

REAL ESTATE LISTING AGREEMENT

The parties to this Real Estate Listing Agreement (“Agreement”) are the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties (the “City”), acting by and through the Director of General Services Department (the “Director”), and **TRANSWESTERN PROPERTY COMPANY SW GP, L.L.C. d/b/a Transwestern**, (“TW”).

1. **PROPERTY:** Approximately 1.273 acres of vacant land having an address of 4215 Leeland Avenue, Houston, Texas (the “Property”).
2. **TERM:** This Agreement commences on the date this Agreement is countersigned by the City Controller (Commencement Date) and terminates at the earlier of: (a) 11:59 p.m. on 365th day after the Commencement Date (Termination Date), or (b) upon the closing and funding of the City’s sale of the Property.
3. **TW’s DUTIES AND AUTHORITIES:**
 - a. TW, at its sole cost and expense, will make reasonable efforts and act diligently to market the Property in accordance with the terms of this Agreement. The City authorizes TW to:
 - i. Gather information on the Property from the City, TW resources, and third-party sources, and organize such information.
 - ii. Develop high-quality listing materials on the Property, including brochures, flyers, and advertisements in print and electronic form. Such listing materials will include Property descriptions and specifications, maps of location, and photographs.
 - iii. List or advertise the Property on (i) third-party listing sources, and (ii) by such means and methods that TW reasonably determines to be appropriate for the Property based on current market practices for properties substantially similar to the Property.
 - iv. Make recommendations to the City for signage on the Property, and install agreed-upon signage upon the Property.
 - v. Consult with the City and the City’s legal counsel regarding such counsel’s recommendation on a lawful method for the City to sell the Property in accordance with the applicable requirements of Chapters 253 and 272 of the Texas Local Government Code. The City and its counsel shall be solely responsible for determining the legal status of any method of sale and the legal sufficiency of any purchase and sale agreement and any other documents contemplated by this Agreement.
 - vi. Identify qualified prospects and target listing efforts to same.
 - vii. Receive and respond to information requests on the Property. Provide prospects with complete and accurate information on the Property, and facilitate prospective purchasers’ due diligence investigations, including

Property tours, upon reasonable advance notice to the City.

viii. Provide periodic reports to the City on TW's listing efforts, and consult with the City as requested on the progress of listing the Property.

b. TW is not authorized to:

i. Execute any document in the name of or on behalf of City with respect to the Property.

ii. Authorize any repairs to the Property.

iii. Authorize the expenditure of any funds with the expectation that such funds will be repaid to TW by the City.

iv. Negotiate any earnest money deposit, purchase agreement, or other instrument in connection with the Property.

v. Disclose to any prospective purchaser any (i) indications of the Property value set out in appraisal reports obtained by the City or TW, (ii) minimum price that the City might accept for the Property, or (iii) such other confidential information that the City specifically instructs TW, in writing, not to disclose, unless (i) otherwise instructed in a separate writing by the City, (ii) a court order requires the disclosure of such information, or (iii) the information materially relates to the condition of the Property.

vi. Place any lien upon the Property.

c. TW is not obligated to market the Property after the City Council has approved a sale of the Property to a purchaser.

d. TW is not responsible in any manner for personal injury to the City resulting from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing water pipes, or other causes, except the negligence or willful misconduct of TW. TW is not responsible for the security of the Property or for inspecting the Property on any periodic basis.

4. **TW REPRESENTATIONS AND COVENANTS:** TW represents and warrants to, and covenants with, the City as follows:

a. TW is duly licensed as a real estate broker, license no. 466196 authorized to provide the real estate listing services contemplated by this Agreement, and will maintain that license in full force and effect at all times during the term of this Agreement. All associates employed by TW to assist with listing the Property will be duly licensed as real estate brokers or agents when any such services are rendered.

b. All activities by TW and its associates hereunder will be conducted in strict compliance with the Texas Real Estate License Act, the rules and regulations of the Texas Real Estate Commission, and all other provisions of applicable law.

c. The City hereby acknowledges receipt from TW of the agency disclosure form

entitled "Information on Brokerage Relationships." The City acknowledges that TW is an affiliate member of a national Brokerage alliance firm and that in some cases it may represent prospective purchasers and tenants. The City desires that the Property be presented to such persons or entities, and hereby consents to and authorizes TW to act as an intermediary in the event of a transaction involving the City and a prospective purchaser or tenant also represented by TW. If TW acts as an intermediary in a transaction involving the City, TW shall:

- i. **Not disclose to the purchaser or tenant that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord;**
- ii. **Not disclose to the seller or landlord that the purchaser or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by the purchaser or tenant;**
- iii. **Not disclose any confidential information or any information a party specifically instructs TW in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose such information by the Texas Real Estate License Act or a court order or if the information materially relates to the condition of the Property;**
- iv. **Treat all parties to the transaction honestly; and**
- v. **Comply with the Texas Real Estate License Act.**

If TW acts as an intermediary, TW may appoint one or more licensees associated with TW to communicate with, carry out the instructions of, and provide options and advice to City, and one or more other licensees associated with TW to provide similar services for the other party to the transaction. The City's appointed agent(s) shall be **Micheal Palmer**, license no. 349242 ("City's Agent"). TW reserves the right to change or appoint additional agents for the City if, in TW's reasonable judgment, same becomes necessary. In the event that the City's Agent also represents the purchaser or tenant in a prospective transaction with the City, both TW and the City's Agent may act in the capacity of an intermediary, rather than as the sole representative of either party to the transaction.

5. CITY'S DUTIES AND AUTHORITIES:

- a. The City shall reasonably cooperate with TW's listing efforts by providing TW with information in the City's possession on the Property and permitting, on reasonable terms, due diligence investigations, including tours, of the Property.
- b. The City reserves the right to sell, exchange, or otherwise dispose of the Property to any purchaser, whether procured by TW, by the City directly, or through any other means without the assistance of TW.
- c. Any offer to acquire the Property is subject to City Council approval. City

Council may reject any and all offers to acquire the Property.

6. **CITY'S REPRESENTATIONS AND COVENANTS:** The City represents and warrants to, and covenants with TW, that the City is the owner of the Property and that, 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 (commonly known as "FIRPTA").
7. **TW'S FEE:** If the sale of the Property is approved by City Council, the compensation (the "Fee") for listing services under this Agreement is 4.5% of the sale price of the Property. The TW listing broker is Micheal Palmer, license no. 349242 ("TW Broker"). If the purchaser of the Property is represented by a broker other than the listing Broker, then the compensation to be paid hereunder shall be 4.5% of the sale price to be equally split 50/50 between the listing Broker and the broker for the purchaser. The City will pay TW the Fee in cash only if the Fee is earned and payable in accordance with the following provisions:
 - a. So long as City Council approves the sale of the Property during the Term of this Agreement or, within ninety (90) days of the termination of this Agreement, City Council approves the sale of the Property to a prospect to whom the Property was submitted during the Term of this Agreement (as designated on a list delivered by TW to the City within five (5) business days of termination hereof), the Fee will be earned and payable when the sale of the Property is finally closed and funded, whether this occurs during the term of this Agreement or after the termination of this Agreement. In any such instance, the Fee will be earned and payable irrespective of whether the purchaser is procured by TW, by the City directly, or through any other means without the assistance of TW.
 - b. TW shall not be due any compensation other than the Fee and the City will not owe TW the Fee if a sale of the Property does not close or fund.
 - c. The City shall authorize any escrow or closing agent authorized to close a transaction for the sale or other disposition of the Property contemplated in this Agreement to, at closing, collect and disburse to TW the Fee due under this Agreement. If TW earns a Fee pursuant to subparagraph (a) above, TW's compensation under this Agreement shall be earned and payable only upon the closing of the sale of the Property.
8. **DEFAULT:** If either party breaches or fails to comply with this Agreement or makes a false representation in this Agreement, the party is in default. The non-defaulting party may seek any relief provided by law.
9. **NOTICES:** Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be

changed by written notice delivered as provided herein.

City: City of Houston
General Services Department
900 Bagby Street, 2nd Floor – Real Estate Division
Houston, Texas 77002
Attention: Humberto Bautista, Assistant Director
Phone: (832) 393-8027
Humberto.Bautista@houstontx.gov

TW: Transwestern
1900 West Loop South, Suite 1300
Houston, Texas 77027
Attention: Micheal Palmer, SIOR
Phone: (713) 231-1627
Email: micheal.palmer@transwestern.com

10. **AGREEMENT OF PARTIES:** This Agreement may not be assigned by either party without the written permission of the other party. This Agreement is binding upon the parties, administrators, successors, and permitted assigns.
11. **ADDITIONAL NOTICES:**
- a. TW and the City are required by law to perform under this Agreement without regard to race, color, religion, national origin, marital status, sex, disability, or familial status.
 - b. TW is not qualified to render property inspections, surveys, engineering studies, environmental assessments, or inspections to determine property condition or compliance with zoning, governmental regulations, or laws (e.g. Americans with Disabilities Act, Texas Architectural Barriers Statute, and others). TW is obliged to disclose to any prospect any material defect In the Property known to TW.
12. **TERMINATION FOR CAUSE:** Either party is entitled to terminate this Agreement before the Termination Date if the other party fails to perform its obligations under the Agreement and the failure to perform is not cured to the reasonable satisfaction of the party giving written notice of such failure within thirty days after receipt of the notice. Except for a termination due to TW's failure to be licensed under the Act, any such termination will not be effective when the City Council has approved the sale of the Property to a purchaser but such sale has not funded and closed.
13. **CHOICE OF LAW:** This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Harris County.
14. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

15. **WAIVER OF DEFAULT:** It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.
16. **FURTHER ASSURANCES:** Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement.
17. **INTEGRATION:** This Agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.
18. **LEGAL CONSTRUCTION:** If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. The Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language. The relationship of TW to the City is that of an independent contractor.
19. **TIME:** Time is of the essence. Unless otherwise specified, all references to “days” mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.
20. **TREC RECOVERY FUND:** TW is licensed and regulated by the Texas Real Estate Commission (TREC). TREC administers two recovery funds which may be used to satisfy judgments against inspectors and real estate licensees involving a violation of the law. Complaints or inquiries should be directed to the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3960.

[Execution pages follow]

Transwestern Property Company SW GP, L.L.C.
d/b/a Transwestern

By:  _____

Name: Kevin Roberts

Title: President, Southwest

Date: _____

ATTEST:

CITY OF HOUSTON, TEXAS

Anna Russell
City Secretary

Annise D. Parker
Mayor of the City of Houston

APPROVED AND
RECOMMENDED:

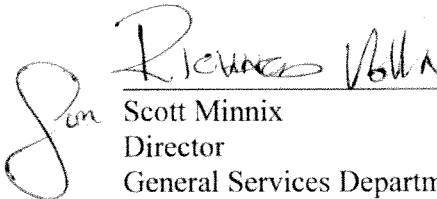


Humberto Bautista, P.E.
Assistant Director
General Services Real Estate

COUNTERSIGNED:

City Controller

Date: _____



Scott Minnix
Director
General Services Department

APPROVED AS TO FORM:

Donna Capps
Assistant City Attorney
L.D. No. 0331500005001

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