

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND TRANSWESTERN

This Services Agreement (“Agreement”) is entered into and effective upon final execution (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “TAMUS”), an agency of the state of Texas, and TRANSWESTERN PROPERTY COMPANY SW GP L.L.C., a Texas corporation (hereafter referred to as “PROVIDER”). TAMUS and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

TAMUS and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with TAMUS to provide a feasibility study to determine market depth to support student housing, parking, retail and/or a mixed-use development on the property at 1020 Holcombe Blvd., Houston, TX (PROPERTY). Refer to **Exhibit A** for the full scope of work.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin on the Effective Date, and will terminate upon completion of the Scope of Work. Reference the **Exhibit A** for timeframe of completion.

3. PAYMENT TERMS

- A. For the services rendered under this Agreement, TAMUS shall pay PROVIDER \$125,000 – One hundred and Twenty-Five Thousand Dollars inclusive of all expenses.
- B. PROVIDER can invoice TAMUS monthly for the Scope of Work identified in Section 1. Payment will be made to PROVIDER upon approval of such invoice by TAMUS. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- C. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/> .
- D. All invoices must reference the TAMUS purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and description of services provided to include but not limited to time, deliverables, and activities.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if

the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of TAMUS.

- B. TAMUS may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that TAMUS is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon TAMUS's written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUS has a right of access.
- C. PROVIDER acknowledges that TAMUS may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUS and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Executive Vice Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER to resolve the claim.

7. INSURANCE

- A. This process is described in **Exhibit B**, attached hereto.

8. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless TAMUS from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TAMUS. TAMUS will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TAMUS relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent

- is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: “Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor’s Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.

- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMUS.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.
- If you determine you will be using a subcontractor, please contact Mr. Jeff Zimmermann from the A&M System's HUB Program at (979) 458-6410 or zimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.
- M. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- N. **Loss of Funding.** Performance by TAMUS under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.
- O. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- P. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- Q. **Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in

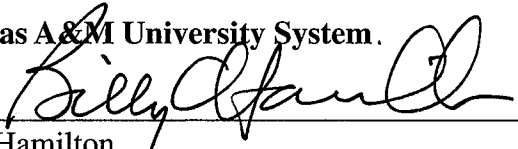
the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

- S. **Prohibition on Contracts with Companies Boycotting Israel.** If PROVIDER is a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit, by executing this Agreement, the PROVIDER certifies it does not and will not, during the performance of this contract, boycott Israel. PROVIDER acknowledges this Agreement may be terminated if this certification is or becomes inaccurate.
- T. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is inaccurate.
- U. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether 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 set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when received. TAMUS and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMUS: The Texas A&M University System
301 Tarrow St., Suite 361
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: jjzimmermann@tamus.edu

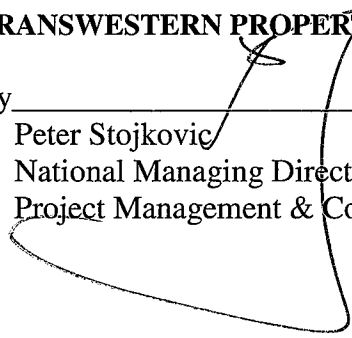
PROVIDER: Transwestern
1900 West Loop South, Suite 1300
Houston, TX 77027
Phone: 713-270-7700
Email: peter.stojkovic@transwestern.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System.
By 
Billy Hamilton
Exec. Vice Chancellor & Chief Financial Officer

6/26/18
Date

TRANSWESTERN PROPERTY COMPANY SW GP L.L.C., a Texas corporation ("Transwestern")

By 
Peter Stojkovic
National Managing Director, Healthcare
Project Management & Construction Services

06.19.18
Date

EXHIBIT A – SCOPE OF WORK

Services to include the following, they are:

- 1) Market study and site scenario planning analysis to determine feasibility of one TAMUS selected scenario over a period of Twelve (12) weeks.
- 2) Transwestern Project Management to lead the team and guide team of consultants and compile final deliverables.
- 3) Transwestern partners to analyze the demand and achievable market rental rates for student housing and MOB and provide high-level overview.
- 4) Transwestern's retail leasing teams to provide high-level market demand study, analytics, and estimate proforma revenues for one TAMUS selected scenarios.
- 5) Transwestern's leasing teams to provide market demand study, analytics, and estimate proforma revenues for one TAMUS selected scenario.
- 6) One construction cost estimate.
- 7) High level study for **Student Housing and Multifamily only**.
 - a) Economic and demographic context
 - (1) Define a Competitive Market Area (CMA) appropriate for the subject site,
 - (2) Review overall population and socio-demographic trends and patterns,
 - (3) Assess overview of economic conditions and prospects for employment growth.
 - b) Evaluation of competitive supply
 - (1) Review historical, current and planned residential and hospitality development activity,
 - (2) Document overall CMA performance including trends in new construction, sales and absorption,
 - (3) Determine inventories, pricing/lease rates, location attributes, occupancy levels, amenities, and quality of major competitive developments (as available).
 - c) Estimate future demand for the potential uses
 - (1) Convert population characteristics and economic data into housing demand,
 - (2) Conduct an over/under analysis to identify housing deficiencies and needs,
 - (3) Analyze the current and anticipated supply and demand balances in the CMA.
 - d) Conclude on market feasibility for development on the site
 - (1) Estimate site share capture rates for housing uses,
 - (2) Conclude on the best development use and estimate reasonable absorption rates.
- 8) Parking Consulting:
 - i) Project Initiation and Market Study -- Gather background information, identify the local parking demand and establish an appropriate parking rate structure for the proposed parking facility.
 - (a) Confirm the study's objectives, boundaries, procedures and project schedule.
 - (b) Gather information on parking supply of existing commercial parking facilities within the study area.
 - (c) Gather information on existing commercial parking demand within the study area.
 - (d) Identify any known new real estate developments or expansions of existing developments that will impact parking demand in the market area. Also identify any major businesses or attractions that might be departing the area, thereby reducing parking demand. Determine the impact that such developments will have on existing parking conditions.
 - (e) Prepare a market study task report. Task report shall include, but is not limited to:
 1. Executive Summary,

2. Study Area – delineate and illustrate with a map,
 3. Definition of Terms,
 4. Conclusions and Recommendations.
- ii) Project Site Parking Demand Analysis
- (a) Prepare Supply/Demand Parking models
 1. Develop a custom spread sheet model based on anticipated parking ratios for the proposed project program that adjusts stand-alone parking rates for standard ULI parking factors.
 - i. Seasonal,
 - ii. Captive Market,
 - iii. Mode Split,
 - iv. Time of Day.
 2. Illustrate accumulation patterns for peak weekday and weekend intervals in a chart format.
 3. Compare anticipated peaks to anticipated supply to determine adequacy and utilization.
 4. This proposal anticipates analyzing a single scenario in collaboration with the project team.
 - (b) Prepare a task report and perform two (2) reviews with client, as applicable. Task report shall include, but is not limited to:
 1. Executive Summary,
 2. Study Area – delineate and illustrate with a map,
 3. Definition of Terms,
 4. Supply/Demand Analysis Summary,
 5. Future Parking Supply/Demand Projections, if applicable,
 6. Conclusions and Recommendations.
- 9) Conceptual Architectural Services
- i) Prepare a single set of phased test-fit scenarios with a maximum of 5 phases,
 - ii) Prepare one rendering to include in the final report.

The following is explicitly excluded, and is available as an add alternate:

- 1) Transwestern’s retail leasing teams to provide in-depth market demand study, analytics, and estimate proforma revenues for one TAMUS selected scenarios.
- 2) Provide one traffic study of egress / ingress, and surrounding infrastructure.
- 3) Landscaping study.
- 4) Assist with geotechnical analysis.
- 5) Assist with City agency approval.
- 6) Additional high-level market study for **Multifamily, Condos, and Hotel**
 - a) Economic and demographic context
 - (1) Define a Competitive Market Area (CMA) appropriate for the subject site,
 - (2) Review overall population and socio-demographic trends and patterns,
 - (3) Assess overview of economic conditions and prospects for employment growth.
 - b) Evaluation of competitive supply
 - (1) Review historical, current and planned residential and hospitality development activity,
 - (2) Document overall CMA performance including trends in new construction, sales and absorption,

- (3) Determine inventories, pricing/lease rates, location attributes, occupancy levels, amenities, and quality of major competitive developments (as available).
 - c) Estimate future demand for the potential uses
 - (1) Convert population characteristics and economic data into housing and hotel demand,
 - (2) Conduct an over/under analysis to identify housing deficiencies and needs,
 - (3) Analyze the current and anticipated supply and demand balances in the CMA.
 - d) Conclude on market feasibility for development on the site
 - (1) Estimate site share capture rates for housing and hotel uses,
 - (2) Conclude on the best development use and estimate reasonable absorption rates.
- 7) Architectural
 - i) Prepare a narrative for each phase,
 - ii) Provide detailed rendering of final selected scenario.
- 8) Structural Engineering Services:
 - i) Identify scope of work related to the structural aspects of the project,
 - ii) Establish options for structural systems that are applicable to the project,
 - iii) Develop conceptual structural systems for the project components,
 - iv) Prepare conceptual design documents for an appropriate structural system.

EXHIBIT B – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. Except for Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TAMUS. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TAMUS at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker’s Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for TAMUS. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures PROVIDER’s or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Additional Endorsements the Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured's.

- D. **Professional Liability (Errors & Omissions)** Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.
- E. PROVIDER will deliver to TAMUS: Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, except for worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to TAMUS at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to TAMUS ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by TAMUS prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following TAMUS contact in Section 8U.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by TAMUS in writing, except as may be noted.