



City of Grand Island

Tuesday, December 12, 2017

Council Session

Item G-6

#2017-344 - Approving Century 21 Da-Ly Realty for Real Estate Broker Services for the Sale of 4808 Gold Core Drive

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Stacy Nonhof, Assistant City Attorney

Meeting: December 12, 2017

Subject: Real Estate Broker Services for the Sale of 4808 Gold Core Drive

Presenter(s): Timothy Luchsinger, Utilities Director

Background

In the 1980's, the Utilities Department purchased property east of Highway 281 between Schimmer Road and Wildwood Drive that would be later developed into the Platte Valley Industrial Park. All of this property has been sold to developers with the exception of approximately nine acres at 4808 Gold Core Road.

Request for Proposals for the purchase of this property have been issued several times over the last few years without resulting in a sale. A Request for Proposals (RFP) for the purchase requires bids due at a certain time. If there is not a suitable response, the process is terminated by default. In order to provide a longer window of opportunity for a sale, the Legal Department prepared an RFP for solicitation of a broker to market this property. Doing so will allow the City to consider proposals without establishing a response deadline.

Discussion

The Request for Proposals for Real Estate Broker Services of City Owned Property at 4808 Gold Core Drive in Grand Island, Nebraska was issued and advertised in accordance with City procurement policies. One response was received from Tracy Babcock of Century 21 Da-Ly Realty. Ms. Babcock and her firm have experience in the marketing and sale of commercial/industrial properties in the Grand Island area and the Utilities Department recommends the execution of the listing agreement with Century 21 Da-Ly Realty by the Mayor for the property at 4808 Gold Core Road.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the execution of the listing agreement with Century 21 Da-Ly Realty by the Mayor for the property at 4808 Gold Core Road.

Sample Motion

Move to approve the execution of the listing agreement with Century 21 Da-Ly Realty by the Mayor for the property at 4808 Gold Core Road.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR REAL ESTATE BROKER SERVICES FOR 4808 GOLD CORE DRIVE**

RFP DUE DATE: November 21, 2017 AT 4:00 P.M.

DEPARTMENT: UTILITIES

PUBLICATION DATE: November 7, 2017

NO. POTENTIAL BIDDERS: 5

SUMMARY OF PROPOSALS RECEIVED

Century 21 Da-Ly Realty
Grand Island, NE

cc: Tim Luchsinger , Utilities Director
Marlan Ferguson, City Administrator
Stacy Nonhof, Purchasing Agent

Pat Gericker, Utilities Secretary
Renae Jimenez, Finance Director
Angi Schulte, Utilities Secretary

P2013



THIS IS A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, SEEK LEGAL ADVICE
The REALTOR® negotiating this agreement is a member of the Nebraska REALTORS® Association
And as such is governed by its Code of Ethics and Rules and Regulations.



FARM, RANCH AND LAND EXCLUSIVE RIGHT TO SELL OR EXCHANGE LISTING

City of Grand Island (Seller)
appoint(s) CENTURY 21 Da-Ly Realty (REALTOR®) as Seller's exclusive agent for the purposes and under the terms
(Firm Name)

set forth below, with my specific limited Seller's Agent to be Tracy Babcock Seller also appoints
designated broker as limited Seller's

Agents and such other affiliated licensees of REALTOR® as may be assigned by REALTOR®, in writing, if needed, as Seller's exclusive, limited Seller's Agents. The Agents named in this paragraph and the Seller's Agents who may be appointed by the Broker for REALTOR® are collectively referred to in this Listing Agreement as Seller's Agents. All responsibilities and duties of REALTOR® shall also be the responsibilities and duties of Seller's Agents.

1. Purpose of Agency. The purpose of this sole and exclusive right to sell agency contract (Listing) is to engage the efforts of REALTOR® to accomplish the sale or exchange of the real property legally described as (please print clearly) PLATTE VALLEY INDUSTRIAL PARK
THIRD SUB TO THE CITY OF GRAND ISLAND LT 1

also known as 4808 Gold Core Drive, Grand Island, NE 68801 (Property).
(Street Address)

2. Effect of this Listing. By appointing REALTOR® as Seller's exclusive agent, Seller agrees to conduct all negotiations for the sale of the Property through REALTOR® and refer to REALTOR® all inquiries received in any form from any source during the term of this Agreement.

3. Duties and Obligations of a Seller's Agent. A REALTOR® representing a Seller as a Seller's Agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of any written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interest of Seller with the utmost good faith, loyalty and fidelity including:
 - (i) Seeking the price and terms which are acceptable to Seller except that REALTOR® shall not be obligated to seek additional offers to purchase the Property while the Property is subject to a contract for sale or to seek additional offers to lease the Property while the Property is subject to a lease or letter of intent to lease;
 - (ii) Presenting all written offers to Seller in a timely manner regardless of whether the Property is subject to a contract for sale or lease or letter of intent to lease;
 - (iii) Disclosing in writing to Seller all adverse material facts actually known by REALTOR® and
 - (iv) Advising Seller to obtain expert advice as to material matters of that which REALTOR® knows but the specifics of which are beyond the expertise of REALTOR®
- (d) To account in a timely manner for all money and property received.
- (e) To comply with all requirements of Neb. Rev. Stat. Sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and/or regulations.

4. Duties and Obligations of Buyer's Agent. A REALTOR® representing a Buyer as Buyer's Agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of any written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interests of the client with the utmost good faith, loyalty and fidelity, including:
 - (i) Seeking a price and terms which are acceptable to the client, except that the REALTOR® shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (iii) Disclosing in writing to the client adverse material facts actually known by the REALTOR® and
 - (iv) Advising the client to obtain expert advice as to material matters about which the REALTOR® knows but the specifics of which are beyond the expertise of the REALTOR®
- (d) To account in a timely manner for all money and property received;
- (e) To comply with all requirements of Neb. Rev. Stat. Sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and/or regulations.

5. Confidential Information. A REALTOR® acting as a Buyer's Agent or a Seller's Agent, shall not disclose any confidential information about the Client without the Client's written permission unless disclosure is required by statute, rule, or regulation, or failure to disclose information would constitute fraudulent misrepresentation. No cause of action shall arise against a REALTOR® acting as a Buyer's Agent or as a Seller's Agent for making any required or permitted disclosure.

6. Disclosure of Motivating Factors. Seller authorizes the disclosure of motivating factors unless initialed here (Seller's initials _____).

7. The Listing Period. This Agreement shall begin December 12, 2017, and shall continue through June 12, 2018.

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CENTURY 21 Da-Ly Realty South, 2514 S Locust St Grand Island NE 68801

Phone: 308-384-1101

Fax: 308-384-9647

Tracy Babcock

City of Grand

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THIS IS A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, SEEK LEGAL ADVICE
The REALTOR® negotiating this agreement is a member of the Nebraska REALTORS® Association
And as such is governed by its Code of Ethics and Rules and Regulations.

**FARM, RANCH AND LAND
EXCLUSIVE RIGHT TO SELL OR EXCHANGE LISTING**

8. Price and Terms. The listing price for the Property shall be \$ 300,000.00 on the following terms: cash or other terms acceptable to Seller. The price and terms shall include all fixtures. Seller's mineral rights are ☒ or are not ☐ included. (check one). The following personal property is also included none

9. Survey of the real estate ☐ shall ☒ shall not, be made prior to the closing hereof and if one is to be made it shall be at the expense of the ☐ Seller ☒ Buyer.

10. Title. Seller represents to REALTOR® that marketable title to the Property is solely in Seller's name. Seller agrees to convey marketable title to Buyer by warranty deed evidenced by a policy of title insurance or an abstract certified to date. ☐ (if checked) subject to the rights of persons in possession. Seller agrees to pay customary closing costs including prepayment penalty and taxes to date of closing

11. Possession. Possession of the Property shall be delivered to Buyer on date of closing

12. Representations and Indemnification. Seller represents that to the best of Seller's knowledge; there are no termites or wood destroying insects or damage therefrom on the premises or in the buildings thereon; there are no known encroachments, unrecorded assessments, adverse material facts, latent (non-apparent) defects, or, local improvements installed, under construction or ordered constructed by public authority affecting this Property except: none

Seller further states that all representations made to the REALTOR® (Listing Company) are accurate. Seller/lessor agrees to indemnify and hold harmless REALTOR® (Listing Company) and any subagents from any claim that may be made against the Listing Company or subagents by reason of the Seller having breached the terms of this paragraph. In addition, Seller/lessor agrees to pay attorney fees and associated costs reasonably incurred by REALTOR® to enforce this indemnity.

13. Compensation of REALTOR®. In consideration of services to be performed for Seller by REALTOR®, a fee of 5.000 percent of the gross sale price upon sale or of the exchange price set forth above upon the exchange of the property shall be payable to REALTOR® payable upon the happening of any of the following:

- (a) If, during the term of the Listing, Seller, REALTOR® or any other person:
 - (i) sells/exchanges the Property; or
 - (ii) finds a Buyer/Exchangor who is ready, willing and able to purchase/exchange the Property at the above price and terms or for any other price and terms which Seller agrees to accept; or
 - (iii) finds a Buyer/Exchangor who is granted an option to purchase or enters into a lease with option of purchase and the option is subsequently exercised; or
- (b) If this agreement is revoked or violated by Seller; or
- (c) If REALTOR® is prevented in closing a sale or exchange of this Property by existing claims, liens, judgments, or suits pending against this Property; or Seller thereof; or
- (d) If REALTOR® is unfairly hindered by Seller in showing or attempting to sell or exchange this Property; or
- (e) If within 90 days after the expiration of this Listing Agreement, Seller sells/exchanges this Property to any person found during the term of this listing, or due to REALTORS® efforts or advertising, under this Listing Agreement, unless this Property is listed with another REALTOR®.

Upon closing of sale or exchange for which the REALTOR® earns compensation under this paragraph or the closing of any sale or exchange within the listing period set forth in paragraph 7, compensation is due and Seller hereby irrevocably authorizes and directs REALTOR® (if closing is handled by REALTOR®) or Escrow Agent (if closing is handled by Escrow Agent) to pay REALTOR® the commission due as set forth in this agreement from the Seller's proceeds of the sale or exchange. Seller gives to REALTOR® an assignment of proceeds to the extent of the commission due. Seller agrees that the closing of a contract for sale or exchange of the Property executed during the listing period is prima facie evidence that REALTORS® due compensation under the terms of this agreement.

14. Limitation on REALTORS® Compensation. REALTOR® shall not accept compensation from the Buyer, Buyer's Agent, or any entity participating in or providing services for the Sale without written disclosure to Seller.

15. Cooperating with other REALTOR®. REALTOR® may accept the assistance and cooperation of other brokers who will be acting as subagents of the Seller or as agent for a Buyer. **Seller agrees to allow REALTOR® to share his/her compensation with subagents of the Seller or agents representing the Buyer (Buyer's Agent).** If REALTOR® participates in a local multiple listing service, REALTOR® shall submit the Property to such listing service.

16. Dual Agency Disclosure. Seller understands that REALTOR® currently serves as the agent for both Sellers and Buyers for the purpose of sale of real property, and Seller is aware that REALTOR® may be the agent for a Buyer of property listed by Seller. If Buyer becomes interested in a property listed with REALTOR®, REALTOR® shall immediately notify Seller that REALTOR® is serving as the agent of the Buyer of the property. Seller consents that REALTOR® may act as a Dual Agent in the sale of the listed property. If REALTOR® serves as a Dual Agent, REALTOR® shall make no representations to Seller of the price Buyer is willing to pay for the property except as set forth in the Purchase Agreement submitted by Buyer, nor any representation to Buyer of the price Seller is willing to accept for the property except as set forth in the Listing Agreement. REALTOR® shall not make any other representations to Seller that would violate REALTORS® agency relationship with Buyer, nor any representations to Buyer that would violate REALTORS® agency relationship with Seller. Seller acknowledges that if a Dual Agency exists, the ability of REALTOR® to represent either party fully and exclusively is limited. If a Dual Agency situation develops, Seller agrees to sign a Consent to Dual Agency. Except for limitations on disclosure of confidential information discussed in paragraph 5, a dual agent has the same duties and responsibilities of a limited agent to a buyer as stated in paragraph 4 and to a seller as stated in paragraph 3.

17. Forfeiture of Earnest Money. In the event of forfeiture of earnest money made by a prospective Buyer, the moneys received, after expenses incurred by REALTORS®, shall be divided between REALTOR® and Seller, one-half thereof to REALTOR® but not to exceed the commission agreed upon herein, and the balance to Seller.

18. Cost of Services. REALTOR® shall bear all expenses incurred by REALTOR® if any, to market the Property and to compensate cooperating brokers, if any. REALTOR® will not obtain or order any products or services to be paid by Seller unless Seller agrees. REALTOR® shall not be obligated to advance funds for the benefit of Seller.

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City of Grand

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19. Maintenance of the Property. Seller agrees to maintain until the delivery of possession, the heating, air conditioning, water heater, sewer, plumbing and electrical systems and any built-in appliances in good and reasonable working condition. Seller further agrees to hold REALTOR® harmless from and all causes of action, loss, damage, or expenses REALTOR® may be subjected to arising in connection with this section. Seller also agrees that REALTOR® shall not be responsible for maintenance of the Property.

20. Nondiscrimination. Seller and REALTOR® agree not to discriminate against any prospective Buyer/Exchangor because of Buyer's/Exchangor's race, color, sex, religion, familial status, handicap, or national origin.

21. Escrow Closing. Seller agrees that the closing of any sale or exchange made by REALTOR® may be handled by an Escrow Agent at a fee not to exceed \$ 150.00.

22. Compliance with Law. Seller agrees to bring the property into compliance with the law as required for the sale/exchange of the property unless otherwise lawfully delegated to the buyer in the purchase agreement, which includes installing a smoke detector if necessary.

23. "For Sale" Sign Permitted. Seller gives permission to REALTOR® to place a "For Sale" and a "Sold" sign on the Property and to use a "Lock Box".

24. Modification of this Listing Agreement. No modification of this Listing Agreement shall be valid, unless made in writing and signed by all parties.

25. Protection of Valuables. REALTOR® is not responsible for items which are lost or stolen during showings. Seller is responsible for placing all valuables in a safe and concealed location when preparing the Property for showings.

26. Authorization of Advertising and Release of Photographic Information. REALTOR® and its agents may advertise/market the property in any media, including radio, newspaper, TV, the Internet, electronic media and computer information networks and may use digital, video or photographic images and/or representations of the Property (along with incidental images of personal property therein) for the purpose of advertising or sales promotion. Seller forever releases REALTOR® and its employees and agents from all claims of any kind and nature which arise out of or are connected to such use and grants REALTOR® and its employees and agents a reasonable time to remove such advertising after termination of listing or closing.

27. Release of Information. Seller authorizes REALTOR® to obtain any information relating to utility expenses and all pertinent information regarding the present mortgage(s) or Deed(s) of Trust on this Property including existing balance, interest rate, monthly payment, balance in escrow account and pay off amount. Seller authorizes the dissemination of sales information including selling price and terms after closing of the transaction.

Seller's Loan Company _____ Loan Number _____

28. Entire Agreement. This Listing Agreement constitutes the entire agreement between the parties and any prior negotiations or agreements, whether oral or written, are not valid unless set forth in this Agreement.

29. Copies of Agreement. This Listing Agreement is executed in multiple copies and Seller acknowledges receipt of a copy signed by the REALTOR® or REALTOR® agent.

30. ☐ IF CHECKED SEE ATTACHED DOCUMENT

31. Other: _____

32. Authority to Sign. Seller represents to REALTOR® that title to the Property is solely in the below-signed Seller's name(s) and that the undersigned is duly empowered and/or authorized, whether individually, on behalf of any entity or as a properly authorized fiduciary, to enter into this Listing Agreement and create a valid and binding contract, and to transfer title to the Property upon sale.

Signed this _____ day of _____,

CENTURY 21 Da-Ly Realty

(Name of REALTOR® or Firm)

2514 S. Locust Street

Grand Island, NE 68801

(Address)

(Phone)

By



(Agent's signature)

Tracy Babcock

(Date)

City of Grand Island

(Name of Seller(s) Typed or Printed)

(Seller Signature)

(Date)

(Seller Signature)

(Date)

PO Box 1968

(Seller(s) Address)

Grand Island

(City)

NE

(State)

68802-1968

(Zip)

(Home Phone)

(Work Phone)

Company **Century 21 Da-Ly Realty** Agent Name **Tracy Babcock**

For additional information on Agency Disclosure and more go to: <http://www.nrec.ne.gov/consumer-info/index.html>

Limited Seller's Agent

- *Works for the seller*
- *Shall not disclose any confidential information about the seller unless required by law*
- *May be required to disclose to a buyer otherwise undisclosed adverse material facts about the property*
- *Must present all written offers to and from the seller in a timely manner*
- *Must exercise reasonable skill and care for the seller and promote the seller's interests*

A written agreement is required to create a seller's agency relationship

Limited Buyer's Agent

- *Works for the buyer*
- *Shall not disclose any confidential information about the buyer unless required by law*
- *May be required to disclose to a seller adverse material facts including facts related to buyer's ability to financially perform the transaction*
- *Must present all written offers to and from the buyer in a timely manner*
- *Must exercise reasonable skill and care for the buyer and promote the buyer's interests*

*A written agreement is **not** required to create a buyer's agency relationship*

Limited Dual Agent

- *Works for both the buyer and seller*
- *May not disclose to seller that buyer is willing to pay more than the price offered*
- *May not disclose to buyer that seller is willing to accept less than the asking price*
- *May not disclose the motivating factors of any client*
- *Must exercise reasonable skill and care for both buyer and seller*

A written disclosure and consent to dual agency required for all parties to the transaction

_____ **Customer Only** (list of services provided to a customer, if any, on reverse side)

- **Agent does not work for you, agent works for another party or potential party to the transaction as:**
___ Limited Buyer's Agent ___ Limited Seller's Agent
___ Common Law Agent (attach addendum)
- **Agent may disclose confidential information that you provide agent to his or her client**
- **Agent must disclose otherwise undisclosed adverse material facts:**
 - about a property to you as a buyer/customer
 - about buyer's ability to financially perform the transaction to you as a seller/customer
- **Agent may not make substantial misrepresentations**

____ Common Law Agent for ____ Buyer ____ Seller (complete and attach Common Law Agency addendum)

(Client or Customer Signature) _____
(Date)

(Client or Customer Signature) (Date)

(Print Client or Customer Name)

(Print Client or Customer Name)

Contact Information:

1. Agent(s) name(s) and phone number(s): **Tracy Babcock (308) 390-5904**

Only the agent(s) named in #1 (above) is offering to represent you as your agent. Other licensees of the same brokerage or members of the same team may work for another party to the transaction and should NOT be assumed to be your agent. Init. Init (this paragraph is not applicable if the proposed agency relationship is a customer only or the brokerage does not practice designated agency)

2. Team name, Team Leader name and phone number (only if applicable):
3. Managing Broker(s) name(s) and phone number(s) (only if applicable):
4. Designated Broker name, name designated broker does business under (if different), and phone number: **Jeffrey Reed (308) 380-6788**

Tasks for Unrepresented Buyer by Seller's Agent.

1. Explain the home buying process. Assess your wants and needs in a property.
2. Conduct previews and showings of multiple properties.
3. Assist in determining financial ability to purchase.
4. Assist in selection of properties best fitting your needs.
5. Provide information on available financing.
6. Provide estimate of total investment and monthly investment required, based on the offer.
7. Provide estimate of closing costs at the time of completing the offer to purchase.
8. Review and explain clauses in the sales contract.
9. Provide background information you wish given to the seller regarding the terms of the offer.
10. Present offers to the seller and counter-offers from the seller.
11. Provide follow-up services, including arranging inspections, appraisal, and delivering documents and copies.
12. Keep in contact with lenders, inspectors, and sellers while awaiting closing and report progress.

Tasks for Unrepresented Seller by Buyer's Agent

1. Explain the home selling process.
2. Provide background information, except that required to be confidential, relating to the buyer's ability to perform under the proposed terms of an offer.
3. Review and explain clauses in the offer.
4. Provide estimate of closing costs based on the proposed terms of an offer.
5. Provide market data that justifies the buyer's offer.
6. Present sellers counter-offers to the buyer.
7. Provide follow-up services, including coordinating inspections, appraisals, surveys, etc.
8. Assist with utilities changes.
9. Assist with preparation and filing of documents.
10. Provide referral services, if relocating.

Client or Customer name(s): _____

RESOLUTION 2017-344

WHEREAS, the City of Grand Island invited proposals for Real Estate Broker Services for the sale of 4808 Gold Core Drive, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on November 21, 2017, proposals were received, opened and reviewed; and

WHEREAS, Century 21 Da-Ly Realty submitted a proposal in accordance with the terms of the advertisement and plans and specifications and all other statutory requirements contained therein.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal from Century 21 Da-Ly is hereby approved and the Mayor is hereby authorized to sign the listing agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 12, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
December 8, 2017	▣ City Attorney