LISTING AGREEMENT WITH NEWMARK MOSES TUCKER PARTNERS TO SELL APPROXIMATELY FIVE ACRES OF PUBLIC LAND IN THE CITY OF NORTH LITTLE ROCK'S DOWNTOWN AREA; AND FOR OTHER PURPOSES.

WHEREAS, demand for downtown property in the City of North Little Rock (the "City") has reached an unprecedented level; and

WHEREAS, City-owned property located in the downtown area, surrounding and including the City Services Building, offers a unique development opportunity with regard to its size, location, and ownership; and

WHEREAS, it would be in the City's best interest to plan, market, and develop this property in its entirety in order to attain the greatest economic and quality of life impact; and

WHEREAS, the City has experience with successfully using public-private partnerships to develop other City-owned properties; and

WHEREAS, Newmark Moses Tucker Partners ("NMTP"), an Arkansas based private company with decades of successful planning, marketing, and development of downtown properties, has agreed to partner with the City to plan and market the property; and

WHEREAS, NMTP employs professional land planners and marketers with development credentials and expertise whom have agreed to work closely with pertinent City government offices and officials on this project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor is hereby authorized to enter into an Exclusive Listing Agreement (substantially similar to Exhibit A) with Newmark Moses Tucker Partners to plan, market, and possibly develop the City-owned property identified in the attached document, approximating five (5) acres of land.

SECTION 2: That the gross selling price for the land will be Sixteen & 00/100 dollars (\$16.00) per square foot of land (land value only), with any demolition costs to be at a buyer's expense.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

Joe A. Smith
Mayor Joe A. Smith *By AF*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED	<u>11:15</u>	A.M.	_____	P.M.
By	<u>A Fields</u>			
DATE	<u>1-22-19</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>D. Ussery</u>			

EXCLUSIVE LISTING CONTRACT

For and in consideration of the services rendered and to be rendered by Newmark Moses Tucker Partners, hereinafter called NMTP, and efforts on its part and at its expense while acting as my agent for the property described herein, Owner(s) does hereby grant NMTP for a term of 540 days from date hereof and thereafter for one additional like period unless notified by Owner in writing at least ten days prior to expiration of this contract, the exclusive right to sell exchange lease rent the following described property: Approximately five (5) acres of land and associated structures more particularly described on attached Exhibit "A".

Gross Selling Price: \$16.00 per square foot (land value only); whereby, any demolition costs shall be at Buyer's expense.

Terms: Cash upon Closing

Lease or Rental Rate: Negotiable

Terms: To be determined on a case by case basis

In the event of sale or exchange, unless otherwise specified between Owner and a purchaser or lessee, the Owner will furnish an owners title insurance policy to said lands, and Owner, at its expense and within a reasonable time, will correct any exceptions to title which are not ordinarily included in an owners policy of title insurance. Likewise, the Owner will pay for documentary stamps to be affixed to the deed as required by Arkansas law. All state and county taxes and special assessments for the year in which the transaction is consummated, interest, rents and insurance (if policies are acceptable to purchaser) are to be prorated from date of transfer. Owner hereby agrees to convey said property by warranty deed, with Owner warranting to NMTP that the undersigned (i) are all of the record title owners, or (ii) has a properly acknowledged and recorded power of attorney which has not been revoked, or (iii) has full legal and actual authority from Owner, if an entity, to enter into this agreement and convey the property.

Regardless of the scope of the listing as set forth in the first paragraph of this contract, if said property be sold, exchanged, leased, rented or otherwise disposed of by NMTP or any person, association, corporation or by Owner during the period of this contract, whether on terms set forth in this contract or on other terms acceptable to Owner, Owner agrees to pay NMTP a professional fee in accordance with the fee schedule below, based on the gross amount of the sale or of the value at which it may be exchanged for other property or on the rate at which the property may be leased or rented. Further, if (1) NMTP shall have delivered to Owner a notice in writing on or before seven (7) days after the expiration of this Exclusive Listing Contract containing a list of all persons or entities (the "Prospective Purchasers") who have obtained information about said property from NMTP during the period of this listing and (2) said property is sold, exchanged, leased, rented or otherwise disposed of, directly or indirectly, or a contract for such sale, exchange, lease, rental or disposition is executed by any person including Owner with any Prospective Purchaser during a period of twelve (12) months after expiration or termination of this Exclusive Listing (the "Exclusive Listing Period"), Owner also agrees to pay NMTP a professional fee in accordance with the fee schedule below, based upon the gross amount of the sale or the value at which it may be exchanged for other property or on the rate at which said property may be leased or rented. However, if Owner enters into an exclusive listing agreement with another licensed real estate broker with respect to said property, then all of the preceding provisions will apply, except that the fee payable to NMTP will be seventy-five percent (75%) of the specified fee if the Prospective Purchaser's offer is submitted through NMTP, or fifty percent (50%) of the specified fee if the Prospective Purchaser's offer is not submitted through NMTP.

In the event there is forfeited earnest money, after the deduction of all expenses, same shall be divided equally between NMTP and Owner up to the amount of the professional fee to be paid NMTP on the transaction, the balance, if any, going to Owner. Owner reserves the privilege of canceling this contract during the term hereof or written extension thereof, by giving NMTP ten days notice in writing to that effect and paying NMTP the same professional fee as though a transaction were accomplished upon the authorized terms.

Owner authorizes NMTP to market the property utilizing the agency relationships checked below. However, NMTP will present to Owner all offers received regardless of agency relationships specified below. Throughout this paragraph, the term "Buyer/Lessee" shall refer to any potential purchaser or tenant that is considering a purchase or lease of the property.

SELLER AGENCY: When the Buyer/Lessee is not represented, either by a separate agent or by NMTP, the only agency in effect is that between Owner and NMTP.

BUYER AGENCY: Owner authorizes NMTP to pay from NMTP's fee agreed upon in the Listing a share deemed competitive by NMTP to an agent representing a Buyer/Lessee.

EXHIBIT

A.

tabbles

X NMTP REPRESENTS BOTH: Owner hereby consents that NMTP may represent both a Buyer/Lessee and Owner in any transaction to sell or lease the property to a Buyer/Lessee subject to a Buyer Agency Contract or similar representation agreement with NMTP. Should this situation arise, the Owner agrees to the following:

1. NMTP shall not disclose to the Buyer/Lessee or Owner any personal, financial or other confidential information about the other party without that party's express written consent. This restriction excludes information related to material property information which is known to NMTP and other information which must, at NMTP's discretion, be disclosed.
2. The Owner acknowledges notification that when NMTP represents both parties, a conflict of interest can arise; and under this agreement the Owner agrees to forfeit the Owner's right to receive the undivided loyalty of NMTP. It is understood, however, that NMTP is obligated to treat each party fairly and equitably.
3. The Owner agrees to waive any claim now or hereafter arising out of any conflicts of interest from NMTP's representing both parties.

Owner hereby agrees to offer subagency to other real estate licensees and acknowledges that the chain of agency extends to the Owner from any subagents who accept the offer of subagency. NMTP will provide disclosures and information about the property necessary to assist any such subagents in exercising their duties and responsibilities to the Owner. Owner authorizes NMTP to pay from NMTP's fee agreed upon in the Listing a share deemed competitive by NMTP to subagent.

NOTE: Owner understands, if the option "NMTP Represents Both" is not selected, any prospective purchasers who have a buyer agency agreement with NMTP cannot be shown the property by NMTP.

Other:

In addition, during the term of this Exclusive Listing Agreement, NMTP and Owner agree to the terms provided for in attached Exhibit "B" – Memorandum of Understanding

Owner hereby acknowledges the receipt of a copy of this contract.

OWNER: CITY OF NORTH LITTLE ROCK

By: _____
Mayor Joe Smith

Address: 300 Main St., North Little Rock, AR 72114

Telephone: 501.975.8885

NEWMARK MOSES TUCKER PARTNERS

By: _____
J. Fletcher Hanson III, Principal & Principal Broker

By: _____
Jimmy Moses, Co-Chair and Associate Broker

Date: _____

Date: _____

SCHEDULE OF PROFESSIONAL FEES

SALES

Property - 6% of total purchase price.

EXCHANGES

Same as for SALES; fee applies to each property transferred in the transaction.

LEASES (not including property management)

A. Building Space Leases

Cash - 5% of the gross aggregate rent reserved for the first five years, plus
4% of the gross aggregate rent reserved for the next five years, plus
2% of the gross aggregate rent reserved for the next forty years, plus
1% of the gross aggregate rent reserved for the remainder of the term.

In addition, a negotiated development fee may be charged for services in addition to leasing or renting. Upon exercise of renewal options or extensions negotiated, a cash fee will be paid in accordance with the above schedule at the time of exercise of said option or extension agreement.

B. Ground Leases

Cash - 8% of the gross aggregate rent reserved for the first five years, plus
6% of the gross aggregate rent reserved for the next five years, plus
4% of the gross aggregate rent reserved for the next ten years, plus
2% of the gross aggregate rent reserved for the next thirty years, plus
1% of the gross aggregate rent reserved for the remainder of the term.

Upon exercise of renewal options or extensions negotiated, a cash fee will be paid in accordance with the above.

Exhibit "A"

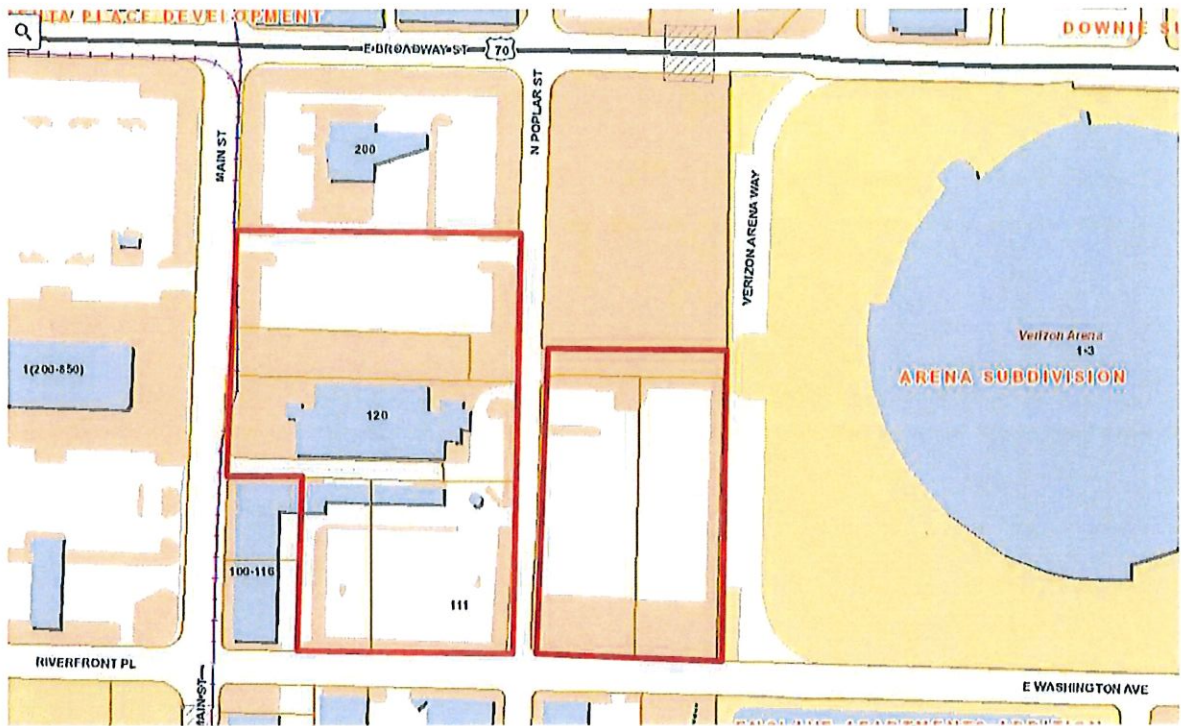


Exhibit "B"
Memorandum of Understanding

To the Exclusive Listing Agreement, between
Newmark Moses Tucker Partners (as "NMTP") and
The City of North Little Rock (as "Owner"), dated
January ____, 2019

1. NMPT will use reasonable efforts to prepare internally or with the assistance of third parties to prepare a Master Plan for the development and sale of the Property; whereby, throughout the process in developing the Master Plan, NMTP will work in cooperation and conjunction with both the North Little Rock Mayor's office and North Little Rock Development Department. The Master Plan shall be subject to approval of the North Little Rock Office of the Mayor.
2. Both parties agree that any transaction provided for in the Exclusive Listing Agreement shall be subject to review and approval by the North Little Rock Office of the Mayor regarding buyer's or lessee's written plan (including development timeframes) for the Property or any portion thereof in order to ensure that the proposed use of the Property conforms to the approved Master Plan. The City of North Little Rock, as Owner, shall have the right to reject any offer and plan, which shall be in Owner's sole discretion.
3. During the term of the Exclusive Listing Agreement, in exchange for its efforts reflected in Number 1 above, NMPT or an entity of its choice (as "NMTP Entity") shall have the First Right to Purchase the Property or any portion thereof, provided NMTP Entity shall be subject to the conditions provided for in Number 2 above. In the event, owner receives a bonafide offer to purchase or lease the Property, NMTP Entity shall have 60 days to either exercise its First Right to Purchase under the same terms and conditions or otherwise release the Property for sale to another party. In addition, subject to the conditions in Number 2 above, NMTP Entity shall have the right to purchase all or any portion of the Property at a Price not to exceed \$16.00 PSF.
4. Provided the Master Plan as outlined above has been approved during the term of the Exclusive Listing Agreement and a transaction has not occurred within the 540-day Listing Period, NMTP shall be granted a one-year extension of the Exclusive Listing Agreement and its First Right to Purchase for a period of one-year following the expiration date.
5. Within 60 days of full execution hereof, Owner shall supply NMTP with the following reports to assist in marketing the Property and developing the Master Plan.
 - a. Phase I Environmental Report;
 - b. ALTA Survey, which shows a minimum of Site boundaries, topography, utilities and right-of-way's; and
 - c. Soils test for determining Site conditions, especially given the proximity to the Arkansas River.