

RESOLUTION NO. 6398

A RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO ENTER INTO A CONTRACT WITH PIPER JAFFRAY, SEATTLE-NORTHWEST DIVISION; AND REPEALING RESOLUTION NO. 6379.

WHEREAS, on December 9, 2009, the City Council adopted Resolution No. 5868 accepting the proposal of Seattle-Northwest Securities for Financial Advisory services; and

WHEREAS, on December 5, 2012, the City Council adopted Resolution No. 6178 which exercised the option to extend the contract for an additional two one-year terms; and

WHEREAS, on January 14, 2015, the City Council passed Resolution No. 6379 extending the Financial Advisory Services contract with Piper Jaffray, Seattle-Northwest Division for up to one year; and

WHEREAS, upon review of the existing contract, the in-house legal counsel at Piper Jaffray asked to modify several provisions of the contract, particularly areas of minimum insurance, indemnification, and relationship between the parties; and

WHEREAS, the many changes to the original contract were substantial enough that staff felt it would be much cleaner to negotiate a new five-year contract; and

WHEREAS, Oregon Revised Statutes have a specific exemption for bond-related expenditures; and

WHEREAS, Piper Jaffray has worked with the City on several bond refundings over the past several years and is well positioned to assist the City in the upcoming public safety facilities general obligation bond if approved by the voters.

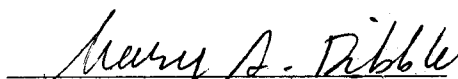
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALBANY, OREGON AS FOLLOWS:

1. The Finance Director is authorized to enter into a contract with Piper Jaffray, Seattle-Northwest Division for Financial Advisory services for up to five years with options for two one-year extensions.
2. Resolution No. 6379 is hereby repealed.

DATED AND EFFECTIVE THIS 11TH DAY OF MARCH 2015.


Mayor

Attest:


City Clerk

**STANDARD TERMS AND CONDITIONS
FOR AGREEMENT TO FURNISH
FINANCIAL ADVISORY SERVICES
TO THE CITY OF ALBANY, OREGON**

ARTICLE I: SCOPE

For consideration set forth in Article V, Piper Jaffray, a professional firm, hereinafter referred to as CONSULTANT, agrees to provide services to the City of Albany, Oregon, a municipal corporation, hereinafter referred to as the CITY. This Agreement incorporates all the promises, representations, and obligations set forth in this Agreement and the Request for Proposal, Proposal Response, Fee Schedule, and other supporting documents and attachments.

The contract term shall be for a period of approximately five years, commencing March 2014, with an option to extend the contract an additional two, one-year terms, at the option of the City. If the City elects to renew the contract, a written notice shall be provided a minimum of thirty (30) days prior to the expiration of the current contract of its intent to do so.

In the event of any inconsistency between the terms of this Agreement and the terms listed in any additional attachments to this Agreement, the terms of this Agreement shall control.

ARTICLE II: RESPONSIBILITY OF CONSULTANT

- A. Notice to Proceed. CONSULTANT will not begin work on any of the duties and services listed in Article I until execution of the contract. Authorization to proceed on additional services not defined in Article I shall be in the form of an amendment as defined in Article II.
- B. Level of Competence. CONSULTANT is employed to render professional services and shall be responsible, to the level of competence presently maintained by other practicing professional CPA firms in good standing and engaged in the same type of professional personal services, for the professional and technical adequacy and accuracy of designs, drawings, specifications, documents, and other work products furnished under this Agreement.
- C. Carol Samuels shall serve as the Lead Consultant for Financial Advisory Services described under the terms of this Agreement. Any change in the designation of this role must be approved by the City.
- D. Documents Produced. CONSULTANT agrees that all work products produced by CONSULTANT 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 XII; subject to CONSULTANT'S document retention requirements.
- E. State or Federal Requirements. CONSULTANT covenants and agrees to comply with all of the obligations and conditions applicable to public contracts of this type pursuant to ORS Chapter 279 A, and B, as though each obligation or condition were fully set forth herein. In addition, CONSULTANT covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to contracts of this type. If any provision of this Agreement shall be deemed to be not in compliance with any statute or role of law, such provision shall be deemed modified to ensure compliance with said statute or role of law.

- F. Oregon Workers' Compensation Law. CONSULTANT, its subconsultants, 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.
- G. Record Retention and Review. The CONSULTANT shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject during regular business hours of the CONSULTANT to inspection, review, or audit by personnel duly authorized by the City upon reasonable advance written notice from the City to the CONSULTANT. The CONSULTANT will retain all records related to this Agreement for seven (7) years following the date of final payment or completion of any required audit, whichever is earlier, and make them available for inspection by persons authorized under this provision; subject to the CONSULTANT's document retention requirements. The CONSULTANT shall be responsible for any audit exceptions or disallowed costs incurred by the CONSULTANT or any of its SUBCONSULTANTS.
- H. Oregon Identity Theft Protection Act. CONSULTANT, and its SUBCONSULTANTS to comply with the Oregon Identity Theft Protection Act (OITPA), ORS Sections 646A.600 through 646A.628.
- I. Taxpayer Identification Number. CONSULTANT agrees to complete a Request for Taxpayer Identification Number and Certification (W-9 Form) as a condition of the CITY'S obligation to make payment. If the CONSULTANT fails to complete and return the W-9 Form to the CITY, payment to CONSULTANT may be delayed, or the CITY may, in its discretion, terminate the Contract.

ARTICLE III: RESPONSIBILITY OF CITY

- A. Authorization to Proceed. CITY shall authorize CONSULTANT upon execution of the contract to start work on any of the services listed in Article I.
- B. Access to Records, Facilities and Property. CITY shall comply with reasonable requests from CONSULTANT for inspection or access to CITY's records, facilities, and properties by providing any and all information within its possession or control that may be reasonably helpful in the performance of the services provided herein.
- C. Timely Review. CITY shall examine all studies, reports, specifications, proposals, and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CITY deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as not to unreasonably delay the services of CONSULTANT.

ARTICLE IV: MODIFICATIONS

CITY or CONSULTANT 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 V: COMPENSATION

City agrees to pay for the professional services procured in Article I in accordance with the compensation provisions described in this Agreement and the Attachment A - Fee Schedule.

The City shall remit payment within thirty (30) days of receipt of a monthly billing from the CONSULTANT. Such billing shall be only for services provided to that point. If payment is not made within 30 days, interest on the unpaid balance will accrue beginning on the 31st day at the rate of one percent (1%) per month or the maximum interest rate permitted by law, whichever is less.

Such interest is due and payable when the overdue payment is made, unless delay in payment is due to a contested billing. CITY has the right to appeal or ask for clarification on any CONSULTANT billing within 30 days of receipt of billing. Until said appeal is resolved or clarification is accepted, no interest will accrue on that portion of the billing. In the event of a contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with this Article V.

Notwithstanding anything in this Agreement to the contrary, the CITY'S obligation to pay money beyond the current fiscal year shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the City Manager or other officer charged with the responsibility for preparing the City's annual budget shall include in the budget for each fiscal year the amount of the city financial obligation payable in such year and the City Manager or such other officer shall use his/her best efforts to obtain the annual appropriations required to authorize said payments.

ARTICLE VI: INDEMNIFICATION

To the extent allowed by law, the CONSULTANT 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 (the "Claims") but only for monetary damages and not for punitive damages but only to the extent that such Claims have been finally and judicially determined to have resulted primarily and directly from actions taken or omitted to be taken by the CONSULTANT due to such person's negligence or willful misconduct. In no case shall fees paid under this Article VI exceed \$250,000.

ARTICLE VII: INSURANCE

Before the Agreement is executed and work begins, the CONSULTANT shall furnish the CITY a Certificate of Insurance for the coverage and limits set out below which is to be in force and applicable to the project for the duration of the contract. The issuing insurance companies must have a minimum current A.M. Best rating of A- VII or approved by the City. The Certificate must state that any insurance coverage shown cannot be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days prior written notice has been given to the CONSULTANT.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Commercial General Liability: Insurance Services Office (ISO) form CG 0001 with an edition date of 10-2001 or later, providing Commercial General Liability – Occurrence Form.

2. Automobile Liability: Insurance Services Office (ISO) form CA 0001, providing Business Automobile Coverage on owned, non-owned and/or hired vehicles.
3. Workers' Compensation insurance as required by Oregon Revised Statutes and including Employers Liability Insurance.
4. Professional Liability insurance on an occurrence or claims made basis with 12 month tail coverage.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than specified below, and may be provided or supplemented by an Excess or Umbrella policy:

- | | |
|----------------------------------|--|
| 1. Commercial General Liability: | \$2,000,000 Each Occurrence
\$2,000,000 Personal Injury
\$3,000,000 General Aggregate
\$3,000,000 Products/Completed Operations Aggregate |
|----------------------------------|--|

The General Aggregate and Products/Completed Operations Aggregate shall apply separately to this project.

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|-------------------------------------|--|
| 2. Automobile Liability: | \$2,000,000 Per Occurrence |
| 3. Employers Liability: | \$ 1,000,000 Each Accident
\$ 1,000,000 Disease Aggregate
\$ 1,000,000 Disease Each Employee |
| 4. Professional Liability Insurance | \$2,000,000 Per incident / Claim
\$2,000,000 Annual Aggregate |

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Clause - The Commercial General Liability insurance coverage required for performance of this contract shall include CITY OF ALBANY and its officers, agents and employees as Additional Insured with respect to CONSULTANT'S or any sub-contractor's activities being performed under the Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the City of Albany, its officers, employees, and agents for losses arising from work performed by the CONSULTANT for the CITY.

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 SUBCONSULTANTS by the CONSULTANT or subsidiary or affiliate Firms of the CONSULTANT for technical or professional services shall not be considered an assignment of a portion of this Agreement, and the CONSULTANT shall remain fully responsible for the work performed, whether such performance is by the CONSULTANT or SUBCONSULTANTS. No SUBCONSULTANTS 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 CONSULTANT.

ARTICLE IX: INTEGRATION

These terms and conditions and the attachments represent the entire understanding of CITY and CONSULTANT 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 IV.

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 CONSULTANT may request that the work be suspended by notifying the CITY, in writing, of circumstances that are interfering with the progress of work. The CONSULTANT 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, CONSULTANT 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. CONSULTANT 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, CONSULTANT shall provide to the CITY all work products, material, documents, etc., gathered or compiled, related to the project, whether in CONSULTANT'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 and the CONSULTANT shall thereafter have no continuing fiduciary or other duties to the CITY.

ARTICLE XII: FORCE MAJEURE

Neither the CITY nor the CONSULTANT 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: RELATIONSHIP BETWEEN THE PARTIES

The CITY acknowledges and understands that state and federal laws relating to disclosure in connection with municipal securities, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the CITY that the failure of the CONSULTANT to provide legal advice to the CITY respecting these laws shall not constitute a breach by the CONSULTANT of any of its duties and responsibilities under this Agreement. The CITY acknowledges that any Official Statement distributed in connection with an issuance of securities are statements of the CITY and not of CONSULTANT. The CONSULTANT is not legal counsel or an accountant and is not providing legal or accounting guidance. None of the services contemplated in this Agreement shall be construed as or a substitute for legal services.

The CITY and the CONSULTANT intend and agree that, to the extent the performance of services by the CONSULTANT constitutes municipal advisory activities within the meaning of rule 15Ba1 of the Securities Exchange Act of 1934 or otherwise creates a duty of the CONSULTANT under Section 15B(c)(1) of the Securities Exchange Act of 1934 or Rule G-23 of the Municipal Securities Rulemaking Board, such duty does not extend beyond the services and such duty does not extend to any other contract, agreement, relationship, or understanding of any nature between the CONSULTANT and the CITY.

ARTICLE XIV: CONFLICT AND SEVERABILITY

In the event of any inconsistency between the terms of this Agreement and the terms listed in any additional attachments to this Agreement, the terms of this Agreement shall control. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

ARTICLE XV: NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

During the term of this Agreement, the CONSULTANT agrees as follows:

The CONSULTANT will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

ARTICLE XVI: 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.

THE PARTIES EACH HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP BETWEEN THE PARTIES. PARTIES AGREE TO WAIVE CONSEQUENTIAL AND PUNATIVE DAMAGES .

CONSULTANT:

Date: _____

By: _____

CONSULTANT

By: _____

Title: _____

Mailing Address: _____

Telephone: _____

Fax: _____

_____ Corp. Tax No./Social Security No.

CITY OF ALBANY, OREGON:

Date: _____

By: _____

Stewart Taylor
Finance Director

APPROVED AS TO FORM:

By: _____

City Attorney

Appendix A: COMPENSATION

The services described in Article I shall be performed in accordance with the following fee schedule:

Non-bond services

For projects that are unrelated to bond transactions, we propose the following hourly rates for the 2015 year, such rates to be increased each successive calendar year for the life of the engagement by the local Consumer Price Index:

Managing Director/Sr. Vice President/Vice President:	\$272/hour
Assistant Vice President:	\$250/hour
Associate:	\$228/hour
Other:	\$163/hour

Bond-related services

For all services provided to the City of Albany or the Central Albany Revitalization Agency related to the issuance of bonds or other forms of indebtedness, charges shall be assessed on a flat fee basis as follows. Such fees shall be increased each successive calendar year for the life of the engagement by the local Consumer Price Index:

Financing Type

	<u>Competitive sale</u>	<u>Negotiated sale</u>
General Obligation Bonds - public offering:	\$38,000	\$44,000
General Obligations Bonds – bank placement	\$22,000	n/a
Revenue Bonds or Full Faith & Credit Obligations – public offering	\$49,000	\$54,000
Revenue Bonds or Full Faith & Credit Obligations – bank placement	\$27,000	n/a
Urban Renewal Bonds – public offering	\$54,000	\$60,000
Urban Renewal Bonds – bank placement	\$44,000	n/a
Bank lines of credit	\$22,000	n/a
Refunding transactions: add \$5,500 to above.		

Expenses

In addition to the above hourly fees and/or maximums, SNW would expect to be reimbursed at cost for reasonable and necessary out-of-pocket expenses, including such items as overnight delivery and travel undertaken at the City's request.

Billing Dates

All hourly work shall be billed on a monthly basis. Bond-related services shall be paid out of bond proceeds.