

Council Business Meeting

March 17, 2020

Agenda Item	Approval of a Public Contract for Financial Advisory Services	
From	Kelly Madding	City Administrator
Contact	kelly.madding@ashland.or.us ; (541) 552-2103	

SUMMARY

Approval is being requested to enter into a public contract for Financial Advisory Services. The services will include evaluating the City's financing programs, reviewing its performance related to issuance and refunding of bonds and other financial consulting services.

POLICIES, PLANS & GOALS SUPPORTED

D. Develop current and long-term budgetary resiliency

PREVIOUS COUNCIL ACTION

N/A

BACKGROUND AND ADDITIONAL INFORMATION

The sourcing method used to obtain proposals for Financial Advisory Services was a formal Competitive Sealed Proposal (Request for Proposal). The City received three (3) proposals in response to this RFP. The proposals were evaluated in accordance with the evaluation process and criteria set forth in the RFP. A three-person evaluation committee evaluated the proposals and the results of the evaluation process are as follows:

Consultant	Total Score	Rank
PFM Financial Advisors LLC	430	1
D.A. Davidson & Co.	384	2
Piper Sandler & Co.	340	3

FISCAL IMPACTS

The fiscal impact will vary from year to year depending on requested issuance such as general obligation bonds, sale of revenue bonds, refunding bonds, defeasance of bonds and other types of debt. Additional costs will also vary depending on need of other services such as debt management and financial policies, appropriate reserve policies and funding levels, researching and analyzing various ongoing funding and financing alternatives.

STAFF RECOMMENDATION

Staff recommends the public contract for Financial Advisory Services be awarded to PFM Financial Advisors LLC.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to approve the award of a public contract to PFM Financial Advisors LLC for Financial Advisory Services.

ATTACHMENTS

Attachment 1: Evaluation Summary

Attachment 2: Personal Services Agreement

City of Ashland
Request for Proposal
FINANCIAL ADVISORY SERVICES
Evaluation Summary
March 3, 2020

Evaluation Criteria	Points	D.A. Davidson & Co.			PFM Financial Advisors LLC			Piper Sandler & Co.		
		#1	#2	#3	#1	#2	#3	#1	#2	#3
Letter of Introduction	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Table of Contents	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Proposal Submission Form	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Mandatory Minimum Requirements	Pass/Fail	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Experience & Background	30	20	20	19	27	27	27	20	20	20
Key Personnel	25	20	20	20	25	25	25	15	15	15
Subcontractor Qualifications	15	15	15	15	15	15	15	15	15	15
Project Approach & Understanding	30	28	25	23	30	30	25	20	20	15
References	15	15	15	10	15	15	15	15	15	15
Contract Terms & Conditions	10	10	10	10	10	10	10	10	10	10
SUBTOTAL	125	108	105	97	122	122	117	95	95	90
Cost Proposal	25	25	25	25	23	23	23	20	20	20
TOTAL	150	132	130	122	145	145	140	115	115	110
GRAND TOTAL		384			430			340		

PERSONAL SERVICES AGREEMENT

**CITY OF
ASHLAND**

20 East Main Street
Ashland, Oregon 97520
Telephone: 541/488-5300
Fax: 541/552-2059

CONSULTANT: PFM FINANCIAL ADVISORS,
LLC

CONSULTANT'S CONTACT: Michael Berwanger,
Managing Director

ADDRESS: 650 NE Holladay Street, Suite 1600
Portland, Oregon 97232

TELEPHONE: 503-837-8445
FAX NUMBER: 503-837-8446
EMAIL: berwangerm@pfm.com

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the **City of Ashland**, an Oregon municipal corporation (hereinafter "City") and **PFM Financial Advisors, LLC**, a foreign limited liability company ("hereinafter "Consultant"), for **Financial Advisory Services**.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall continue in full force and effect until **April 1, 2025**.
- 2. Scope of Work:** Consultant will provide Financial Advisory Services as more fully set forth in the Consultant's Technical Proposal to Provide Financial Advisory Services dated February 25, 2020, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to in this Agreement as the "Work." The City is not obligated to procure any specific amount of Work from Consultant pursuant to this Agreement.
- 3. Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- 4. All Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
- 5. Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.

6. **Compensation:** City shall pay Consultant at the hourly rates as set forth in “Exhibit D,” Consultant’s Cost Proposal dated February 25, 2020, which is attached hereto and incorporated herein as compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **\$150,000 (one hundred and fifty thousand dollars) per twelve (12) month period** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant’s invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted by the City as of the date of termination.
7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$21,507.75 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as “Exhibit B” predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the negligent or intentional acts by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement) in the performance of this Agreement. However, Consultant shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, caused solely by the negligence of City.
11. **Termination:**
 - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
 - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days’ prior written notice delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
 - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of

services;

- ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or
 - iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
- d. For Default or Breach.
- i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
 - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.
 - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

12. Independent Contractor Status: Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.

13. Assignment: Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of

any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.

- 14. Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign its rights in, or delegate its duties under, this Agreement.
- 15. Insurance.** Consultant shall, at its own expense, maintain the following insurance:
- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
 - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per claim. This is to cover any damages caused by any error, omission or negligent act related to the Work to be provided under this Agreement. "Tail" coverage will be required at the completion of the Work under this Agreement for the remaining Term, and for not less than twenty-four (24) months after completion of all Work. Consultant shall be responsible for furnishing certification of the "tail" coverage as described herein or continuous "claims made" liability coverage for not less than twenty-four (24) months following completion of all Work, provided that the continuous "claims made" coverage has a retroactive date on or before the Effective Date of this Agreement.
 - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.
 - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.
 - f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. Nondiscrimination: Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

17. Consultant's Compliance With Tax Laws:

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

18. Notice. Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed at the address or facsimile number set forth below:

If to the City:

City Department

Attention: Kelly Madding, Interim Finance Director

20 E. Main Street

Ashland, Oregon 97520

Kelly.Madding@ashland.or.us

Telephone: (541) 488-6002

With a copy to:

City of Ashland – Legal Department
20 E. Main Street
Ashland, Oregon 97520
Telephone: (541) 488-5350

If to Consultant:

PFM Financial Advisors, LLC
Michael Berwanger, Managing Director
650 NE Holladay Street, Suite 1600
Portland, Oregon 97232
Telephone: (503) 837-8445
berwangerm@pfm.com

19. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
20. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
21. **Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.
22. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

23. **Certification.** Consultant shall sign the certification attached hereto as “Exhibit C” and incorporated herein by this reference.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF ASHLAND:

PFM FINANCIAL ADVISORS LLC:

By: _____
City Administrator

By: _____
Signature

Printed Name

Printed Name

Date

Title

Purchase Order No. _____

Date

W-9 is to be submitted with this signed Agreement

APPROVED AS TO FORM:

Assistant City Attorney

Date

EXHIBIT B

CITY OF ASHLAND, OREGON

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



\$15.39 per hour, effective June 30, 2019.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$21,507.75** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or

portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$21,507.75**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value of health care, retirement,

401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us.

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.

CITY OF
ASHLAND

EXHIBIT C

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into this Agreement and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- _____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

Consultant's signature

Date