

## **City of Dayton Economic Development Authority (EDA)**

June 18, 2024- 7:30 a.m.

### **Agenda**

1. Call to Order
2. Approve Agenda
3. Consent Agenda
  - a. Approval of Minutes – May 21, 2024 EDA Meeting
4. Open Forum – Time is limited to 3 minutes. No EDA Board Action will be taken, however direction can be given to staff for future meetings.
5. EDA Flower Pots – Update (Still looking for 2)
6. Discussion of IAG Contract for Commercial Broker Services
7. Discuss and Set Priorities for IAG for Types of Businesses for Dayton
8. Discussion of Levander Legal Services Agreement
9. Financial Update and Budget Discussion for 2025 – Requests for Council
10. Discuss July Meeting Date – Potential Move of Date?
11. Staff and Board Updates
12. Adjourn

*The mission of the EDA is to promote economic growth in the City of Dayton through the attraction of new business, retention of existing business and promotion of managed growth and redevelopment of key areas by providing resources that enable development and enhance the quality of life in Dayton.*

## **MINUTES OF THE MAY 21, 2024 ECONOMIC DEVELOPMENT AUTHORITY MEETING**

Chair Huttner called the May 21, 2024 EDA to order at 7:30 a.m.

### **Roll Call**

Present: EDA Chair Huttner, Bernens, Fashant, Luther, Peralta, Salonek

Absent: None

Also, in attendance: Zach Doud, City Administrator/Finance Director; Jon Sevald, Community Development Director

### **Approval of the Agenda**

Motion to approve the agenda by Fashant seconded by Luther all ayes. Motion passed unanimously.

### **Approval of EDA Minutes from April 16, 2024**

Motion to approve the minutes by Salonek seconded by Peralta all ayes. Motion passed unanimously.

### **Open Fourm**

No one present for Open Forum.

## **AGENDA ITEMS**

### **EDA Flowerpots – Update**

Doud stated that five flowerpots need sponsors. The cost is \$200. The old placards will be removed and replaced with new placards. The eight pots have already been planted and three have been sponsored thus far.

### **Approval of RFP Response on Commercial Broker**

Luther stated that CBRE stands out because they are a nationwide company, they have the potential to bring out-of-state business to Dayton, they already do a lot in the Dayton area, and they are a very well-known company. Luther's second choice would be IAG because it is also a very well-known company. Luther stated that neither of these companies mentions fees and commissions, so that's a conversation that needs to be had before selecting anyone.

Bernens stated that he has worked with CBRE in the past and agrees that their nationwide scope will be helpful. Bernes believes that CBRE's fees and commissions will likely be fairly high.

Huttner stated that CBRE is his preference.

Fashant stated that IAG would be his number-one choice. Fashant had two major concerns with CBRE: 1) Their hourly rate ranged from \$150 - \$400 per hour; and 2) They have done and are doing a lot of business in Dayton, and Fashant is concerned that they could end up on both sides of the same deal.

Additional conversation ensued.

Motion by Salonek and seconded by Fashant to accept the RFP from IAG. Motion passed unanimously.

Doud requested that the EDA make a motion to allow him to sign the contract. Huttner stated that he would come by the office to sign the contract.

### **Approval of RFP Response on Legal**

Huttner stated that he received an email from the current Council, and there was a lot of stuff that went round and around. Huttner stated he prepared official responses to that email that he has not yet transmitted to anyone. Huttner asked who the EDA liked for an attorney.

Doud stated that Amy Schmidt represents the City Council and the EDA. Doud further stated that if the EDA selects an alternative attorney, Amy Schmidt will continue to represent the City Council.

Bernens understood that when the EDA was formed, the City Council did not do it correctly, and that needs to be fixed. Doud stated that Bernens was correct. Bernens stated that a voice vote was taken rather than a written resolution.

Doud stated that for anything to be done by ordinance, resolution, or code, it needs to be amended by the same format. Whatever was done in 1990, when the EDA was formed, in order to adjust the EDA, another resolution needs to be done.

Huttner recommended Taft as his number-one pick.

Fashant stated that there is a huge difference in fees. Levander, Gillen, & Miller, PA fees range from \$160 to \$235 per hour. Taft Law fees range from \$500 to \$755 per hour. Fashant further stated that he's not in favor of hiring another attorney to represent the EDA because it is a duplication of service, and it will be inefficient. Fashant stated there is a lot of potential waste.

Huttner likened having two attorneys to having two doctors; one says you have cancer, and one says you have gas.

Additional conversation ensued.

Huttner stated that having an attorney for the EDA is important for getting a second opinion, if needed.

Luther stated that his number-one pick would be Levander, Gillen & Miller, PA. Luther also liked Taft Law because of their connections to so many other city EDAs. Luther concurred with Fashant regarding the cost.

Bernens stated that he would lean towards the lower fees.

Peralta asked who would be paying for these fees. Doud stated that the EDA would pay.

Doud stated that if the EDA selects either of the proposals that particular law firm would be the EDA's primary attorney. The EDA would no longer be using the current City attorney.

Peralta asked what other cities do and if it is common to have two different attorneys. Doud stated that probably half use two and half use one.

Bernens asked if the EDA uses Schmidt, what rate per hour does she charge. Doud stated \$185 per hour.

Peralta stated that he agrees with Fashant and Peralta doesn't see the need for a second attorney.

Doud reiterated that the term "second opinion" is inaccurate. If the EDA selects a law firm from the RFP tonight, that particular law firm will be the primary legal advice for the EDA, not a second opinion.

Bernens stated that it all comes down to the confidence you have in the current attorney and the fees. If the fees are similar, then the decision is based on the confidence in the current attorney.

Salonek stated that he would lean towards Levander, Gillen, & Miller, PA, noting that just because someone's fees are three times higher, that doesn't mean they are better attorneys. Salonek stated that he doesn't want a wishy-washy opinion; he wants a straight yes or no answer. Doud stated that's never going to happen, no matter which attorney is selected.

Motion by Luther and seconded by Salonek to approve the RFP for Levander, Gillen, & Miller, PA. Motion passed 5 ayes, 1 nay (Fashant)

## **Staff Update**

### **a. General Update**

Doud stated there has been a lot of budget work and the EDA will see budgets at the next EDA meeting. Doud asked the EDA to come with ideas of what its budget should look like, noting the City Council would like to see what the EDA intends to do with its money.

### **b. Huttner's Request**

Huttner stated that he'd like to see an agenda item added for previous business and how it is progressing. Huttner stated the EDA seems to get in a rut and that previous business never gets completed.

### **c. Cameras**

Huttner asked if there has been any progress on the security cameras for the City. Doud stated that nothing has gone to City Council yet. Huttner stated that Champlin has up to six cameras now and they are seeing a reduction of issues happening at 2:00 a.m. and 3:00 a.m.

### **d. Commercial & Industrial Developments**

A Concept Plan for an industrial complex is planned to go before the Planning Commission and the City Council in June. DCM Farms, located off Fernbrook Lane and 114<sup>th</sup> Avenue, will include about 14 acres of commercial retail.

**e. Development on West Territorial Road**

This is new within the last couple of days, so there aren't any details to report yet.

**f. Dehn's Pumpkins Event Center**

Huttner asked for an update. Sevald stated that it was approved by the City Council.

**g. LawnSmart**

Huttner asked for an update. Sevald stated that it was approved by the City Council.

**h. Driven Auto Sales**

Huttner asked for an update. Sevald stated that it was approved by the City Council. Huttner asked if there was anything in place to make sure of they are in compliance. Sevald stated the City can do an inspection, but there has been no time to do it yet.

**ADJOURN**

Motion by Bernens and seconded by Peralta to adjourn at 8:15 a.m. Motion passed unanimously.

Respectfully submitted,  
Zach Doud, City Administrator/Finance Director

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## CLIENT REPRESENTATION AGREEMENT

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The City of Dayton's Economic Development Authority, a body corporate and politic in the State of Minnesota ("CLIENT") (whether "Buyer", "Seller", "Landlord", "Tenant", and/or "CLIENT") hereby appoints the Integrust Advisory Group, LLC, d.b.a. IAG COMMERCIAL ("Broker") as its exclusive agent and charges the Broker with providing advisory services and conducting negotiations on its behalf in a manner so as to represent its best interests, whether for the purchase, sale, and/or lease of real property, or in providing advisory services, subject to the following provisions:

1. **TIME.** The agency period shall commence as of the date of signing of this agreement and shall terminate at midnight on December 31, 2025.
2. **AUTHORITY.** Broker is authorized to select for purchase, list for sale, and/or lease for properties that substantially meet the requirements set forth below, but not to commit CLIENT to any purchase, sale, and/or lease terms without CLIENT's prior written consent.
3. **SCOPE OF SERVICES.** Broker will provide the following services (as desired and applicable by CLIENT) as part of this CLIENT Representation Agreement:
  - a. Strategic planning/consulting/advisory services
  - b. Assist CLIENT in purchasing properties
  - c. List properties owned by CLIENT for sale
  - d. Assist in listing property owned by CLIENT for lease
  - e. Assist CLIENT in leasing property
  - f. Provide investment services
  - g. If desired by CLIENT, Broker shall provide owner's representation and construction project management services as detailed in *Addendum A – Owner's Representative Construction and Project Management Services*
4. **PROPERTY REQUIREMENTS.**
  - a. TYPE: To Be Determined
  - b. LOCATION: City of Dayton
  - c. PURCHASE/LEASE TERMS: To Be Determined
  - d. LEASE TERMS: To Be Determined
5. **COMPENSATION.** If CLIENT lists a property for sale, the total commission owed by CLIENT is 6% of the total purchase price upon a successful closing. If there is a co-broker involved, said co-broker representing the buyer shall receive 3% of the total 6% of the total purchase price upon a successful closing.

If CLIENT chooses to purchase a property, Broker will look to the owner of the subject property to pay Broker's commission in accordance with the commission agreement between the owner and the Broker, notwithstanding the Broker's representation of CLIENT. In the rare event the owner

WILL NOT provide a fair market commission to Broker, then the difference between the owner's commission and fair market commission will be paid by the CLIENT.

Broker defines fair market commission for purchasing as follows: 3% of the total purchase price.

Strategic planning services are done on an hourly basis with three pay structures:

- a. \$350 per hour for Jeff LaFavre
- b. \$175 per hour for Zach Synstegaard
- c. \$75 per hour for research and support services

Any extraordinary costs, (i.e. blue print copies, delivery costs, permit fees) will be reimbursed by the CLIENT.

## **6. TERMINATION.**

- a. This Agreement may be terminated by either party upon thirty (30) days' written notice without cause.
- b. Nothing in this Agreement shall be construed to contemplate or establish dual agency unless fully disclosed to and agreed in writing by CLIENT.

**7. RELATIONSHIP TO THE PARTIES.** This Agreement shall not constitute, create, give effect to or otherwise imply a joint venture, partnership or formal business organization of any kind between the CLIENT and Broker.

**8. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflicts of laws principles. Each party irrevocably submits to the jurisdiction of the federal or state courts in Hennepin County, Minnesota for the purposes of any suit, action or other proceeding arising out of this Agreement and each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in the federal or state courts in the State of Minnesota.

**9. COUNTERPARTS.** This Agreement may be executed in several counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes and all counterparts shall, collectively constitute an agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**11. ELECTRONIC SIGNATURES.** The electronic signature of the Chair on behalf of the CLIENT or President on behalf of the Broker, to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party hereto. For purposes hereof, (i) "electronic signature" means (a) a manually signed original signature that is then transmitted by electronic means or (b) a signature obtained through DocuSign or Adobe or a similarly digitally auditable signature gathering process; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating

image attached to an electronic mail or internet message.

- 12. DATA PRACTICES.** The Broker shall manage all data created, collected, received, stored, used, maintained, or disseminated by the Broker pursuant to this Agreement in accordance with, and subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the “Act”). The Broker shall immediately notify the CLIENT if it receives a request for data related to the services being performed by the Broker pursuant to this Agreement. Any reports, information, or other data given to, prepared, or assembled by the Broker under this Agreement which the CLIENT requests be kept confidential must not be made available to any individual or organization without the CLIENT’s prior written approval unless disclosure is required by law.
- 13. INDEPENDENT CONTRACTOR.** The Broker shall be deemed an independent contractor. The Broker is not to be deemed an employee or agent of the CLIENT and has no authority to make any binding commitments or obligations on behalf of the CLIENT except to the extent expressly provided herein. All services provided by the Broker pursuant to this Agreement shall be provided by the Broker as an independent contractor and not as an employee of the CLIENT for any purpose including, but not limited to, income tax withholding, workers’ compensation, unemployment compensation, FICA taxes, liability for torts, and eligibility for employee benefits.
- 14. ASSIGNMENT.** Neither party will assign any part of this Agreement, nor any interest arising herein, without the written consent of the other party.
- 15. SEVERABILITY.** The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining portions of this Agreement.
- 16. ENTIRE AGREEMENT.** This document, including the attached addendums expressly incorporated herein by reference, constitutes the entire agreement between the parties and it supersedes all oral and written agreements and negotiations between the parties regarding the subject matter of this Agreement.
- 17. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing the services hereunder, the Broker must abide by all applicable statutes, ordinances, rules, and regulations. Any violation will constitute a material breach of this Agreement and entitle the CLIENT to be able to immediately terminate the Agreement.
- 18. WAIVER.** Any waiver by either party of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
- 19. INDEMNIFICATION.** To the fullest extent permitted by law, the Broker agrees to protect, defend, save, and hold harmless the CLIENT, its officials, agents, and employees from all claims, suits, or actions of any kind, nature, or character, and the costs, disbursements, and expenses of defending the same including, but not limited to, attorneys’ fees, professional services, and other technical, administrative, or professional assistance resulting from or arising out of the alleged negligence, breach of contract, or willful misconduct of the Broker, its agents or employees



related to or arising out of the Broker's performance of, or failure to perform, the services under this Agreement. Nothing herein shall be construed as a limitation on or waiver of any immunities or limitations on liability available to the CLIENT under Minnesota Statutes, Chapter 466, or other law.

- 20. INSURANCE.** During the entire term of this Agreement, the Broker must maintain workers' compensation insurance (to the extent required by law) and commercial general liability insurance with a per occurrence limit of no less than \$1,500,000. The Broker shall provide such additional insurance coverages and specific minimum amounts of coverage as may be required by the CLIENT.
- 21. PROTECTIVE PERIOD.** CLIENT further agrees that in the event any purchase, sale, and/or lease involving CLIENT resulting from any contract or agreement entered within six (6) months after the expiration or termination of this Agreement ("Protective Period") is consummated with any person or entity for which a commission would otherwise be payable by CLIENT hereunder, CLIENT will pay the commission to Broker. CLIENT shall furnish Broker with all relevant information received by CLIENT during the Protective Period regarding any offers or inquiries from such persons or entities promptly after receiving same. The Broker's Protective Period shall only be applicable to persons or entities with whom Broker has negotiated during the term of this Agreement. If any party, or assigns, on the Protective List is under a letter of intent or other agreement at the end of the Protective Period but has not finalized such letter of intent or other agreement, the Protective Period shall be extended another six (6) months. Broker shall identify such persons or entities by providing CLIENT with a written "protective list" within 72 business hours of the expiration or termination of this initial Agreement, time being of the essence. Broker shall be conclusively deemed to have "negotiated" with a party, if Broker (or any outside broker acting at the direction of Broker) has shown any property involving CLIENT to such party or prepared an offer/Letter of Intent on behalf of CLIENT to such party or submitted written information to such party specifically at the request of such party.
- 22. DUAL AGENCY DISCLOSURE.** If a prospective customer represented by Broker becomes interested in a property involving CLIENT, a dual agency will be created. This means that Broker will represent both CLIENT and the prospect and owes the same duties to the prospect that Broker owes to CLIENT. This conflict of interest will prohibit Broker from advocating exclusively on CLIENT's behalf. Dual agency will limit the level of representation which Broker can provide.
- If a dual agency should arise, CLIENT will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless CLIENT instructs Broker in writing to disclose specific information about CLIENT. All other information will be shared. Broker cannot function as a dual agent unless both CLIENT and the prospect agree to it. By agreeing to a possible dual agency, CLIENT will be giving up the right to exclusive representation in an in-house transaction. However, if CLIENT should decide not to agree to a possible dual agency, and CLIENT wants Broker to represent CLIENT, CLIENT may give up the opportunity to work with prospects represented by Broker.

## **OWNER'S INSTRUCTIONS TO BROKER**

Having read and understood this information about dual agency, CLIENT now instructs Broker as follows:

- \_\_\_\_\_ CLIENT will agree to a dual agency representation and will consider offers made by prospects represented by Broker.
- \_\_\_\_\_ CLIENT will not agree to a dual agency representation and will not consider offers made by prospects represented by Broker.

### **23. CLIENT'S REPRESENTATIONS AND AGREEMENTS.**

- a. CLIENT represents that CLIENT has full legal right to purchase, list for sale, and/or lease properties.
- b. CLIENT agrees to comply with the terms and conditions of any agreement, to which it is a party, in a timely fashion.
- c. CLIENT agrees to permit Broker to erect an "Available" and/or "For Sale" sign on an agreed upon property for sale or lease and to remove all other real estate signs from a property during the term of this Agreement.
- d. CLIENT agrees to refer to Broker all inquiries regarding any property received from prospects.
- e. CLIENT agrees that any member of Broker's sales force may immediately offer an agreed upon property for sale and/or lease under the terms hereof. CLIENT agrees to cooperate with and assist Broker in making any property available for inspection by prospects and their agents. CLIENT agrees to permit Broker to share part of its commission with a cooperating real estate broker, including a prospect represented by a real estate broker.
- f. CLIENT agrees to provide Broker with all material information concerning the financial, physical, legal, or environmental status of any property presently in CLIENT's possession or subsequently received by CLIENT.

### **25. LIMITATION ON BROKER'S AUTHORIZATION.**

Broker is not authorized to render any tax or legal advice with respect to the scope of work performed hereunder, and CLIENT agrees to look to accountants, attorneys, and/or other professionals of its choosing for specific advice with respect to any such transactions.

### **26. MISCELLANEOUS.**

In the event CLIENT breaches the terms of this Agreement and Broker engages legal counsel to enforce its rights hereunder, Broker shall be entitled to recover from Client all attorneys' fees and related costs.

SIGNATURE PAGE TO FOLLOW



EXECUTED, effective on the date listed below.

**BROKER:** Integrust Advisory Group,  
LLC, dba IAG COMMERCIAL

**CLIENT:** City of Dayton's Economic  
Development Authority

By:

By:

\_\_\_\_\_  
**Jeffrey L. LaFavre**, CCIM, MCR

\_\_\_\_\_  
**Tim Huttner**

Its: President

Its: Chair

Date:

Date:

## **ADDENDUM A – Owner’s Representative Construction and Project Management Services**

The following is an addendum to the CLIENT Representation Agreement by and between the City of Dayton Economic Development Authority (“CLIENT”) and Integrust Advisory Group, LLC, d.b.a. IAG COMMERCIAL (“Broker”) dated \_\_\_\_\_, 2024. Broker agrees to provide Owner’s Representation Services to CLIENT in accordance with the following terms and conditions:

**1. CONSTRUCTION AND PROJECT MANAGEMENT SCOPE OF SERVICES.** If CLIENT desires, Broker can provide the following additional services:

- a. Define desired project outcomes with CLIENT
- b. Send out an RFP to architect and contractor
- c. Review proposals and set up interviews for top proposals
- d. Hire project team including architect and contractor, negotiate agreement
- e. Coordinate the design process
- f. Oversee project scheduling and budgeting
- g. Assist and coordinate with furniture selection
- h. Manage move related vendors including phone, security, cabling and move
- i. Close out the budget with vendors & CLIENT

## **2. COMPENSATION FOR CONSTRUCTION AND PROJECT MANAGEMENT SERVICES.**

- a. Construction Project Management Services will include: oversight of the architect and contractor, attendance in project design meetings, management of the master budget and schedule, approval of payment requests, collection of lien waivers and project closeout. If the CLIENT desires, Construction Project Management can also include oversight of the audio visual, low voltage wiring and security vendors. If CLIENT decides to utilize the Construction Project Management services of Broker’s associates, compensation will be as follows; plus extraordinary expenses such as mileage, blue prints and etc.:
  - i. 5% on projects under \$500K
  - ii. 4% on projects of \$500K-\$1,000,000
  - iii. 3% on projects of \$1,000,000-\$2,000,000
  - iv. 2% on projects of \$2,000,000-\$5,000,000
  - v. 1% on projects over \$5,000,000

All fees are calculated cumulatively.

- b. If within one hundred eighty (180) days after expiration of the agency period described above, or any extension of it, CLIENT shall enter into a lease with any person or entity with whom Broker has conducted negotiations on behalf of CLIENT, Broker shall be entitled to compensation from CLIENT as though the transaction has occurred during the agency period provided the Broker notifies CLIENT in writing within thirty (30) business days of the expiration of this agreement identifying such persons or entities and provided that the Broker has not been otherwise compensated by a third party to the transaction.

- c. Broker agrees to exercise reasonable diligence to act in the best interests of CLIENT in any and all negotiations contemplated in this agreement.
- d. Nothing in this agreement shall be construed to contemplate or establish dual agency unless fully disclosed to and agreed in writing by CLIENT.
- e. Either party to this agreement may affect in its cancellation by providing thirty (30) days written notice to the other party via certified U.S. Mail.

### **3. SCHEMATIC DESIGN DEVELOPMENT AND CONSTRUCTION DOCUMENT PHASE**

- a. Broker will review the CLIENT's architect and engineer's design documents to date and will work with CLIENT and its architect and engineer to manage the design process through construction drawings.
- b. Broker will consult with CLIENT's representative with respect to any major issues or decisions to be made related to its review of the design documents and construction drawings.

### **4. BIDDING PROCESS**

- a. Broker will work with the CLIENT's representatives to assist in drafting the bid documents, including but not limited to, the bid advertisement, the bid specifications and instructions, the bid form, and the contract documents per City and state requirements.
- b. Broker will work with the CLIENT's representative to widely and transparently advertise the bid opportunities, answer questions from bidders with respect to the bid documents, and hold a pre bid conference(s) with interested bidders.
- c. Broker will assist the CLIENT with reviewing the bids in order to determine whether they are responsive and whether the bidder is a responsible bidder.

### **5. GENERAL MANAGEMENT AND COORDINATION (CONSTRUCTION PHASE)**

- a. Broker will review the work performed by the CLIENT's contractors throughout the project through the project completion and final punch list stages. Broker must ensure that it requires that the materials furnished and the work performed by the contractors are in accordance with the drawings, specifications, and contract documents.
- b. The Broker will coordinate with the contractors with respect to the implementation of construction information systems, project time control schedules and resources analysis as they relate to materials, labor, and costs.
- c. The Broker shall review and comment on all safety, health, and environmental protection measures proposed by each contractor and make recommendations to the CLIENT with respect to any changes that the Broker deems necessary or appropriate.

- d. The Broker must provide construction audits in the form of status updates and other reports for the project to the CLIENT on a monthly basis. The Broker must review all labor and wage standards and practices to make reasonable efforts to ensure compliance by each contractor and make recommendations to the CLIENT with respect to any issues identified with respect to compliance.
- e. The Broker must establish with the contractors on-site organization and lines of authority in order to carry out the CLIENT's overall plans in all phases of the project on a coordinated and efficient basis.
- f. The Broker must require the contractors to maintain an on-site record-keeping system in sufficient detail to satisfy an audit by the CLIENT. Such records must include, but shall not be limited to daily logs, progress schedules, labor breakdowns (daily by trade), financial reports, material quantity lists, shop drawings, and the like.
- g. The Broker must verify that all legally required permits, licenses, and certificates have been obtained by the contractors. The Broker must also coordinate through the contractors, aspects of the work with all local municipal authorities, governmental agencies, utility companies, etc., who may be involved in the project.
- h. The Broker must coordinate through the contractors, the work of all subcontractors until final completion and acceptance of the project by the CLIENT. If the interpretation of the meaning and intent of the contract documents becomes necessary during construction, the Broker will ascertain the CLIENT's architect and the CLIENT's representatives' interpretation, make recommendations as appropriate, and transmit such information to the appropriate contractor.
- i. The Broker must attend job meetings attended by the contractors, subcontractors, the architect and the CLIENT's representatives, to discuss procedures, progress, problems, scheduling, and open items.
- j. The Broker must coordinate the review, for compliance with the contract documents, all shop drawings, materials, and other items submitted by the contractors.
- k. The Broker will review and approve, in accordance with the CLIENT's procedures, all applications for payments submitted by the contractors in accordance with established procedures.
- l. The Broker will receive and review change order requests from contractors or from the CLIENT's representatives. The Broker will review unit prices, time and material charges and similar items. The Broker will also monitor and advise the CLIENT upon request for changes required by field conditions and progress of the work and obtain approval from the CLIENT's representatives and the CLIENT's architect.

- m. The Broker will review the contractors' schedules and work with the contractors to ensure timely delivery of the project.

## **6. POST CONSTRUCTION**

- a. The Broker will coordinate the preparation of punch lists at the appropriate times, indicating the items of work remaining to be accomplished, and require that these items are completed in an expeditious manner.
- b. The Broker will assemble all guarantees, warranties, etc., as required by the contract documents, and provide copies of them to the CLIENT.
- c. Provided the CLIENT has paid all contractors and material suppliers, the Broker shall obtain all necessary receipts, releases, waivers, discharges and assurances necessary to keep the property free from mechanics and materialmen's liens and other claims to the extent permitted by applicable law.
- d. The Broker will expedite the contractors' preparation of "as-built" drawings of the entire project in accordance with the terms of the specifications.

## **7. THROUGHOUT THE PROJECT**

The Broker will review all project documents, including, but not limited to, plans, drawings, and specifications, bid documents, architect and contractor agreements, certificates, draw requests, invoices, change orders, and budgets. The Broker will require such changes, as are necessary, so that all such documents are in the name of the CLIENT, all warranties run in favor of the CLIENT and the CLIENT will have the right to utilize the plans and drawings during and after project construction.

The Broker must not enter into contracts or subcontracts for the services provided for by the Broker pursuant to this Agreement or contracts with any contractors performing work on the project without the prior express written consent of the CLIENT.

Notwithstanding any provision hereof to the contrary, the CLIENT acknowledges that the services and work product provided by its architects, engineers, consultants, design professionals and other contractors retained by the CLIENT with respect to the project as contemplated in this Agreement are the responsibility of those professionals.

**The Broker does not and shall not warrant or guarantee the performance of the CLIENT's architects, engineers, consultants, design professionals, and other contractors.**

## 8. SECURITY AND SAFETY

While performing the services under this Agreement, the Broker shall promptly inform the CLIENT's representative whenever it becomes aware of any security concerns or unsafe conditions with respect to the property or the project.

EXECUTED, effective on the date listed below.

**BROKER:** Integrust Advisory Group,  
LLC, dba IAG COMMERCIAL

**CLIENT:** City of Dayton's Economic  
Development Authority

By:

By:

\_\_\_\_\_  
**Jeffrey L. LaFavre**, CCIM, MCR

\_\_\_\_\_  
**Tim Huttner**

Its: President

Its: Chair

Date:

Date:



**From:** [Tim Huttner](#)  
**To:** [Zach Doud](#)  
**Subject:** some more aeras of conversation.  
**Date:** Friday, June 7, 2024 9:32:07 PM  
**Attachments:** [Outlook-dgxwi3at.png](#)

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Based on the provided document, there are a few potential issues or concerns with the contract for the City of Dayton's Economic Development Authority:

1. **Lack of Specific Property Requirements:** The document mentions that the property requirements, including type, location, purchase/lease terms, and lease terms, are "To Be Determined." This lack of specificity may pose a problem as it does not clearly define the parameters for the Broker's services. It is important for the City of Dayton to have clear and specific property requirements to ensure that the Broker can effectively represent their interests.
2. **Commission Structure:** The document outlines the commission structure for the Broker's services, including a 6% commission on the total purchase price for a successful closing. However, it does not provide specific details on how the commission will be calculated for lease transactions. This lack of clarity may lead to disputes or misunderstandings regarding the commission owed to the Broker.
3. **Dual Agency Disclosure:** The document mentions the possibility of dual agency representation, where the Broker represents both the City of Dayton and the prospect. However, it does not explicitly state whether the City of Dayton agrees or disagrees to dual agency representation. This lack of clarity may create confusion and potential conflicts of interest.
4. **Termination Notice Period:** The document states that either party can terminate the agreement upon thirty (30) days' written notice without cause. While this provides flexibility, it may be beneficial for the City of Dayton to negotiate a longer notice period to ensure a smooth transition if they decide to terminate the agreement.
5. **Limited Liability for Broker:** The document includes provisions that limit the Broker's liability and provide indemnification for the Broker. It is important for the City of Dayton to carefully review these provisions to ensure that they are reasonable and do not excessively limit their rights or protections.
6. **Lack of Specific Project Management Services:** The addendum regarding Owner's Representative Construction and Project Management Services provides a general scope of services but lacks specific details on the responsibilities and deliverables.

of the Broker. The City of Dayton should seek clarification and ensure that the services provided align with their specific project management needs.

7. Insurance Coverage: While the document mentions the requirement for the Broker to maintain workers' compensation and general liability insurance, it does not specify the minimum coverage amounts for these policies. The City of Dayton should ensure that the insurance coverage meets their standards and adequately protects their interests.

It is important for the City of Dayton to carefully review and negotiate these potential issues to ensure that the contract adequately protects their rights and interests throughout the engagement with the Broker. Consulting with legal counsel may be advisable to address any concerns and ensure the contract is in the best interest of the City of Dayton EDA.

Tim Huttner: Chair  
Economic Development Authority  
12260 S. Diamond Lake Road  
Dayton, MN 55327  
763-427-9821



*The mission of the EDA is to promote economic growth in the City of Dayton through the attraction of new business, retention of existing business and promotion of managed growth and redevelopment of key areas by providing resources that enable development and enhance the quality of life in Dayton.*

**From:** [Tim Huttner](#)  
**To:** [Zach Doud](#)  
**Subject:** talking points with aig?  
**Date:** Friday, June 7, 2024 4:08:13 PM  
**Attachments:** [Outlook-ahq3vjco.png](#)

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1. **Dual Agency:** The document mentions the possibility of dual agency, where the Broker represents both the CLIENT and the prospect. This creates a conflict of interest and limits the level of representation the Broker can provide. The CLIENT has the option to agree or not agree to dual agency representation.
2. **Termination:** The agreement can be terminated by either party upon thirty (30) days' written notice without cause. This termination clause is a legal issue that outlines the conditions under which the agreement can be ended.
3. **Compliance with Laws and Regulations:** The Broker is required to abide by all applicable statutes, ordinances, rules, and regulations while providing services. Any violation of these laws and regulations would constitute a material breach of the agreement.
4. **Indemnification:** The Broker agrees to protect, defend, save, and hold harmless the CLIENT from any claims, suits, or actions resulting from the alleged negligence, breach of contract, or willful misconduct of the Broker. This provision addresses the legal issue of indemnification and liability.
5. **Insurance:** The Broker is required to maintain workers' compensation insurance and commercial general liability insurance with specific minimum coverage amounts. This requirement addresses the legal issue of insurance coverage and risk management.
6. **Data Practices:** The Broker is obligated to manage all data in accordance with the Minnesota Government Data Practices Act. This provision ensures compliance with data privacy and protection laws.
7. **Independent Contractor Status:** The agreement explicitly states that the Broker is an independent contractor and not an employee or agent of the CLIENT. This distinction has legal implications for tax obligations, liability, and employee benefits.
8. **Limitation on Broker's Authorization:** The Broker is not authorized to provide tax or legal advice regarding the scope of work performed under the agreement. This limitation ensures that the CLIENT seeks advice from appropriate professionals for

tax and legal matters.

9. Miscellaneous Legal Provisions: The document includes various other legal provisions, such as waiver, severability, entire agreement, governing law, counterpa

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**CITY OF DAYTON  
LEGAL SERVICES AGREEMENT**

This Legal Services Agreement ("Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date"), by and between the City of Dayton ("City"), a Minnesota municipal corporation, and LeVander, Gillen & Miller, P.A. ("LeVander"), a Minnesota professional association.

**RECITALS**

- A. The City has selected LeVander to serve as the law firm to provide legal representation to the City's Economic Development Authority ("EDA").
- B. The City and LeVander desire to memorialize their understanding in this Agreement regarding the scope of work and fee arrangements for the civil legal representation.

**I. TERM**

This Agreement shall commence as of the Effective Date and terminate on May 31, 2027. Either party may terminate this Agreement upon sixty (60) days written notice to the other.

**II. SERVICES PROVIDED**

LeVander shall provide civil legal representation on behalf of the EDA during the term of this Agreement. Amanda Johnson will be the principal responsible attorney for all matters. Any of the shareholders, associates, legal assistants or staff will also be available.

**III. FILES AND RECORDS**

- A. File Maintenance. LeVander will keep complete files and records for all matters handled for the City for a minimum of seven years. Paper files and records may be scanned and stored electronically. An updated index of such files will be provided to the City upon request. Files no longer needed for current matters may be commercially archived, and any cost of said archiving shall be a charge, which may be billed in addition to the fees set forth in Section V. If the City desires any or all of its files, LeVander shall incur the copy cost on any file copies that LeVander desires to copy and retain.

Pursuant to Minn. Stat. §16C.05, subd. 5, LeVander agrees that the books, records, documents, and accounting procedures and practices of the LeVander, that are relevant to the contract or transaction, are subject to examination by the City and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. LeVander shall maintain such records for a minimum of six years after final payment.

- B. Data Practices Act. Pursuant to the provisions of Minn. Stat. § 13.05 subd. 11, all data created, collected, received, stored, used, maintained, or disseminated by LeVander in performing legal services on behalf of the City is subject to the requirements of Minn. Stat. Ch. 13, and LeVander shall comply with the requirements of Minn. Stat. Ch. 13 as if it were a government entity. All data supplied to LeVander shall be administered consistent with the provisions of Minn. Stat. Ch. 13 and data on individuals shall be maintained according to the statutory provisions applicable to the data.
- C. File Destruction. LeVander may destroy files and records pertaining to a concluded matter seven years after the conclusion of the matter, except as follows: (1) If the City has instructed that said files or records be transmitted to the custody of the City, LeVander will so transmit them; and (2) LeVander will preserve or transmit to the City any original instruments that are still in effect (e.g., deeds, mortgages, easements, notes, etc.).

#### IV. FEES, CHARGES AND BILLING

LeVander will bill the City monthly for the following services at the following rates:

|  | June 2024 – May 31, 2027                   |
|--|--|
| <b>Hourly Rate for Attorneys</b>                             | \$235                                      |
| <b>Hourly Rate for Legal Asst.</b>                           | \$160                                      |
| <b>Itemized Fees:</b>  |  |
| • <b>Photocopying</b>  | \$.20/page black/white<br>\$.49/page color |
| • <b>Westlaw Legal Research</b>                              | Actual Cost; not to exceed<br>\$300/month  |
| • <b>Recording fees, filing fees, out of pocket expenses</b> | Actual Cost                                |

Staff time spent filing, copying, and performing other secretarial duties is not billed. All time is billed in minimum increments of one-tenth (0.1) of an hour. The Firm provides detailed monthly bills.

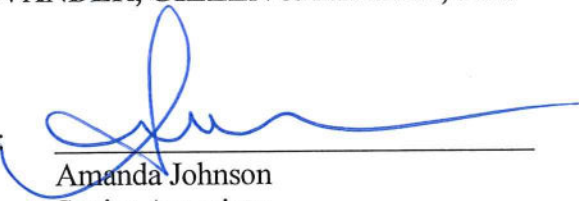
#### V. MISCELLANEOUS

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- B. This Agreement shall not be assignable.

**[remainder of page intentionally blank]**


**LEVANDER, GILLEN & MILLER, P.A.**

By:



Amanda Johnson  
Senior Associate

By:



Korine Land  
Shareholder

**CITY OF DAYTON**

By: \_\_\_\_\_  
Dennis Fisher  
Mayor

By: \_\_\_\_\_  
Amy Benting  
City Clerk



06/13/2024 08:26 AM  
User: zdoud  
DB: Dayton

TRIAL BALANCE REPORT FOR DAYTON MN  
PERIOD ENDING 12/31/2024

Page: 1/1

| GL NUMBER                            | DESCRIPTION                   | BALANCE<br>12/31/2023 | 2024<br>AMENDED BUDGET | END BALANCE<br>12/31/2024 |
|--------------------------------------|-------------------------------|-----------------------|------------------------|---------------------------|
| Fund 225 - EDA                       |                               |                       |                        |                           |
| Assets                               |                               |                       |                        |                           |
| Function: Unclassified               |                               |                       |                        |                           |
| 225-00000-10100                      | Cash                          | 672,181.94            |                        | 675,538.77                |
| 225-00000-10450                      | Interest Receivable           | 0.00                  |                        | 0.00                      |
| 225-00000-10500                      | Taxes Receivable - Current    | 0.00                  |                        | 0.00                      |
| 225-00000-15000                      | Due from Other Funds          | 0.00                  |                        | 0.00                      |
| Total - Function Unclassified        |                               | 672,181.94            |                        | 675,538.77                |
| TOTAL ASSETS                         |                               | 672,181.94            |                        | 675,538.77                |
| Liabilities                          |                               |                       |                        |                           |
| Function: Unclassified               |                               |                       |                        |                           |
| 225-00000-20200                      | Accounts Payable              | 0.00                  |                        | 0.00                      |
| Total - Function Unclassified        |                               | 0.00                  |                        | 0.00                      |
| TOTAL LIABILITIES                    |                               | 0.00                  |                        | 0.00                      |
| Fund Equity                          |                               |                       |                        |                           |
| Function: Unclassified               |                               |                       |                        |                           |
| 225-00000-25300                      | Unreserved Fund Balance       | 523,318.22            |                        | 672,181.94                |
| Total - Function Unclassified        |                               | 523,318.22            |                        | 672,181.94                |
| TOTAL FUND EQUITY                    |                               | 523,318.22            |                        | 672,181.94                |
| Revenues                             |                               |                       |                        |                           |
| Function: Unclassified               |                               |                       |                        |                           |
| 225-40100-31012                      | EDA Property Tax Levy         | 100,000.00            | 0.00                   | 0.00                      |
| 225-40700-36210                      | Interest Earnings             | 28,329.30             | 0.00                   | 5,885.63                  |
| 225-40700-39000                      | Other Financing Sources       | 1,200.00              | 0.00                   | 400.00                    |
| 225-40700-39101                      | Sales of General Fixed Assets | 35,950.00             | 0.00                   | 0.00                      |
| Total - Function Unclassified        |                               | 165,479.30            | 0.00                   | 6,285.63                  |
| TOTAL REVENUES                       |                               | 165,479.30            | 0.00                   | 6,285.63                  |
| Expenditures                         |                               |                       |                        |                           |
| Function: Unclassified               |                               |                       |                        |                           |
| 225-41710-50210                      | Operating Supplies            | 126.22                | 0.00                   | 428.80                    |
| 225-41710-50300                      | Professional Srvs             | 16,489.36             | 0.00                   | 2,500.00                  |
| 225-41710-50510                      | Land                          | 0.00                  | 0.00                   | 0.00                      |
| Total - Function Unclassified        |                               | 16,615.58             | 0.00                   | 2,928.80                  |
| TOTAL EXPENDITURES                   |                               | 16,615.58             | 0.00                   | 2,928.80                  |
| Total Fund 225 - EDA                 |                               |                       |                        |                           |
| TOTAL ASSETS                         |                               | 672,181.94            |                        | 675,538.77                |
| BEG. FUND BALANCE                    |                               | 523,318.22            |                        | 672,181.94                |
| + NET OF REVENUES & EXPENDITURES     |                               | 148,863.72            |                        | 3,356.83                  |
| = ENDING FUND BALANCE                |                               | 672,181.94            |                        | 675,538.77                |
| + LIABILITIES                        |                               | 0.00                  |                        | 0.00                      |
| = TOTAL LIABILITIES AND FUND BALANCE |                               | 672,181.94            |                        | 675,538.77                |