



*City Council Memorandum*

**To: Mayor Fasbender & City Councilmembers**  
**From: Dan Wietecha, City Administrator**  
**Date: September 5, 2023**  
**Item: City Attorney Agreement**

**Council Action Requested:**

Approve First Amendment to City of Hastings Legal Services Agreement

**Background Information:**

Levander, Gillen & Miller, PA has served as our City Attorney since February 2021. Our current three-year contract expires at the end of the year December 31, 2023, and can be renewed upon mutual written agreement. The proposed amendment would extend the contract three years through December 2026 at the same monthly retainer and a modest increase in hourly rates.

**Financial Impact:**

Monthly retainer of \$2,250 and base hourly rate for Attorney \$160

**Committee Discussion:**

Not applicable

**Attachments:**

- First Amendment to City of Hastings Legal Services Agreement
- City of Hastings Legal Services Agreement with Levander, Gillen & Miller

**FIRST AMENDMENT TO  
CITY OF HASTINGS  
LEGAL SERVICES AGREEMENT**

This First Amendment to City of Hastings Legal Services Agreement (“First Amendment”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Hastings (“City”), a Minnesota municipal corporation, and LeVander, Gillen & Miller, P.A. (“LeVander”), a Minnesota professional association.

**RECITALS**

- A. The City entered into a Legal Services Agreement with LeVander on February 16, 2021 (“Agreement”).
- B. The City and LeVander desire to amend the Agreement to modify the Term and the Fees.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of each to the other contained in this First Amendment and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

- 1. The entire Agreement is hereby incorporated into this First Amendment, except as modified below.
- 2. Section II of the Agreement is hereby removed and replaced in its entirety as follows:

**II. TERM**

This Agreement shall commence on January 1, 2024 and shall terminate on December 31, 2026. This Agreement may be renewed thereafter upon mutual agreement of the parties. The City may terminate this Agreement upon sixty (60) days written notice to LeVander.

- 3. Section V of the Agreement is hereby removed and replaced in its entirety as follows:

**V. FEES, CHARGES AND BILLING**

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

	2024	2025	2026
<b>Retainer Services Fee</b>	\$2,250/month	\$2,250/month	\$2,250/month
<b>Hourly Rate for All Attorneys for Non-Retainer Services</b>	\$160	\$160	\$165
<b>Hourly Rate for Legal Asst. for Non-Retainer Services</b>	\$120	\$120	\$125
<b>Hourly Rate for All Attorneys for Developer Pass-Through Services and Litigation Matters</b>	\$220	\$220	\$225
<b>Hourly Rate for Legal Asst. for Developer Pass-Through Services and Litigation Matters</b>	\$135	\$135	\$140

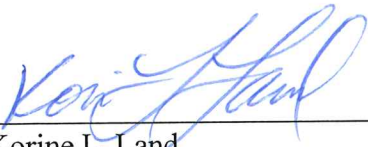
**Itemized Fees:**

• <b>Photocopying</b>	\$.20/page black/white \$.49/page color
• <b>Westlaw Legal Research</b>	Actual Cost; not to exceed \$300/month
• <b>Mileage Reimbursement</b>	Applicable IRS approve rate <i>(Mileage will not be charged to and from City Hall)</i>
• <b>Recording fees, filing fees, title search fees, out of pocket expenses</b>	Actual Cost
<b>Minimum increments of time billed for each service</b>	.10 per hour

4. Except as provided for above, the terms and provisions of the Agreement shall remain in full force and effect.
5. This First Amendment and all disputes or controversies arising out of or relating to this First Amendment, or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Minnesota, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Minnesota.
6. This First Amendment may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by the parties and delivered to the other parties.
7. This First Amendment shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each party.

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LEVANDER, GILLEN & MILLER, P.A.

By:   
\_\_\_\_\_  
Korine L. Land  
Shareholder/Vice President

**CITY OF HASTINGS**

By: \_\_\_\_\_  
Mary Fasbender  
Mayor

By: \_\_\_\_\_  
Kelly Murtaugh  
City Clerk

**CITY OF HASTINGS  
LEGAL SERVICES AGREEMENT**

This Legal Services Agreement (“Agreement”) made this 16<sup>th</sup> day of February, 2021, by and between the City of Hastings (“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 civil legal representation for civil matters, for the Hastings Economic Development & Redevelopment Authority (“HEDRA”), and for Developer Pass-Through Services and Litigation Matters.
- 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. DEFINITIONS**

- A. “Retainer Services” means to:
  - 1. Provide routine legal advice, consultation and opinions to the City Council and City Administrator.
  - 2. Attend regular City Council meetings and work sessions.
  - 3. Conduct newly elected City Councilmember trainings following elections or appointments, or upon request.
  - 4. Participate in introductory meetings in 2021 with department heads, staff, commissions, and City Council.
  - 5. Monitor relevant pending and current State/Federal legislation and case law and provide direction to City if needed.
- B. “Non-Retainer Services” means all other matters not included in Retainer Services above, such as but not limited to:
  - 1. Represent the City in voluntary acquisition of rights of way and land for public improvement projects.
  - 2. Represent the City in administrative proceedings.
  - 3. Attend meetings of the Planning Commission, HEDRA or special City Council meetings.
  - 4. Negotiate, draft and provide substantial review of contracts, deeds, easements, ordinances, resolutions, and other documents.
  - 5. Represent the City in employment law, telecommunications and public utilities matters.

C. “Developer Pass-Through Services and Litigation Matters” means:

1. Represent the City or HEDRA for projects that involve a developer or other party, such as a planning or zoning land use applicant who specifically needs or requests the City’s or HEDRA’s legal services and the City’s interest is served in providing those legal services, including but not limited to development agreements, project analysis, and planning applications. These projects typically involve an escrow that is provided by the developer or applicant prior to the initiation of work and the costs of legal services are recovered from the escrow.
2. Represent the City or HEDRA in civil litigation, including, but not limited to assessment appeals, condemnation, defense against claims made by 3<sup>rd</sup> parties when there is no insurance coverage, or initiation of claims made by the City or HEDRA.

D. “HEDRA Representation” means those matters that come before HEDRA as development projects or other actions that require legal assistance or review, including attendance at HEDRA meetings, as requested. HEDRA Representation will be billed the same rates as Non-Retainer Services, unless specifically designated as a Developer Pass-Through Representation.

## **II. TERM**

This Agreement shall commence on February 17, 2021 and shall terminate on December 31, 2023. This Agreement may be renewed thereafter upon mutual agreement of the parties. The City may terminate this Agreement upon sixty (60) days written notice to LeVander.

## **III. SERVICES PROVIDED**

LeVander shall provide civil legal representation on behalf of the City during the term of this Agreement. Korine Land will be the principal responsible attorney for all matters, assisted by Bridget McCauley Nason. Any of the shareholders, associates, legal assistants or staff will also be available. LeVander will not provide Criminal Prosecution Services on behalf of the City. “Criminal Prosecution Services” shall mean those matters involving the enforcement of laws of the State of Minnesota or the ordinances of the City through the use of the criminal justice system.

## **IV. 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.).

**V. FEES, CHARGES AND BILLING**

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

	2021	2022	2023
<b>Retainer Services Fee</b>	\$2,250/month	\$2,250/month	\$2,250/month
<b>Hourly Rate for All Attorneys for Non-Retainer Services</b>	\$150	\$150	\$155
<b>Hourly Rate for Legal Asst. for Non-Retainer Services</b>	\$115	\$115	\$120
<b>Hourly Rate for All Attorneys for Developer Pass-Through Services and Litigation Matters</b>	\$205	\$205	\$210
<b>Hourly Rate for Legal Asst. for Developer Pass-Through Services and Litigation Matters</b>	\$130	\$130	\$135



<b>Itemized Fees:</b>	
• <b>Photocopying</b>	\$.20/page black/white \$.49/page color
• <b>Westlaw Legal Research</b>	Actual Cost; not to exceed \$300/month
• <b>Mileage Reimbursement</b>	Applicable IRS approve rate <i>(Mileage will not be charged to and from City Hall)</i>
• <b>Recording fees, filing fees, title search fees, out of pocket expenses</b>	Actual Cost
<b>Minimum increments of time billed for each service</b>	.10 per hour

## VI. 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.

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

By: \_\_\_\_\_  
Korine L. Land  
Shareholder/Vice President

**CITY OF HASTINGS**

By: \_\_\_\_\_  
Mary Fasbender  
Mayor

By: \_\_\_\_\_  
Erica Henderson  
City Clerk