

STATE BOARD OF LAND COMMISSIONERS

May 21, 2024
Regular Agenda

Subject

Commercial Real Estate Advisor

Question Presented

Shall the Land Board approve the recommended commercial real estate advisor?

Background

The role of commercial real estate advisor was established in 2015 consistent with the direction provided by the Asset Allocation and Governance Review from Callan, adopted by the State Board of Land Commissioners (Land Board) in 2014. The recommendations from Callan included obtaining expert professional guidance for the Land Board regarding management and disposal of commercial real estate assets.

The commercial real estate advisor has assisted the Land Board and the Idaho Department of Lands (Department) with analysis and review of commercial and transitional real estate assets, leasing opportunities, property valuation, land exchange opportunities, and more. Third party expert review of these complex issues adds to the expertise of the Land Board and the Department, helping ensure that decisions reflect the best interest of the endowment beneficiaries. The Department remains in need of this type of expertise.

At its October 17, 2023 meeting, the Land Board authorized the Department and the Investment Subcommittee to develop and issue a Request for Proposal (RFP) for a commercial real estate advisor, review the responses, interview candidate firms, and make a recommendation to the Land Board.

Discussion

An RFP was issued with responses due on February 29, 2024. The scope of work was as follows:

1. Develop, provide, and/or review financial data and analysis, determinations of property value, land use information, potential highest and best use evaluations, and consistency with Land Board policies and land management objectives as the preceding items pertain to proposed land acquisitions, dispositions, exchanges, leases and lease terms, permits, and other revenue-generating opportunities.
2. Develop, provide, and/or review Requests for Proposals (RFP) and responses received related to potential leases, permits, and revenue-generating opportunities on

endowment land, and provide analysis of responses to the same. May be requested to participate in the award decision making process.

3. Provide third party real estate expertise to the Land Board/Department to help ensure that decisions are consistent with the Land Board's fiduciary duty and prudent investor requirements.
4. Develop and present information pertaining to real estate issues for the Land Board, verbally and in writing, when requested.
5. Other tasks related to real estate analysis, planning, and transactions to assist the Land Board/Department as needed.

Two firms submitted responses to the RFP:

1. Heartland LLC (Seattle, WA)
2. Canyon Data, Inc (Eagle, ID)

The Department conducted an initial review of the responses. The Land Board's Investment Subcommittee then reviewed the responses and met with each firm on April 22, 2024. Each firm made a brief presentation followed by questions from the Investment Subcommittee and Department staff. After consideration, the Investment Subcommittee voted to recommend Heartland LLC as the Land Board's Commercial Real Estate Advisor.

If approved, the Department would negotiate and issue a contract substantively similar to the attached draft contract (Attachment 1).

Recommendation

Authorize the Department to contract with Heartland LLC to serve as the Land Board's Commercial Real Estate Advisor.

Board Action

Attachments

1. Draft Commercial Real Estate Advisor contract

ATTACHMENT 1

COMMERCIAL REAL ESTATE ADVISOR AGREEMENT

This Real Estate Advisor Agreement (hereinafter "Agreement") is made by and between _____, a _____, whose address is _____ (hereinafter "Advisor"), and the State of Idaho Board of Land Commissioners (hereinafter the "Land Board").

WHEREAS, the Land Board has the direction, control and disposition of the public lands and endowment lands of the state, under such regulations as may be prescribed by law, pursuant to Idaho Constitution Art. IX, §§ 7 & 8;

WHEREAS, the Land Board has identified the need for third-party expertise related to certain matters pertaining to real estate acquisition, disposition, leasing, valuation, and analysis;

WHEREAS, the Land Board conducted a search through a competitive process for a commercial real estate investment advisor with sufficient experience and qualifications to assist the Land Board with matters pertaining to real estate;

WHEREAS, Advisor submitted a proposal to provide the Land Board with the requested third-party expertise; and

WHEREAS, the Land Board selected Advisor to provide the requested third-party expertise as set forth in the Scope of Services herein.

NOW THEREFORE, in consideration of the following representations, warranties, terms, conditions and covenants, the parties agree as follows:

1. Incorporation. The above recitals are intended to be contractual in nature and not mere recitals.

2. Term of Agreement. This Agreement shall commence on the date of execution by both parties and shall continue thereafter until terminated as provided for herein.

3. Compensation.

3.1. In consideration of Advisor's services hereunder, the Land Board shall pay Advisor compensation for its services in accordance with Exhibit A attached hereto, and incorporated by reference.

3.2. Advisor shall pay all applicable taxes assessed on the compensation received under this Agreement and shall identify and pay those taxes under Advisor's federal and state identification number(s).

3.3. Advisor shall submit invoices to:

Board of Land Commissioners
c/o Bill Haagenson, Deputy Director

4. Scope of Services.

4.1 Develop, provide, and/or review financial data and analysis, determinations of property value, land use information, potential highest and best use evaluations, and consistency with Land Board policies and land management objectives as the preceding items pertain to proposed land acquisitions, dispositions, exchanges, leases and lease terms, permits, and other revenue-generating opportunities.

4.2 Develop, provide, and/or review Requests for Proposals (RFP) and responses received related to potential leases, permits, and revenue-generating opportunities on endowment land, and provide analysis of responses to the same. May be requested to participate in the award decision-making process.

4.3 Provide third-party real estate expertise to the Land Board/Department to help ensure that decisions are consistent with their fiduciary duty as Trustee of the Constitutional Trust (Id. Const. Art. IX, § 8), and in accordance with prudent investor rule (Chapter 5, Title 68, Idaho Code).

4.4 Develop and present information pertaining to real estate issues for the Land Board, verbally and in writing, when requested.

4.5 Other tasks related to real estate analysis, planning, and transactions to assist the Land Board/Department as needed.

5. Advisor's Qualifications and Standard of Care.

5.1 If Advisor is a registered adviser under the Investment Advisers Act of 1940, as amended, then during the term of this Agreement it shall be continually so registered.

5.2 In performing its obligations, Advisor shall comply fully with all applicable federal and state laws, rules and regulations, and shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, including but not limited to compliance with the Idaho Uniform Prudent Investor Act, Chapter 5, Title 68 of the Idaho Code.

6. Representations and Warranties of Advisor. Advisor represents and warrants that:

6.1. Advisor is an "investment adviser" as defined in the Investment Advisers Act of 1940, as amended, and that it is registered with the Securities and Exchange Commission as an investment adviser.

6.2. Advisor has completed, obtained, and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority

for acts contemplated by this Agreement, and that it shall comply with all existing, new or amended laws that apply to its performance under this Agreement.

6.3. Except as disclosed to the Land Board in writing, neither Advisor, nor any of its officers, directors, or partners, nor any of its affiliates, or its officers, directors or partners, have ever been (i) convicted or pleaded guilty (or nolo contendere) to a felony or misdemeanor involving (1) an investment or investment-related business, (2) fraud, false statements or omissions, or (3) the wrongful taking of property, bribery, forgery, counterfeiting or extortion; (ii) found by a court or administrative agency to be in violation of any federal or state investment (or investment-related) statutes, rules or regulations; (iii) found by the United States Securities and Exchange Commission, or any other federal or state regulatory agency or self-regulating organization, to have (1) made a false statement or omission, (2) been involved in a violation of its rules, regulations or statutes, or (3) been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted.

6.4. Except as disclosed in writing to the Land Board, neither Advisor nor any of its officers, directors, partners, nor its affiliates, or its officers, directors partners have ever (i) had coverage under a fidelity bond or investment counselor's errors and omissions insurance policy denied or revoked; (ii) filed a bankruptcy or insolvency petition or been declared bankrupt; or (iii) had its registration revoked or its activities restricted.

6.5. If Advisor is a registered adviser under the Investment Advisers Act of 1940, as amended, then it shall deliver true, complete, and most recent copies of the Advisor's Investment Advisory Services Disclosure Document or Part 2 of its Form ADV at the time of execution of this Agreement. Advisor will deliver true and complete copies of any changes, modifications, and interpretations or new, revised or replaced issuances of such documents as promptly as practicable after the adoption thereof.

6.6. Advisor is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is qualified to do business in all states for which qualification is required in light of Advisor's business, activities and operations.

6.7. Advisor has all requisite power and authority to enter into this Agreement and to carry out its obligations hereunder, including but not limited to all licenses, permits and other government regulations required in connection therewith. The execution of this Agreement has been duly authorized by Advisor and no other proceedings on Advisor's part are necessary to authorize this Agreement.

6.8. Neither the execution of this Agreement nor the performance of the acts contemplated hereby nor compliance by Advisor with any provisions hereof will:

- (a) violate any provision of Advisor's organizational documents;
- (b) to Advisor's knowledge, violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Advisor;
- (c) violate any agreement to which Advisor or Advisory Personnel are parties to or to which they are bound or affected; or

(d) violate, conflict with or constitute a default under, permit the termination of, or require the consent of any person under, any agreement to which Advisor may be bound that in the aggregate would have a material adverse effect on the properties, business, prospective earnings, assets; liabilities or condition (financial or otherwise) of Advisor.

6.9 The personnel of Advisor set forth on Exhibit B attached hereto and incorporated herein (the “Advisory Personnel”) shall be responsible for discharging Advisor’s duties and obligations under this Agreement. The Advisory Personnel are individuals experienced in the performance of the various functions contemplated by this Agreement. Advisor shall provide advance written notice to Land Board of any change to the Advisory Personnel. Any replacement of any of the Advisory Personnel shall be individuals with experience and expertise who are at least reasonably equivalent to that of the personnel they are replacing.

6.10 Neither Advisor nor the Advisory Personnel are parties to any litigation, administrative proceeding or investigative proceeding which would, if determined adversely, affect their suitability or ability to engage in and perform the services contemplated by this Agreement. None of the Advisory Personnel have been convicted of a felony of any nature or a misdemeanor involving moral turpitude. Neither Advisor nor any of the Advisory Personnel have entered into a consent decree in lieu of civil sanctions or criminal prosecution for any offense which if proven would have rendered them ineligible or unsuitable to perform the services contemplated by this Agreement.

6.11 Advisor has fully reviewed and understands its duties, obligations and rights under the provisions of this Agreement. Without limitation, Advisor agrees, understands and warrants that its performance under the terms and conditions of this Agreement shall be evaluated in accordance with the terms of this Agreement.

7. Advisor’s Affirmative Covenants.

7.1 The Land Board acknowledges that Advisor and its Affiliates are engaged in a broad range of businesses, services and investments in real estate and other areas, both as principals and as agents or brokers for others. Without first obtaining the Land Board’s written consent, neither Advisor, its Affiliates, nor its or their principals, officers, directors, shareholders or employees, may (i) receive any commissions or fees from any third party with respect to the purchase, sale, mortgage or leasing of any of the endowment land or the financing thereof; or (ii) except as elsewhere expressly provided in this Agreement, receive any other compensation or fees or engage in any other transactions with respect to the business of any of the endowment land other than receipt of fees payable hereunder pursuant to Section _____. If the Land Board approves a transaction or contract otherwise forbidden by this Section, a condition to such approval shall be that the Land Board shall each have a direct right of action against Advisor and the Affiliate of Advisor for breaches of such Affiliate’s duties under such contract or transaction.

As used herein, “Affiliate” shall mean with respect to any person, any entity, company, corporation, limited partnership, general partnership, or joint venture, that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such firm, person or entity.

7.2 Upon a good faith showing by the Land Board that it has reason to believe Advisor may have financial difficulties that would adversely affect Advisor's ability to fulfill its duties hereunder, Advisory shall furnish to the Land Board upon the Land Board's request Advisor's most recent financial statements.

7.3 Advisor shall permit the Land Board or any duly authorized agent of the Land Board, upon reasonable notice, to audit, inspect, examine, excerpt, copy or transcribe Advisor's records, as they pertain to the Account, during the term of this Agreement and for a period of five (5) years following the termination of this Agreement. Advisor shall also permit the Land Board or its agent, upon reasonable notice, to monitor all activities conducted by Advisor pursuant to this Agreement. Such monitoring may include, but shall not be limited to, internal evaluation procedures, examination of data, special analyses, on-site checks and any other reasonable procedures.

7.4 Advisor shall obtain and maintain the following insurance coverages during the term of this Agreement:

(a) Fiduciary liability or investment consultant's errors and omissions insurance in a form commercially available and acceptable to the Land Board of not less than a combined single limit of Two Million Dollars (\$2,000,000) covering all officers, agents and employees of Advisor ("E&O Insurance"). The E&O insurance shall protect the Land Board's assets, including but not limited to the Properties, against losses from the negligent acts, errors and omissions of such persons.

(b) Commercial General Liability Insurance (with broad form endorsement) of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, death and property damage.

(c) Automobile Liability Insurance with at least Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

(d) Such other insurance as shall be deemed reasonably necessary from time to time by the Land Board to fully protect the Land Board's assets, including but not limited to the Properties, against losses and liabilities attributable to Advisor's acts or omissions.

All insurance carriers shall be rated an "A" or above by Best's Insurance Rating Service. The policies shall require the insurer to copy the Land Board with all notices sent to Advisor, including but not limited to, notices of cancellation, renewal, amendments, potential exhaustion of aggregate limits, and denials of coverage. Such certificates of insurance shall contain a provision, which requires that a sixty (60) day notice, prior to cancellation, be given to the Land Board. A true and correct copy of each paid-up policy evidencing such insurance that provides the coverage required by the Land Board shall be delivered to the Land Board concurrently with the execution hereof. The Land Board shall be named as an additional insured under such policies, where appropriate.

If any of the insurance required under this Agreement is arranged on a “claims made” basis, “tail” coverage will be required at the completion of this Agreement for a duration of twenty-four (24) months thereafter. Advisor shall be responsible for furnishing certification of “tail” coverage or continuous “claims made” liability coverage for twenty-four (24) months following Agreement completion. Continuous “claims made” coverage will be acceptable in lieu of “tail” coverage provided its retroactive date is on or before the effective date of this Agreement.

7.5 Advisor acknowledges and agrees that if this Agreement is terminated, Advisor and the Authorized Personnel shall be deemed to have resigned their director, officer or advisor positions as of a date designated by the Land Board which will be no later than three (3) days following the date this Agreement is terminated, and will assist and cooperate with the transition of successor directors, officers or advisors, as the case may be.

7.6 Advisor shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, necessary in the performance of this Agreement.

7.7 Advisor shall provide right of access to its facilities to the Land Board, its directors, officers and employees and any other authorized agent of the Land board, in order to reasonably monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

7.8 Advisor shall promptly, and in any case within three business days, notify the Land Board in writing:

- (a) if any of the covenants, representations and warranties of Advisor set forth in this Agreement shall cease to be true at any time during the term of this Agreement;
- (b) of any change in the Advisory Personnel;
- (c) of any direct or indirect change in control of Advisor;
- (d) of any other material change in Advisor’s business operations or organizational structure that could have a material adverse effect on Advisor’s ability to perform its obligations under this agreement;
- (e) of any investigation, examination or other proceeding involving Advisor or any of the Advisory Personnel commenced by any regulatory agency or other governmental authority which is not conducted in the ordinary course of Advisor’s business, or any criminal investigation involving Advisor or any of the Advisory Personnel; or
- (f) of any written claims against Advisor of any of advisor’s institutional investors seeking reimbursement or damages separately or cumulatively exceeding \$50,000 in amount or alleging fraud, misrepresentation or other violation of fiduciary responsibility by Advisor or any of the Advisory Personnel.

8. Advisor's Negative Covenants.

8.1 Without the Land Board's prior written consent, neither Advisor, its Affiliates nor any of their respective shareholders, partners, officers, agents or employees shall directly or indirectly receive any material benefit from any of the Properties other than as contemplated by this Agreement. A certification to this effect from Advisor shall be required with respect to the Properties on an annual basis or as otherwise requested by the Land Board.

8.2 Advisor may enter into contractual arrangements at its sole cost and expense with third parties to provide specialized information, advice, and reports to Advisor. Such arrangements shall not in any way relieve Advisor of any responsibility under this Agreement. Advisor shall be and remain liable for all damages to the Land Board or the State of Idaho caused by negligent performance or non-performance of work under the Agreement by any such third party. Advisor shall provide any reports or other documentation produced by such third parties to the Land Board as soon as reasonably practicable, and in no event later than thirty (30) days after the termination of this Agreement.

9. "Most Favored Nations." Advisor represents and warrants to the Land Board that Advisor will provide the Land Board with the lowest hourly rate as set forth in Exhibit A available to any other client of Advisor for similar management services and similar size of the fair market value of funds under management. Advisor represents and warrants that such lowest hourly rate is reflected in Exhibit A of this Agreement. Advisor also represents and warrants to the Land Board that should Advisor contract with any current or future client at an hourly rate lower than the hourly rate set out in Exhibit A of this Agreement for similar management services and size of this Agreement Advisor shall within ten (10) business days of Advisor having executed such contract with such hourly rate, (1) notify the Land Board in writing of such rate reduction, and (2) enter into a written amendment to this Agreement with the Land Board that includes an amended Exhibit A to this Agreement, to reduce the hourly rate in such Exhibit A to match such hourly rate.

10. Notice. Any notice given in connection with this Agreement shall be in writing and shall be delivered either by hand to the other party, or by certified mail, postage prepaid, return receipt requested, to the addresses provided below shall be deemed given three (3) days after the date of mailing to the following address:

BOARD:

Idaho State Board of Land Commissioners
300 North 6th Street, Suite 103
Boise, ID 83702
Attn: Secretary, Dustin T. Miller

ADVISOR:

Either party may change its address by giving written notice of the change to the other party delivered in the manner described in this Section.

11. Indemnification. Advisor shall indemnify, defend and save harmless the Land Board, the Department, and their officers, agents and employees, from and against any and all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever caused by or arising out of Advisor's performance, acts or omissions under this Agreement. The indemnification rights and obligations of the parties hereto shall survive the termination of this Agreement.

12. Sufficient Appropriation by Legislature Required. It is understood and acknowledged that the Land Board is a part of the State of Idaho, and this Agreement shall in no way or manner be construed to bind or obligate the Land Board, Idaho Department of Lands, or the State of Idaho beyond the term of any appropriation of funds by the State legislature as the same may exist from time to time. The Land Board reserves the right to terminate this Agreement if, in its sole judgment, the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required by the Land Board or Idaho Department of Lands to meet any obligation under this Agreement; or requires any return or "give-back" of funds required for the Land Board or Idaho Department of Lands to continue payments; or if the Executive Branch mandates any cuts or holdbacks in spending; or if funds are not budgeted or otherwise available; or if the Land Board or Idaho Department of Lands discontinues or makes a material alteration of the program under which funds were provided. Neither the Land Board nor Idaho Department of Lands shall be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to Advisor. Further, in the event of non-appropriation, neither the Land Board nor Idaho Department of Lands shall be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

13. Termination

13.1 This Agreement may be terminated by the Land Board in its sole discretion and without cause upon written notice to Advisor. Such termination shall be effective as of 5:00 p.m. Mountain Time on the day which it is received by Advisor if such day is a business day, and if not, as of 5:00 p.m. Mountain Time on the next business day.

13.2 This Agreement may be terminated by Advisor on thirty (30) days' written notice to Land Board. Upon the effective date of such termination, Advisor shall cease all activity with respect to the Properties except as provided for in section [] hereafter.

13.3

(a) Upon termination of this Agreement pursuant to sections [], or [], Advisor shall have the right and obligation to complete such work as the Land Board requests, if any. Termination by either party shall in no way affect the rights, liabilities and obligations which arose prior to the effective date of termination.

(b) Upon termination pursuant to sections [], or [], fees of Advisor payable hereunder shall be prorated to the date of termination. The Land Board may withhold funds in an amount

reasonably determined by the Land Board to be necessary to protect the Land Board against potential loss or liability caused by Advisor's misfeasance; provided however, the Land Board shall provide written notice to Advisor that such amounts are being withheld, the amount thereof and the reasons therefor. The parties agree to confer in good faith to resolve any disputes regarding such withheld amounts.

(c) Upon termination of this Agreement pursuant to sections ___, or ___, the Land Board, in addition to any other rights provided in this Agreement, may require Advisor to deliver to the Land Board any property specifically produced or acquired by Advisor on behalf of the Land Board, including, but not limited to, materials provided by third parties pursuant to section ___ of this Agreement.

(d) Effective as of the date of termination pursuant to sections ___, or ___, of this Agreement, and except as otherwise directed by the Land Board in writing, Advisor shall (i) stop work under the Agreement on the termination date, (ii) take such action as may be necessary, or as the Land Board may direct, for the protection and preservation of the property related to this Agreement that is in Advisor's possession and in which the Land Board has or may acquire an interest. The foregoing shall include, without limitation, attending post-termination meetings and additional consultations during the six-month period following the date of termination as shall be reasonably requested by the Land Board.

(e) The rights and remedies of the Land Board provided in this Section ___ shall not be exclusive and are in addition to any other rights and remedies provided by law or equity or under this Agreement.

13.4 The Land Board may terminate this Agreement for its convenience in whole or in part, if the Land Board determines that it is in the Land Board's best interest to do so.

(a) After receipt of a notice of termination for convenience, and except as directed by the Land Board, Advisor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. Advisor shall:

- (i) Stop work.
- (ii) Place no further subcontracts or other agreements with third parties for materials, services, or facilities, except as necessary to complete the continuing portion of the Agreement.
- (iii) Terminate all subcontracts or agreements with third parties to the extent they relate to the work terminated.
- (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts or agreements with third parties.

(b) If Advisor and Land Board fail to agree on the amount to be paid because of the termination for convenience, the Land Board will pay Advisor the following amounts; provided that in no event will total payments exceed the flat fee payable to Advisor as set forth in Exhibit A:

(i) The prorated price services accepted by the Land Board and not previously paid for; and

(ii) The total of:

A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to services paid or to be paid;

B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts and agreements with third parties that are properly chargeable to the terminated portion of the Agreement; and

C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by Advisor in winding down and terminating its work.

(c) Advisor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

14. Advisor's Staff and Organizational Changes. Advisor shall immediately notify the Land Board of any changes in Advisor's organizational structure which may have impact on the duties and responsibilities of Advisor as it relates to the Account. Unless prohibited by law, Advisor shall immediately notify the Land Board if it enters into any negotiations or discussions with another party for the sale to or merger of Advisor with another entity or the acquisition of another entity if such negotiations have a material chance of success or if a principal member or manager begins to spend a substantial amount of time on the subject of sale, acquisition or merger. Advisor shall also immediately notify the Land Board of any material change in the status of any Advisor Personnel as listed in Exhibit C, other staff, consultants, or agents who have a significant role in the performance of this Agreement including, but not limited to, a change in duties which would materially reduce the amount of time spent on matters relating to the Agreement.

15. Notice of Regulatory Matters. To the extent permitted by applicable law, Advisor shall promptly notify the Land Board of any extraordinary investigation, examination, complaint, disciplinary action or other legal or regulatory proceeding relating to or affecting Advisor or involving any staff, consultants or agents who has performed any services with respect to the Account in the twenty-four (24) preceding months, which is commenced by any of the following:

(i) the Securities and Exchange Commission of the United States; (ii) The New York Stock Exchange; (iii) the National Association of Securities Dealers; (iv) any agency of the state of Idaho that regulates real estate, real estate transactions, securities, investment organizations or banking; (v) any agency of any state of the United States or any United States government department or agency that regulates securities, investment organizations or banking; or, (vi) any governmental agency of a country in which Advisor is doing business that regulates securities, investment organizations or banking. In the event that notice required by this section is prohibited by law, Advisor shall immediately notify the Land Board upon the expiration of such prohibition.

16. Confidential Communications. All communication and information furnished by the Land Board to Advisor, and by Advisor to the Land Board including, but not limited to, materials provided by third parties pursuant to section of this Agreement, shall be treated as confidential and shall not be disclosed to third parties by Advisor except as required by law, including, but not limited to, the Idaho Public Records Act, Chapter 1, Title 74, Idaho Code.

The Land Board may require that Advisors officers, employees, agents, or subcontractors separately agree in writing to the obligations contained in this section or sign a separate confidentiality agreement. Confidential Information shall be returned to the Land Board upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that:

- (a) Is or was in the possession of Advisor before being furnished by the Land Board or being furnished by a third-party consultant to Advisor pursuant to this Agreement, provided that such information or other data is not known by Advisor to be subject to another confidentiality agreement with or other obligation of confidentiality to the Land Board or the Idaho Department of Lands;
- (b) Becomes generally available to the public other than as a result of disclosure by Advisor; or
- (c) Becomes available to Advisor on a non-confidential basis from a source other than the Land Board, the Idaho Department of Lands, or a third-party consultant to Advisor pursuant to this Agreement, provided that such source is not known by Advisor to be subject to a confidentiality agreement with or other obligation of confidentiality to the Land Board or the Idaho Department of Lands.

17. Independent Contractor Status. Advisor is an independent contractor. Advisor shall not hold itself out to any third person as an agent, partner, joint venturer of, or with the Land Board, or in any other capacity or relationship with the Land Board.

17.1 Advisor shall be responsible for payment of all taxes which it may incur in the performance of this Agreement including, but not limited to, federal and state income taxes, unemployment insurance taxes, and any other taxes or business license fees.

17.2 Advisor shall supply, at its sole expense, all equipment, tools, materials or supplies to accomplish the work to be performed.

17.3 Advisor is not eligible for, nor entitled to, and shall not participate in, any of the State of Idaho's pension, health or other fringe benefit plans.

17.4 Advisor agrees to obtain worker's compensation coverage as required by law for Advisor's employees and to furnish a copy of Advisor's certificate of worker's compensation insurance to the Land Board upon the Land Board's request.

18. No Third-party Beneficiaries. The parties hereto do not intend that any persons or entities other than the parties hereto shall have any rights or remedies hereunder. The parties hereto specifically disclaim any intent to bestow any enforceable benefit upon any third parties as against the parties hereto. Any benefit accruing to any such third party as the result of the execution of this Agreement is merely coincidental and no third party may rely on receiving any such benefit.

19. Default. Advisor shall be in default hereunder if any one or more of the following occurs: (i) Advisor fails to observe or perform any of the covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by Advisor; (ii) Proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Advisor's affairs are instituted by or against Advisor; (iii) A receiver or trustee is appointed for all or substantially all of Advisor's business or assets; (iv) Advisor shall make an assignment for the benefit of creditors. In the event of any default by Advisor, the Land Board, at its election, may enforce, by judicial action or otherwise, any one, or any combination of, remedies available at law or in equity including, but not limited to, terminating this Agreement and/or seeking court ordered injunctive relief.

20. Land Board's Authority. The Land Board represents that this Agreement with Advisor to advise the Land Board is authorized by applicable Idaho law, and that the Land Board is duly authorized and empowered to execute this Agreement.

21. No Personal Liability. Advisor specifically understands and agrees that in no event shall any official, officer, employee or agent of the Land Board, Department of State of Idaho, be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.

22. Attorney Fees. In the event of a legal proceeding of any kind instituted under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorney fees, costs and distributions incurred in such proceeding.

23. Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction and venue of the courts of Ada County, State of Idaho, in the event of any dispute with respect to this Agreement.

24. Registration With Secretary Of State And Service Of Process

24.1 Advisor must independently verify whether it is required by Idaho law to register its business entity or assumed business name with the Idaho Secretary of State and, if required to do so, must remain in good standing during the term of this Agreement.

24.2 Regardless of its registration with the Idaho Secretary of State, and in addition to any methods of service allowed by Idaho law, Advisor hereby consents to service of process upon it by registered or certified mail, return receipt requested, at its last known address. Advisor must notify IDL in writing of any change of address to which service of process can be made. Service shall be completed upon Advisor's actual receipt of process or upon Land Board's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Advisor shall have thirty calendar days after completion of service in which to respond.

25. Assignment and Delegation. Advisor shall not assign, subcontract or otherwise delegate any rights or obligations under this Agreement, without the prior written consent of the Land Board, which such consent may be withheld in the Land Board's sole discretion, and any other approvals required by State law, including, but not limited to, Idaho Code §67-1027. This Agreement shall inure to the benefit of and be binding upon the parties and their permitted successors and assigns.

26. No Waiver. The waiver of any breach or default to this Agreement shall not be construed as or deemed to be a waiver of any subsequent breach or default.

27. Severability. In the event that any court of competent jurisdiction specifically finds that any provision or section hereof is unconstitutional or is in irreconcilable conflict with applicable law, or specifically finds that any provision or section hereof is unenforceable, the remaining provisions hereof shall be enforceable. However, if the court also specifically finds that allowing the enforcement of the Agreement under the remaining terms will work an injustice upon either or both parties, or deprive either or both parties of the benefit of their respective bargain, the court shall declare the Agreement terminable by either party effective upon the expiration of thirty (30) days following written notice of the same by the terminating party to the other.

28. No Waiver of Sovereign Immunity. In no event shall this Agreement or any act by the Land Board, be construed as a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

29. Time Is Of The Essence. Time shall be of the essence in connection with Advisor's performance of its obligations under this Agreement.

30. Incorporation of Amendments to Applicable Laws. Any references to a section of state law or other laws or to any regulations or administrative pronouncements thereunder shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

31. Counterparts. This Agreement may be executed simultaneously by facsimile signature and in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

32. Section Headings. The section headings of this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

33. Use of the State of Idaho, Land Board, or Department of Lands Name. Advisor shall not, prior to, in the course of, or after performance under this Agreement, use the State's, the Land Board's, or the Department of Lands' name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the Land Board or the Department of Lands.

34. Entire Agreement. This Agreement sets forth the entire agreement between the parties related to the subject matter of this Agreement and may only be amended or modified by mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement.

[SIGNATURE PAGE FOLLOWS].

Advisor Name

State of Idaho Board of Land Commissioners

Name: _____

Name: Dustin T. Miller

Title: _____

Title: Secretary

Date: _____

Date: _____

DRAFT - SUBJECT TO MODIFICATION

**EXHIBIT A
FEE SCHEDULE**

Fee Rates:

1. One per hour fee for all items in the Scope of Services as provided in the following table.

Function	Per Hour Fee Rate
Executive Management	\$380
Managing Director	\$290
Senior Vice President	\$235
Vice President	\$210
Assistant Vice President	
Associate	\$175
Analyst	\$200
Administrative	\$100

For items in the Scope of Services, fees will be paid on a monthly basis after receipt of an itemized invoice for services rendered during the previous month.

EXHIBIT B
Advisory Personnel

[TO COME]

DRAFT - SUBJECT TO MODIFICATION