

RESOLUTION NO. 5588

A RESOLUTION ACCEPTING THE PROPOSAL FROM DAVIDSON FIXED INCOME MANAGEMENT FOR INVESTMENT ADVISORY SERVICES.

WHEREAS, for several years the City of Albany has contracted for advisory services related to investment of the City's available cash not needed for short term operations; and

WHEREAS, all investments are made consistent with the City's investment policy which sets forth priorities for safety, liquidity, and yield; and

WHEREAS, proposals were received from five qualified investment advisory firms; and

WHEREAS, the proposal from Davidson Fixed Income Management was determined to best meet the requirements of the Request for Proposals and the needs of the City; and

WHEREAS, the City desires to enter into a contract with Davidson Fixed Income Management for Investment Advisory Services, for approximately five years, commencing April 2008, with an option to extend the contract up to an additional two, one-year terms.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby accepts the proposal submitted by Davidson Fixed Income Management for Investment Advisory Services.

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to enter into a Professional Services Agreement, Attachment A, in substantially the form that is attached and the Fee Proposal submitted by Davidson Fixed Income Management.

DATED AND EFFECTIVE THIS 9TH OF APRIL 2008.



Mayor

ATTEST:



City Clerk

Attachment A

**ALBANY PROFESSIONAL SERVICES AGREEMENT
FOR AGREEMENT TO FURNISH INVESTMENT ADVISORY SERVICES
TO THE CITY OF ALBANY, OREGON**

ARTICLE I: SCOPE

For consideration set forth in Article V of this Agreement, the firm of _____, a professional firm, hereinafter referred to as CONTRACTOR, agrees to provide services to the City of Albany, Oregon, a municipal corporation, hereinafter referred to as CITY. This agreement incorporates all these Standard Terms and Conditions, the promises, representations, and obligations set forth in the complete Request for Proposals, Scope of Work, Fee Proposal, and all Attachments. The CITY shall assist the CONTRACTOR by providing any and all information within its possession or control that may be reasonably helpful in the performance of the services provided herein.

In the event of a conflict between the attachment and this document, the terms of this document shall control. Unless modified in writing as set forth in Article III by the parties hereto, the duties of the CONTRACTOR and the CITY shall not be construed to exceed those services and duties specifically set forth in the agreement. The parties agree that all work products produced by CONTRACTOR in the fulfillment of its obligations under this agreement, and all information, documents and material, gathered or compiled in meeting those obligations, shall be considered property of the CITY, and shall be provided to the CITY upon completion of this agreement or termination of the agreement pursuant to Article XI.

ARTICLE II: PROFESSIONAL COMPETENCE

The services provided by CONTRACTOR, shall, in all respects, meet or exceed the standards of thoroughness, quality, and competence customarily maintained by similar professionals offering such services in the Pacific Northwest. The CONTRACTOR shall not propose solutions, which they should reasonably know will not perform as represented in the Proposal.

_____ will serve as the lead Investment Advisor under the terms of this Agreement. Any change in the designation of this role must be approved by the City.

The CONTRACTOR will not begin work on any of the duties and services listed in Article I until the CITY directs in writing to proceed.

ARTICLE III: MODIFICATIONS

CITY or CONTRACTOR shall not make modifications in the attached agreement or these Standard Terms and Conditions except in writing as an amendment to the agreement. Said modifications shall be agreed to by both parties, with scope of work, schedule, and compensation to be negotiated at the time the modification is proposed by either party. Modifications that do not meet these requirements shall not be binding, and no further compensation will be allowed for any work performed.

ARTICLE IV: STATE AND FEDERAL REQUIREMENTS

The CONTRACTOR covenants and agrees to comply with all of the obligations and conditions applicable to public contracts pursuant to ORS 279 Chapters A and B, as though each obligation or condition were set forth fully herein. In addition the CONTRACTOR covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to the City of Albany for projects of the type in question.

The CONTRACTOR, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

ARTICLE V: COMPENSATION

The services described in Article I shall be performed for the fees stated in the Fee Proposal, Contract Document - Attachment A. The City shall remit payment within thirty (30) days of receipt of a monthly billing from the CONTRACTOR. Such billing shall be only for services provided to that point.

ARTICLE VI: INDEMNIFICATION

The CONTRACTOR agrees to indemnify, defend, and hold harmless the CITY, its agents, officers and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses arising out of or resulting from the negligent or intentional acts, errors, or omissions of the CONTRACTOR, its officers, employees, or agents.

ARTICLE VII: INSURANCE

During the life of this agreement, the CONTRACTOR shall maintain the following minimum insurance:

- A. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
- B. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired vehicles.
- C. Statutory workers' compensation and employer's liability insurance as required by state law.
- D. Professional liability insurance in the amount of \$1,000,000.

ARTICLE VIII: ASSIGNMENT

This agreement is to be binding upon the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this agreement shall be effective until the assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other original party to this agreement.

Use of subcontractors by the CONTRACTOR or subsidiary or affiliate firms of the CONTRACTOR for technical or professional services shall not be considered an assignment of a portion of this agreement, and the CONTRACTOR shall remain fully responsible for the work performed, whether such performance is by the CONTRACTOR or subcontractors. No subcontractors shall be used without the written approval of the CITY.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

ARTICLE IX: INTEGRATION

These terms and conditions and the attachments represent the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The agreement may not be modified or altered except in writing as specified in Article III.

ARTICLE X: SUSPENSION OF WORK

The CITY may suspend, in writing, and without cause, all or a portion of the work under this agreement. The CONTRACTOR may request that the work be suspended by notifying the CITY, in writing, of circumstances that are interfering with the progress of work. The CONTRACTOR may suspend work on the project in the event the CITY does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. In the event that the period of suspension exceeds 90 days, the terms of the agreement are subject to renegotiation and both parties are granted the option to terminate work on the suspended portion of the project, in accordance with Article XI.

ARTICLE XI: TERMINATION OF WORK

CITY may terminate all or a portion of the work covered by this agreement for its convenience. Either party may terminate work if the other party fails to substantially perform in accordance with the provisions of the agreement. Termination of the agreement is accomplished by written notice from the party initiating termination no less than fifteen (15) days in advance of the effective date of termination. Such notice of termination shall be delivered by certified mail with a receipt for delivery returned to the sender.

In the event of termination, CONTRACTOR shall perform such additional work as is necessary for the orderly filing of documents and closing of the project. The time spent on such additional work shall not exceed 10 percent (10%) of the time expended on the terminated portion of the project prior to the effective date of termination. CONTRACTOR shall be compensated for work actually performed prior to the date of termination plus work required for filing and closing as described in this Article. Upon termination, CONTRACTOR shall provide to the CITY all work products, material, documents, etc., gathered or compiled, related to the project, whether in CONTRACTOR'S possession at the time of termination or received later.

If no notice of termination is given, relationships and obligations created by this agreement shall be terminated upon completion of all applicable requirements of this agreement.

ARTICLE XII: FORCE MAJEURE

Neither the CITY nor the CONTRACTOR shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

ARTICLE XIII: DISPUTE COSTS

In the event either party brings action to enforce the terms of this agreement or to seek damages for its breach, or arising out of any dispute concerning the terms and conditions hereby created, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs, and expenses, incurred therein, including such costs and fees as may be required on appeal.

ARTICLE XIV: COOPERATIVE PURCHASING

Pursuant to ORS 279A.205 thru 279A.215, other Public Agencies and members of the Oregon Cooperative Purchasing Program (ORCPP) may use the purchase agreement resulting from this RFP unless CONTRACTOR expressly notes in the proposal that the prices quoted are available to the City only. The condition of such use by other Agencies is that any such Agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with the CONTRACTOR; the City accepts no responsibility for performance by either the successful CONTRACTOR or such other Agency using this Agreement. With such condition, the City consents to such use by any other Public Agency.

ARTICLE XV: COURT OF JURISDICTION

The laws of the state of Oregon shall govern the validity of this agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in Linn County, Oregon.

CONTRACTOR:

Date: _____

By: _____
CONTRACTOR

By: _____

Title: _____

Mailing Address: _____

Telephone: _____

Fax: _____

Corporation Tax No. (if incorporated) _____

Social Security No. (if individual) _____

CITY OF ALBANY, OREGON:

Date: _____

By: _____
Stewart Taylor,
Finance Director

APPROVED AS TO FORM:

By: _____
City Attorney

ATTACHMENT A – FEE PROPOSAL

Fee Proposal

The undersigned hereby proposes and, if selected, agrees to furnish all services in accordance with the Request for Proposal, and Addendums, for the prices shown immediately below.

Investment Advisory Services	Flat Fee	Percent of Assets Under Management
April through December, 2008	\$ 18,750	\$
January through December, 2009	\$ 25,000	\$
January through December, 2010	\$ 30,000	\$
January through December, 2011	\$ 30,000	\$
January through December, 2012	\$ 30,000	\$
Total	\$133,750	\$

Certifications --Non-Collusion

The undersigned Proposer hereby certifies that it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, potential Proposer, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Proposers or potential proposers, or to secure through any unlawful act an advantage over other Proposers or the City. The fees and prices submitted herein have been arrived at in an entirely independent and lawful manner by the Proposer without consultation with other Proposers or potential Proposers or foreknowledge of the prices to be submitted in response to this solicitation by other Proposers or potential Proposers on the part of the Proposer, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

Conflict Of Interest

The undersigned Proposer and each person signing on behalf of the Proposer certifies, and in the case of a sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the City Council, officer, employee, or person, whose salary is payable in whole or in part by the City, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein. The undersigned hereby submits this Proposal to furnish all work, services systems, materials, and labor as indicated herein and agrees to be bound by the following documents: Request for Proposal, Professional Services Contract, and associated inclusions and references, specifications, Proposal Form, Proposer response, mutually agreed clarifications, appropriately priced change orders, exceptions which are acceptable to the City, and all other Proposer submittals.

