R-20- 157

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FIRST ADDENDUM TO THE EXCLUSIVE LISTING CONTRACT WITH NEWMARK MOSES TUCKER PARTNERS TO EXTEND THE EXPIRATION DATE TO MAY 31, 2021; AND FOR OTHER PURPOSES.

WHEREAS, on February 11, 2019, the North Little Rock City Council passed Ordinance No. 9615, authorizing the Mayor to enter into an Exclusive Listing Contract (the "Contract") (see Contract attached hereto as Exhibit A) with Newmark Moses Tucker Partners (NMTP) to plan, market, and possibly develop the City-owned property; and

WHEREAS, due to the current COVID pandemic, the Contract was not renewed before the termination date of August 11, 2020, and the parties would like to extend the Contract to May 31, 2021; and

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

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 a First Addendum to the Exclusive Listing Contract (substantially similar to Exhibit B) with Newmark Moses Tucker Partners to extend the termination date to May 31, 2021.

SECTION 2: 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

ATTEST:

_____
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 10:40 A.M. _____ P.M.
By A. Fields
DATE 11-3-20
Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas
RECEIVED BY D. Usery

EXHIBIT

A

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 365 days from date hereof, the exclusive right to __X__ sell 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

In the event of sale or exchange, unless otherwise specified between Owner and a purchaser, 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 or exchanged, 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. 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 or otherwise disposed of, directly or indirectly, or a contract for such sale, exchange 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;. 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 documented out of pocket expenses incurred in preparing the Master Plan as provided for in attached Exhibit "B", not to exceed 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" shall refer to any potential purchaser of the property.

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

__X__ 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.

__X__ NMTP REPRESENTS BOTH:. Owner hereby consents that NMTP may represent both a Buyer and Owner in any transaction to sell the property to a Buyer 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 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

Date: 2/14/19

By: _____

Jimmy Moses, Co-Chair and Associate Broker

Date: 2-14-19

SCHEDULE OF PROFESSIONAL FEES

SALES

Property - 6% of total purchase price.

Exhibit "A"

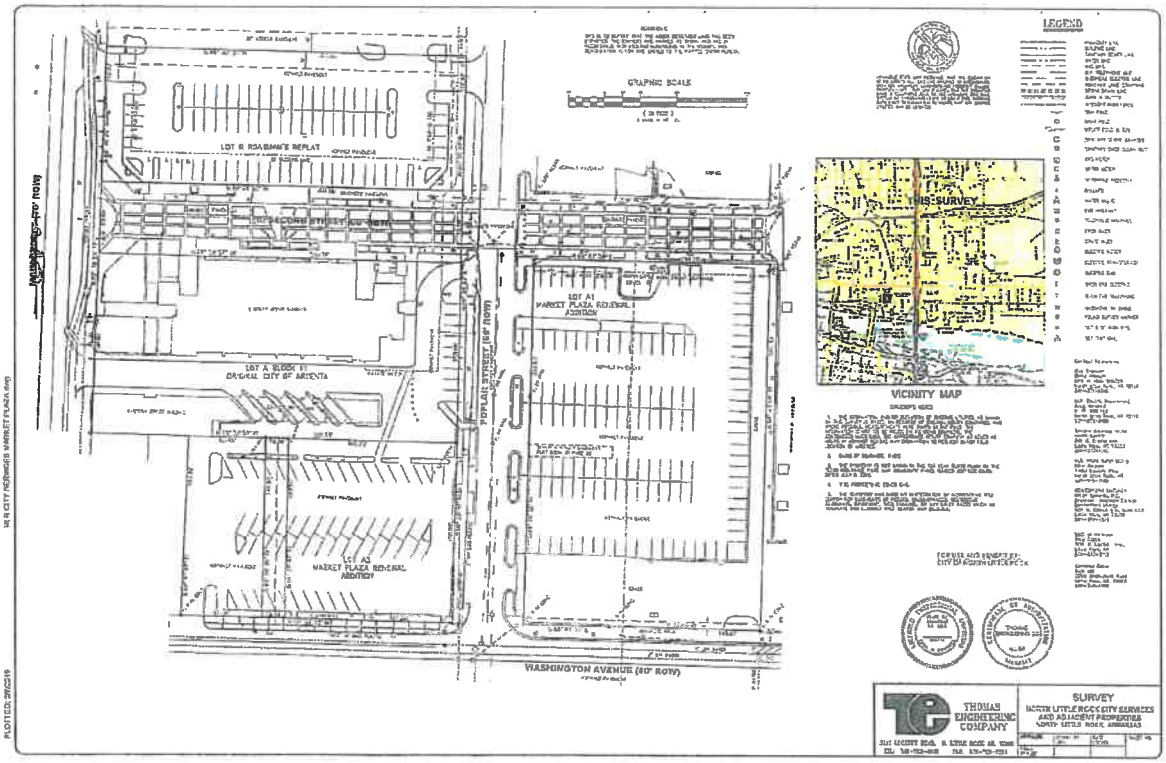

LEGEND
GRAPHIC SCALE
LOT 8 ROADMAN'S REPLAT
SECOND STREET (60' ROW)
LOT A BLOCK 51
ORIGINAL CITY OF ARCENTA
LOT A1
MARKET PLAZA REVISED ADDITION
LOT A2
MARKET PLAZA REVISED ADDITION
POPLAR STREET (60' ROW)
WASHINGTON AVENUE (60' ROW)
VICINITY MAP
THIS SURVEY
THOMAS ENGINEERING COMPANY
SURVEY
MAPPING LITTLE ROCK CITY SERVICES AND ADJACENT PROPERTIES
LITTLE ROCK, ARKANSAS

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
February 14, 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 and North Little Rock City Council.

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 and North Little Rock City Council regarding buyer'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 therefore, 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 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.

4. Provided the Master Plan as outlined above has been approved by the North Little Rock Office of the Mayor and North Little Rock City Council during the term of the Exclusive Listing Agreement and a transaction has not occurred within the 365-day Listing Period, NMTP shall be granted a 180-day extension of the Exclusive Listing Agreement and its First Right to Purchase for a period of 180-days 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.

EXHIBIT
tabbies
B

FIRST ADDENDUM TO THE
EXCLUSIVE LISTING CONTRACT

THIS First Addendum to the Exclusive Right of Sale Listing Agreement (the "Addendum") is entered into as of November ___, 2020, between City of North Little Rock (as "Seller") and Newmark Moses Tucker Partners (as "Listing Firm").

WITNESSETH:

WHEREAS, Seller and Listing Firm has entered into a certain Exclusive Listing Contract, dated February 14, 2019, (the "Contract"), which was extended through August 11, 2020 per the Contract, Exhibit B - Section 4, for the real property described as: Approximately five (5) acres of land and associated structures more particularly described on attached Exhibit "A" (the "Property").

NOW, THERFORE, in consideration for the covenants, agreements and promises made below and other good and valuable consideration, receipt and sufficiency being acknowledged, agree to the revisions as follows:

EXPIRATION DATE CHANGE

Seller and Listing Firm agree to extend the current Exclusive Listing Contract termination date from the current termination date of August 11, 2020, to a new termination date of May 31, 2021.

This First Addendum to the Exclusive Listing Contract, upon its execution by all parties, incorporates by reference all provisions of the above referenced Exclusive Listing Contract not expressly modified herein. In the event that a conflict arises between the Exclusive Listing Contract and the First Addendum to the Exclusive Listing Contract, the terms provided for in the First Addendum to the Exclusive Listing Contract shall prevail.

The above Addendum to the Exclusive Listing Contract is executed on November ___, 2020 at _____ (am) (pm)

SELLER: CITY OF NORTH LITTLE ROCK

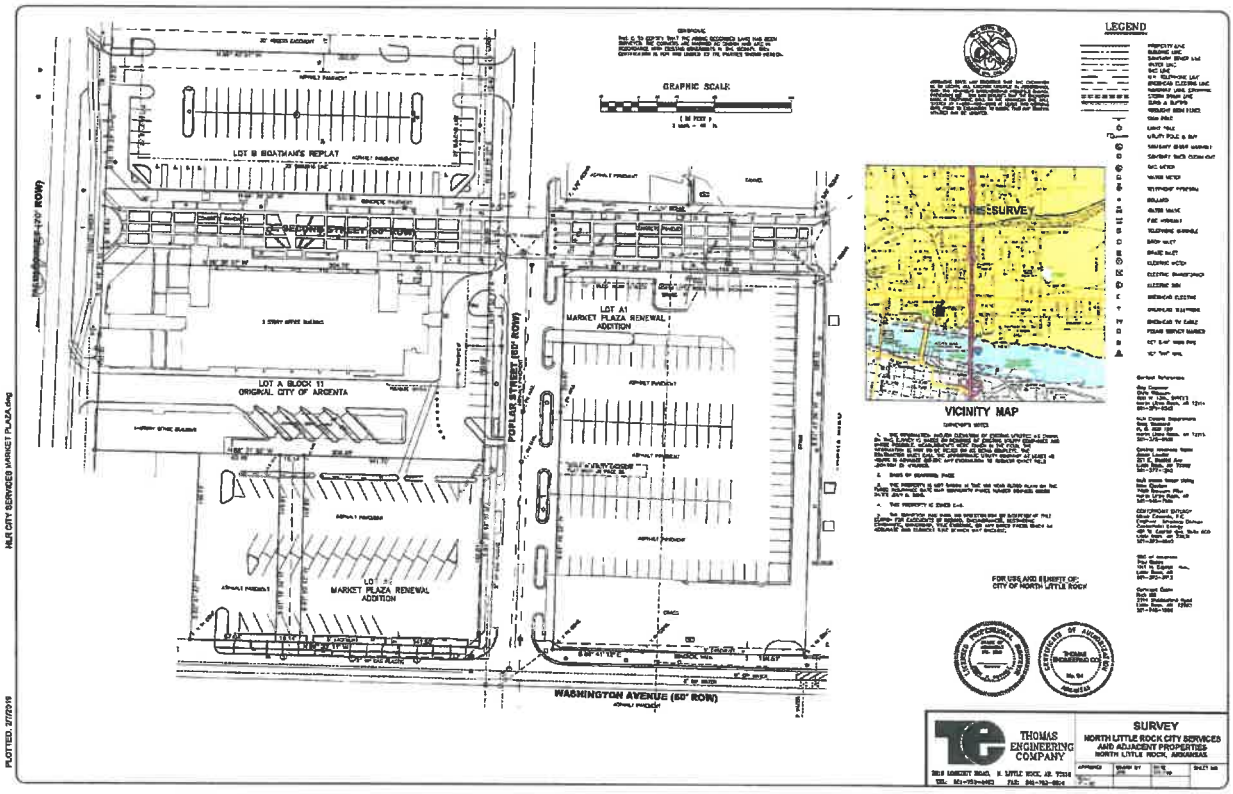
BY: _____
Authorized Office or Agent

LISTING FIRM: NEWMARK MOSES TUCKER PARTNERS

By: _____
J. Fletcher Hanson, Principal Broker

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

Exhibit "A"


LEGEND
GRAPHIC SCALE
VICINITY MAP
SURVEY
LOT B BOATMAN'S REPLAT
LOT A BLOCK 11
ORIGINAL CITY OF ARCENTA
LOT A1
MARKET PLAZA RENEWAL
ADDITION
LOT A2
MARKET PLAZA RENEWAL
ADDITION
POPLAR STREET (60' ROW)
WASHINGTON AVENUE (60' ROW)
FOR USE AND BENEFIT OF:
CITY OF NORTH LITTLE ROCK
THOMAS
ENGINEERING
COMPANY
SURVEY
NORTH LITTLE ROCK CITY SERVICES
AND ADJACENT PROPERTIES
NORTH LITTLE ROCK, ARKANSAS
NLR CITY SERVICES MARKET PLAZA.dwg
PLOTTED: 2/7/2019