



WEST DES MOINES WATER WORK BOARD OF TRUSTEES MEETING COMMUNICATION

ITEM:**DATE:** May 21, 2018

5. Recommendations from Committees

c. Operations

1. Motion –

Ratifying Exclusive Representation Agreement
with Iowa Realty Commercial**FINANCIAL IMPACT:**

N/A

SUMMARY:

This action would ratify the Exclusive Representation Agreement with Kevin Crowley and Jason Lozano of Iowa Realty Commercial. The term of the agreement began on April 30, 2018 and expires December 31, 2018.

The agreement was reviewed by Amy Beattie of Brick Gentry, P.C.

BACKGROUND:

The West Des Moines Water Works (WDMWW) and City of West Des Moines (City) are currently considering the relocation of the Water Works Administrative Office outside of the current City Hall location, due to space allocation issues encountered by the City. The professional services of a commercial real estate broker was determined to be necessary to properly evaluate options and assist in facilitating any future relocation by WDMWW.

RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:

To concur with the recommendation of the Operations Committee and approve the motion ratifying the Exclusive Representation Agreement with Iowa Realty Commercial.

Prepared by: _____

Approved for Content by: _____

**IOWA REALTY COMMERCIAL
EXCLUSIVE REPRESENTATION AGREEMENT**

This Agreement is made and entered into by and between West Des Moines Water Works (hereinafter referred to as "Client"), and Iowa Realty Commercial, Kevin Crowley and Jason Lozano, as Client's agent (together, "Broker"):

WHEREAS, Client is desirous of purchasing or leasing or otherwise acquiring certain real property, and

WHEREAS, Client is desirous of engaging the Broker to act on Client's behalf in purchasing, leasing or otherwise acquiring certain real property, and

WHEREAS, Broker is willing to help identify properties, help negotiate on behalf of Client, and represent the Client in the purchase, lease or other acquisition of real property.

NOW THEREFORE, in consideration of the mutual promises and in consideration of the remuneration herein set out, the parties agree as follows:

1. **TERM OF AGENCY:**

Client hereby engages Broker and grants to Broker the exclusive rights and responsibilities described herein during the term of this Agreement, which shall begin on April 30, 2018 and shall continue until midnight on December 31, 2018.

2. **PROPERTY:**

The Client hereby appoints the Broker as the sole and exclusive Broker to represent the Client during the term of this Agreement in obtaining a lease, sub-lease or renewal of lease or purchase of real property.

3. **BROKER'S ROLE:**

Broker will undertake an evaluation of market alternatives, will advise client of their findings and make available information needed in the decision making process. Client will work with Broker to select the preferable alternatives (including having Broker solicit Request for Proposals - RFP's - if deemed appropriate) and attempt to negotiate an ultimate agreement. At all times, Broker shall be governed by the Code of Iowa Real Estate Licensing Law, the regulations of the Iowa Real Estate Commission, the laws of agency and other laws applicable to real estate brokers and salespersons.

4. **CLIENT'S ROLE:**

Client acknowledges and agrees that the purchase of real property encompasses many professional disciplines, and while Broker possesses considerable general knowledge, Broker is not an expert in matters including but not limited to law, tax, financing, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges that he or she has been advised by Broker to seek professional expert assistance and advice in these and other areas of professional expertise. In the event that Broker provides to Client names or sources for such advice and assistance, Client acknowledges and agrees that Broker does not warrant or guarantee the services and/or products.

Client agrees to:

A. Work exclusively with Broker during the term of this Agreement by:

- (1) viewing any property (previewing, etc.) only with Broker and not with another real estate broker, salesperson or owner;
- (2) exclusively allowing Broker to identify properties for, negotiate on behalf of, and/or represent Client;
- (3) to inform any interested and relevant party of this appointment (Representation Authorization form) and to refer to Broker all inquiries received from any other real estate broker, salesperson, prospective sellers, lessors, or any other source during the time this agency agreement is in effect;
- (4) holding Broker harmless from liability resulting from incomplete/inaccurate information provided to Broker by Client.

B. Assist Broker in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire property by:

- (1) providing reliable information including financial information (if necessary) and the general requirements of the desired property including location, price range, and other terms;
- (2) making himself/herself available to meet with Broker and to see properties, in order that Broker will be able to perform the covenants of this Agreement.

5.

DUTIES TO PARTIES:

Client understands and agrees that an agency relationship is created by means of a legally binding agency agreement. In addition, Iowa law imposes certain duties and restrictions on a broker and agent. Broker has the following duties to all parties in a transaction:

- A. Provide brokerage services to all parties to the transaction honestly and in good faith.
- B. Diligently exercise reasonable skill and care in providing brokerage services to all parties.
- C. Disclose to each party all material adverse facts that the Broker knows except for the following:
 - (1) Material adverse facts known by the party.
 - (2) Material adverse facts the party could discover through a reasonably diligent inspection, and which a reasonably prudent person under like or similar circumstances would discover.
 - (3) Material adverse facts the disclosure of which is prohibited by law.
 - (4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.
- D. Account for all property coming into the possession of Broker that belongs to any party within a reasonable time of receiving the property.

6.

DUTIES TO CLIENT:

In addition to the foregoing duties, under Iowa law, brokers and agents have the following duties to their clients, whether the client is a buyer or seller.

- A. Place the client's interest ahead of the interests of any other party, unless loyalty to a client violates the duties to all parties to a transaction under other applicable law.
- B. Disclose to the client all information known by Broker that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.
- C. Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the licensee has under this chapter or any other law.
- D. Disclose to a client any financial interest the licensee or the brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

7.

COMPENSATION TO BROKER:

Client confirms that Broker will be the procuring broker in our lease or purchase of land/facilities if initiated within 360 days of the termination of this agreement for property identified to client during the active term of this agreement. Also, client will require Broker to be compensated with a normal brokerage commission for their services by the owner, landlord or developer of the property in the manner consistent with Iowa Realty Commercial's standard policy and procedures contingent upon completion of a transaction.

Broker KOE Date

Client Wilson Date 4/30/18