

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Administrator to execute an agreement appointing Zimmer Real Estate Services, L.C., of Kansas City, MO, as agent for the search for a new Health Department facility at no cost to the County.

RESOLUTION NO. 20424, May 11, 2020

INTRODUCED BY Theresa Cass Galvin, County Legislator

WHEREAS, the Jackson County Health Department has a need for a new facility to allow the department to retain additional staff to provide a proper response to the ongoing Coronavirus/COVID-19 pandemic; and,

WHEREAS, Zimmer Real Estate Services, L.C., has successfully assisted the County in previous real estate acquisitions, including the new Sheriff Office Headquarters and the 14th Street Downtown Kansas City parking garage; and,

WHEREAS, purchasing and financing of the new Health Department facility is subject to legislative approval; and,

WHEREAS, under the Agreement, any compensation due Zimmer for successfully finding a new building will be paid by the seller or landlord out of the proceeds of the sale and not by Jackson County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Administrator be and hereby is authorized to execute, on the behalf of the County, the attached Agreement with the Zimmer Real Estate Services, L.C., of Kansas City, MO.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

Jim D. Haden
Chief Deputy County Counselor

Bryan O. Coninky
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 20424 of May 11, 2020, was duly passed on *May 11*, 2020 by the Jackson County Legislature. The votes thereon were as follows:

Yeas *8*

Nays *0*

Abstaining *0*

Absent *1*

5.11.2020
Date

Mary Jo Spino
Mary Jo Spino, Clerk of Legislature

**EXCLUSIVE AGENCY AGREEMENT
(Representation in Acquisition of Real Estate)**

AGREEMENT made as of May 1, 2020 between Jackson County, Missouri hereinafter called "BUYER/TENANT" and Zimmer Real Estate Services, L.C., a Missouri Limited Liability Company, dba Newmark Grubb Zimmer, hereinafter called "BROKER."

WITNESSETH, that the parties hereto have agreed as follows:

1. BUYER/TENANT hereby appoints BROKER as its exclusive agent for and gives it the exclusive right to negotiate for the purchase/lease of property by BUYER/TENANT and to negotiate terms and conditions acceptable to BUYER/TENANT for the procurement of certain property as generally described in this Agreement.

2. BUYER/TENANT desires to purchase/lease real property which may include certain items of personal property described as follows: Type: Residential Income Vacant Land Commercial.
General Location: Eastern Jackson County, Missouri
Approximate Price Range: Indefinite
Preferred Terms: Facilities search for Health Department – Subject to approval of purchase and financing by appropriate County body.

(purchase/lease, building area and/or acres/square feet of land, etc.)

3. All contracts of sale or lease are to be subject to the final approval of the BUYER/TENANT and are to be executed by the BUYER/TENANT, the BUYER/TENANT hereby covenanting that he/it has the authority to enter into the transaction contemplated herein.

4. BUYER/TENANT agrees during the term of this Agreement to refer to BROKER all properties made known to BUYER/TENANT by other brokers, or otherwise, and BROKER agrees to diligently investigate and pursue other properties in a diligent manner. BROKER agrees to cooperate with other commercial and industrial real estate brokers according to customary and ethical practices in the Kansas City area. BUYER/TENANT agrees that all negotiations concerning the sale or lease of property shall be conducted by and through BROKER during the term of this Agreement. In endeavoring to identify property to purchase or lease, BROKER will have the right to use all reasonable and recognized professional practices including, but not limited to, the association and cooperation with other licensed brokers, including both Landlord and Sellers' agents.

5. BROKER agrees to seek compensation in the form of a brokerage fee from the Seller/Landlord of said real estate in a manner which is customary in the Kansas City area. Such compensation shall not become due to BROKER until the sale or lease contemplated herein has been finalized and fully executed sale and/or lease documents have been returned to the parties and a statement for services rendered herein. Compensation of any other real estate brokers acting as a cooperating broker with BROKER shall be from the brokerage fee received from the Seller/Landlord pursuant to a separate agreement between BROKER and other real estate brokers.

6. This Agreement shall become effective on the date hereof and shall remain in full force and effect until **October 31, 2020**. If BUYER/TENANT concludes a sale or lease on a property submitted to him by BROKER within ninety (90) calendar days following termination of this Agreement, then BROKER shall be entitled to a brokerage fee as set forth above and BUYER/TENANT agrees to conduct all negotiations through BROKER in accordance with this Agreement.

7. **BROKER AGREES TO:**

- (a) Perform the terms of this Contract, exercise reasonable skill and care for BUYER/TENANT, and promote the interests of BUYER/TENANT with the utmost good faith, loyalty and fidelity unless acting as a Disclosed Dual Agent (Missouri only) or as a Transaction Broker.
- (b) Seek a price and terms acceptable to BUYER/TENANT.

(c) Present all written offers, counteroffers, and back-up offers in a timely manner. BROKER shall not be obligated to continue to seek other properties while the client is a party to a Contract to purchase/lease property; however, the BROKER must present all written offers to and from the client regardless of whether the client is a party to purchase/lease or not, unless directed otherwise by the BUYER/TENANT in writing.

(d) Disclose to BUYER/TENANT all adverse material facts actually known (or should have known, in Missouri) by BROKER about Seller/Landlord.

(e) Disclose to BUYER/TENANT any facts known by BROKER which are omitted from or contradict any information included in a written report prepared by a qualified third party,

(f) Comply with all applicable federal, state, and local laws, rules and regulations, and ordinances.

(g) Keep all information about BUYER/TENANT confidential unless; disclosure is authorized under this Contract; disclosure is required by statute, rule or regulation; or failure to disclose would constitute a material misrepresentation; or disclosure is required by law to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee.

(h) Disclose to any BUYER/TENANT all adverse material facts actually known (or should have known, in Missouri) by BROKER including but not limited to environmental hazards affecting the Property, material defects in the physical condition of the Property or title thereto, and any material limitation on BUYER/TENANT's ability to perform under the terms of a sales Contract.

(i) Assist with the Closing of the sale of the Property.

(j) Account in a timely manner for all money and property received.

8. **BROKERAGE RELATIONSHIP DISCLOSURE.** BROKER is duly licensed under the laws of the state(s) of Kansas and/or Missouri a real estate licensee and agrees to use BROKER'S best efforts as BUYER/TENANT's agent to locate property as described in this Agreement and (except where Disclosed Dual Agency in Missouri or Transaction Brokerage in Kansas or Missouri arises) to negotiate the terms and conditions for the procurement of said property. BUYER/TENANT understands and agrees that BROKER can show any property which is available for sale/lease, including properties which are listed with Sellers/Landlords with whom BROKER has a brokerage relationship. BROKER shall notify BUYER/TENANT and Seller/Landlord of BROKER'S intention to represent both of them (Disclosed Dual Agency is available only in Missouri), to represent neither but to assist both BUYER/TENANT and Seller/Landlord (Transaction Broker in both Kansas and Missouri), or designate an agent for the BUYER/TENANT and another to represent Seller/Landlord (Designated Agency in both Kansas and Missouri). BUYER/TENANT understands that BROKER may show alternative properties not listed by BROKER to BUYER/TENANT and may show all such properties for sale to other Buyers/Tenants without breaching any duty or obligation to BUYER/TENANT.

• **Transaction Broker.** (Kansas and Missouri). BUYER/TENANT acknowledges that BROKER may have clients who have retained BROKER to represent them in the sale/lease of property. If the property owned by one of these clients is one in which BUYER/TENANT becomes interested in making an offer, BROKER would be in the position of representing BUYER/TENANT and the Seller/Landlord in the same transaction. Unless designated agents have been appointed as provided below, this representation would constitute a Dual Agency (Missouri only). With the informed consent of both BUYER/TENANT and the Seller/Landlord, BROKER may act as a Transaction Broker. As a Transaction Broker, BROKER would assist the parties with the real estate transaction without being an agent or advocate for the interests of either party. A Transaction Broker has the duty to perform the terms of any written or oral agreement made with any party to the transaction; to exercise reasonable skill, care and diligence as a Transaction Broker, including but not limited to: presenting all offers and counteroffers in a timely manner regardless of whether the Property is subject to a Contract for sale or lease or a letter of intent; keeping the parties fully informed regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the Transaction Broker knows but the specifics of which are beyond the expertise of such BROKER; accounting in a timely manner for all money and property received; disclosing to each party to the transaction any adverse material facts of which the Transaction Broker has actual notice or knowledge; and assisting the parties in complying with the terms and conditions of any Contract. The parties to a transaction brokerage transaction shall not be liable for any acts of the Transaction Broker. The following information shall not be disclosed by a Transaction Broker without the informed consent of the party or parties disclosing such information to the Transaction Broker: that BUYER/TENANT is willing to pay more than the Purchase/Lease Price offered for the Property; that a Seller/Landlord is willing to accept less than the asking price

for the Property; what the motivating factors are for any party buying, selling or leasing the property; that a Seller or Buyer will agree to financing terms other than those offered; any confidential information about the other party, unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealing. A separate Transaction Broker Addendum must be signed by all parties when this arrangement is used.

- **Sub-Agency:** A subagent is the agent of an agent. A subagent owes the same obligations and responsibilities as the agent.

- **Disclosed Dual Agency.** (Missouri only) BROKER may have clients who have retained BROKER to represent them in connection with the sale/lease of property. If a Seller/Landlord represented by BROKER has property in which BUYER/TENANT becomes interested in making an offer, BROKER is in the position of representing both BUYER/TENANT and Seller/Landlord in that transaction. This representation, known as Dual Agency, can create inherent conflicts of interest. A Dual Agent shall be a limited agent for both BUYER/TENANT and Seller/Landlord and shall have the duties of BUYER/TENANT or Seller's/Landlord's agent except that a Dual Agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information that has not been made public or becomes public by the words or conduct of the client to whom the information pertains or by a source other than the licensee. A Dual Agent may not disclose, without the consent of the client to whom the information pertains: that BUYER/TENANT is willing to pay more than the Purchase/Lease Price offered for the Property; that a Seller/Landlord is willing to accept less than the asking price for the Property; what the motivating factors are for any client, buying, leasing or selling the Property; that a client will agree to financing terms other than those offered and/or the terms of any prior offers or counter offers made by any party. A Dual Agent shall not disclose to any other client any confidential information about the other client unless the disclosure is required by statute, rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliate licensee against an action of wrongful conduct in any administrative or judicial procedure or before a professional committee. A separate Disclosed Dual Agency Amendment must be signed by BUYER/TENANT and Seller/Landlord when this form of agency is used.

- **Designated Agency.** This alternative to Disclosed Dual Agency in Missouri or Transaction Broker in Kansas or Missouri provides that the BROKER may designate two separate sales people, one to represent the BUYER/TENANT and one the Seller/Landlord respectively. A Designated Agent is a real estate licensee affiliated with a Broker who has been designated by the BROKER, or the BROKER'S duly authorized representative, to act as the agent of the BROKER'S BUYER/TENANT or Seller/Landlord client to the exclusion of all other affiliated licensees. A designated BUYER/TENANT agent will perform all of the duties of a BUYER/TENANT agent. If a Designated Agent is appointed to represent BUYER/TENANT, BUYER/TENANT understands:

- (a) The Designated Agent will perform all of the duties of a BUYER/TENANT's agent and will be BUYER/TENANT's legal agent to the exclusion of all other licensees in the firm.
- (b) Another licensee with the brokerage firm may act as a Designated Agent for the Seller/Landlord in the BUYER/TENANT's purchase/lease of Seller/Landlord's property.
- (c) The Supervising Broker (or Branch Broker, if applicable) will act as a Transaction Broker and will not advocate for the interests of either party and will not, without prior consent of both parties, disclose any information or personal confidences about the party which might place the other party at an advantage. The Supervising Broker (or Branch Broker, if applicable) may appoint an affiliated licensee to act in the transaction as a Transaction Broker
- (d) If the Designated Agent for BUYER/TENANT is also the Designated Agent of a Seller/Landlord in whose property BUYER/TENANT is interested, the Designated Agent cannot represent both BUYER/TENANT and Seller/Landlord. With the informed consent of both BUYER/TENANT and Seller/Landlord, the Designated Agent may act as a Transaction Broker and assist the parties with the real estate transaction without being an agent or advocate for the interests of either party.
- (e) If a BUYER/TENANT client of a Designated Agent wants to see a property which was personally listed by the Supervising Broker, the Supervising Broker, with the written consent of Seller/Landlord, may specifically designate an affiliated licensee who will act as Designated Agent for Seller/Landlord.

Appointment of Designated Agent: BROKER, or BROKER's authorized representative hereby consents

to the appointment of Joyce C. Murray to act as a Designated Agent on BUYER/TENANT's behalf. BUYER/TENANT consents to the above named Designated Agent acting as BUYER/TENANT's Designated Agent (or as a Transaction Broker, or Disclosed Dual Agent in Missouri if such Designated Agent is also the Designated Agent for the Seller/Landlord, subject to both BUYER/TENANT and Seller/Landlord signing a Transaction Broker Addendum or Disclosed Dual Agency Addendum (Missouri only) with BROKER, which must be signed by BUYER/TENANT prior to writing an offer to purchase the Property and by Seller/Landlord prior to signing the Contract. BROKER's signature (required in Missouri) _____

9. **BROKERAGE RELATIONSHIPS CONFIRMATION:** Unless otherwise provided herein, the BUYER/TENANT authorizes the designated broker to cooperate with and receive compensation from other brokers. BUYER/TENANT consents to the following (check applicable boxes):

- Yes No BUYER/TENANT consents to BUYER/TENANT Agency.
- Yes No BUYER/TENANT consents to a Transaction Broker and agrees, if applicable, to sign a Transaction Broker Addendum.
- Yes No BUYER/TENANT consents to Sub agency.
- Yes No BUYER/TENANT consents to a Dual Agent and agrees, if applicable, to sign a Disclosed Dual Agency Agreement. (Missouri Only)
- Yes No BUYER/TENANT consents to a Designated Agency relationship (In Kansas, Supervising Broker acts as a Transaction Broker).
- Yes No If BUYER/TENANT consents to Designated Agency, BUYER/TENANT consents to the appointment of a Designated Agent for a Seller/Landlord in sale/lease of the Seller's/Landlord's Property. (In Kansas, Supervising Broker acts as a Transaction Broker)

10. Notice to either party shall be made by certified or registered mail. Notices to BUYER/TENANT shall be given to Tory Schulte, County Administrator, Jackson County, MO (email: tschulte@jacksongov.org). Notices to BROKER shall be given to: P.O. Box 411299, Kansas City, MO 64141-1299; Attn: David J. Zimmer.

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together shall constitute one agreement. Signature pages to this Agreement transmitted by facsimile or by e-mail in portable document format will have the same legal effect as manually executed signature pages.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

JACKSON COUNTY, MISSOURI
BUYER/TENANT

ZIMMER REAL ESTATE SERVICES, L.C.
dba NEWMARK GRUBB ZIMMER

By: _____

By: _____

Print Name: Troy Schulte
County Administrator

Print Name: David J. Zimmer
ZRES Management, Inc. – Manager BROKER

APPROVED TO FORM:

By: _____
Jay D Haden
Chief Deputy County Counselor