

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 2, 2024 AGENDA**

Subject:	Type:	Submitted By:
PROFESSIONAL SERVICES AGREEMENT – FINANCIAL SERVICES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	WENDY LOWERY HUMAN RESOURCES DIRECTOR

SYNOPSIS

A resolution has been prepared to approve a Professional Services Agreement with D.A. Davidson & Co. for financial services and provide the City Administrator or designee authority to negotiate a contract with D.A. Davidson in an amount not to exceed \$29,000.

FISCAL IMPACT

The FY23/FY24 Biennial Budget provides funding for financial services.

RECOMMENDATION

Approval.

BACKGROUND

Through the completion of our retirement benchmarking process, we were able to work with our current provider, Mission Square, to negotiate alternative pricing options. A move to an open architecture design would allow us to offer our employees many more investment options and lower fees. While this would necessitate an advisor to manage the funds instead of Mission Square, we believe it would be in the best interest of our employees. The third-party advisor would work closely with our internal retirement team and regularly benchmark our vendors to ensure they remain competitive.

After interviewing three highly skilled and knowledgeable advisory firms, staff is recommending the selection of D.A. Davidson to represent the city as a 338 fiduciary for our retirement plan. D.A. Davidson has a current relationship with the city and offers the most competitive pricing.

Here are the pricing options for the three finalists:

Quality Plan Advisors: .13% (roughly \$37,700 with current plan assets)

HUB International: .15% (roughly \$43,500 with current plan assets)

D.A. Davidson: flat fee of \$29,000

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH D.A. DAVIDSON & CO. FOR FINANCIAL SERVICES IN AN AMOUNT NOT TO EXCEED \$29,000.00.

WHEREAS, the Mayor and City Council have determined said financial services are necessary; and

WHEREAS, the FY23/FY24 Biennial Budget includes funding for financial services; and

WHEREAS Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska that a professional services agreement, in a form satisfactory to the City Administrator and City Attorney, be authorized with D.A. Davidson & Co. for financial services in an amount not to exceed \$29,000.00.

PASSED AND APPROVED THIS 2ND DAY OF APRIL 2024.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

This INVESTMENT ADVISORY SERVICES AGREEMENT is entered into on March 7 2024, by and between D.A. Davidson & Co. ("Advisor") and The City of La Vista (Nebraska) ("Client") for the provision of those services specified on Appendix A for the Plan(s) (the "Plan") identified on the signature page.

Client and Advisor (the "Parties") hereby agree as follows:

1. Disclosures. Before this Agreement was entered into, Advisor provided to Client Advisor's Form ADV, Part 2.
2. Services. Advisor agrees to provide the Services specified in Appendix A; provided that Client acknowledges that Advisor has no responsibility whatsoever to provide any Services or liability with respect to assets not held in the Plans' trust or custodial account, employer securities, real estate (but not including mutual funds that invest in real estate securities or publicly traded REITs), participant loans, non-publicly traded securities (other than collective trusts and similar vehicles), other hard to value securities or assets, or any other assets specified as excluded on Appendix A; and provided further that all such "excluded assets" shall be disregarded in determining the Fees payable to Advisor under Section 3.
3. Fees. In consideration for the Services provided under this Agreement, Client shall pay or cause to be paid to Advisor the fees shown for such Services on the Fee Schedule attached as Appendix B, and applying the payment method and payment frequency specified in Appendix B (the "Fee Schedule").
4. Limitations on Functions. In performing any and all Services under this Agreement: Advisor does not act as, nor has Advisor agreed to assume the duties of, a trustee of the Plan; Advisor has no discretion to interpret the Plan documents, or to take any other action with respect to the management, administration or any other aspect of the Plan; and Advisor shall not, and cannot, provide legal or tax advice to Client or the Plan. Client acknowledges that Advisor has no authority to direct the disbursement of funds from the Plan. Advisor shall have no obligation or authority to vote proxies on any of the investments held by the Plan, or to offer advice as to the voting of proxies.
5. Non-Exclusivity. Client understands that Advisor and its affiliates perform among other things, investment banking, research, brokerage, and investment advisory services for other clients. Client recognizes that Advisor, or any of its affiliates, may give advice and take action in the performance of its duties to such other clients (including those who may have similar retirement plan arrangements as Client) which may differ from advice given, or in the timing and nature of action taken, with respect to Client. Nothing in this Agreement shall be deemed to impose on Advisor, or any of its affiliates or personnel, any obligation to advise Client with respect to the Plan, including the Services provided by Advisor under this Agreement, or any of its affiliates or personnel, in the same manner as it may advise any of its other clients. Client also acknowledges that Advisor and its affiliates or personnel may, by reason of its investment banking or such activities as described above, from time to time acquire confidential information. Client acknowledges and agrees that Advisor is unable to divulge to Client or any other party, or to act upon, any such confidential information with respect to its performance of this Agreement.
6. Representations of Client. Client represents and warrants as follows:
 - (a) The Plan is not subject to the Employee Retirement Income Security Act of 1974. The Plan is in compliance with all applicable requirements of the Internal Revenue Code of 1986, as amended.

(b) Client has the power and authority to designate and direct investments under the terms of the Plan and to enter into contractual arrangements with third parties to assist in the discharge of this authority. D.A. Davidson may at all times rely on the fact of such authorization without any duty to investigate into either the authenticity or extent thereof of such authorization; and the party or parties designated as authorized signatories constitute(s) all of the proper and necessary authorized signatories.

(c) Client acknowledges that federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, when you open an account with us, we will ask for your name, address, and other information that will allow us to identify you and your authorized persons. We may also request to see additional documentation, which could include information relating to the persons authorized to transact business in this Account.

(d) The execution of this Agreement and the performance thereof is within the scope of the investment authority authorized by the Client's and the Plan's governing instruments and/or applicable laws. If Client's trade or business is incorporated, Client represents that the execution of the Agreement has been duly authorized by appropriate corporate action and agrees to provide such supporting documentation as may be reasonably required by Advisor. This Agreement is a valid and binding obligation of Client.

(e) Upon request, Client shall deliver to Advisor true and accurate copies of the governing Plan documents including without limitation any and all amendments thereto.

(f) Client acknowledges receipt of Advisor's investment advisory services disclosure document (Form ADV, Part 2). Client undertakes to review and consider the contents of the disclosure document, in particular, the provisions relating to compensation, interests in transactions and potential conflicts of interest, as well as the remainder of the disclosure document which contains information concerning, among other matters, background information such as educational and business history, business practices such as the types of advisory services provided, the methods of securities analysis used, and the like.

(g) All information provided to Advisor by Client or other service providers to the Plan (whether provided orally or in writing) that is necessary for Advisor to carry out its duties hereunder that is provided by Client, Client's representatives or Client's other service providers, is and shall be true, correct and complete in all material respects. To the fullest extent permissible under applicable law, Advisor may rely on all such information without independent verification. Client shall promptly notify Advisor in writing of any material change in the information provided to Advisor and promptly provide any such additional information as may be reasonably requested by Advisor.

(h) Client acknowledges that investments are subject to various market, political, currency, economic, and business risks, and may not always be profitable; and further that Adviser does not and cannot guarantee financial results.

7. Representations of Advisor. Advisor represents as follows:

(a) It is registered as an investment adviser with the Securities and Exchange Commission, under the Investment Advisers Act of 1940.

(b) It has the power and authority to enter into and perform this Agreement, and there are no authorizations, permits, certifications, licenses, filings, registrations, approvals or consents which must be obtained by it from any third party, including any governmental authority, in connection with this Agreement. This Agreement constitutes a valid and binding agreement of Advisor.

(c) Advisor will receive the compensation disclosed in Appendix B only.

8. Confidentiality. All information and advice furnished by either Party to this Agreement to the other, including its representatives, agents and employees, shall be treated as confidential, shall not be used for any purpose other than as contemplated by this Agreement and shall not be disclosed to any third party except as agreed upon in writing, as required by law or as required in order for Advisor to perform the Services hereunder. Notwithstanding the above, by signing this Agreement, Client authorizes Advisor to give a copy of this Agreement to the Plan's custodian and/or recordkeeper. In addition, Client grants Advisor authority to discuss, disclose, and provide confidential Client information to outside attorneys, auditors, consultants and any other professionals retained by Advisor to assist it in the performance of the Services. Client also acknowledges that Advisor may, by reason of its other activities as described in Section 5 above, from time to time acquire confidential information from third parties. Client acknowledges and agrees that Advisor is unable to divulge to the Client or any other party, or to act upon, any such confidential information with respect to its performance of this Agreement.

9. Standard of Care. Except as provided otherwise in Appendix B or the Investment Advisers Act of 1940, only an act of intentional misconduct or gross negligence shall constitute a violation of the standard of care, as to the Services provided by Advisor. In no event shall Advisor be liable for any indirect, special, consequential or exemplary damage with respect to the Services hereunder. Notwithstanding the above, nothing in this Agreement shall be construed in such a way as to be in violation of federal or state securities laws, or as a waiver of any rights that the client and/or Plan may have under securities laws which, by law, cannot be waived.

10. Termination. Either Party may terminate this Agreement upon 60 days (or such other period as the Parties may agree upon) written notice to the other Party. Upon the effective date of such termination, Advisor shall no longer be obligated to provide Services under the Agreement, provided that Advisor shall be entitled to receive pro-rated payment in full for its Services provided prior to termination, as described in Appendix B. Such termination will not, however, affect the liabilities or obligations of the Parties arising from transactions initiated prior to such termination, and such liabilities and obligations (together with the provisions of Sections 9 and 11) shall survive any expiration or termination of this Agreement.

11. Arbitration Agreement. To the extent permissible under applicable law, all controversies between Client and Advisor or its affiliates, including any of Advisor's present or former officers, directors, agents or employees, which may arise out of or relate to any of the Services provided by Advisor under this Agreement, or the construction, performance or breach of this or any other agreement between Advisor or an affiliate and Client, whether entered into prior to, on or subsequent to the date hereof, shall be settled by arbitration in Great Falls, Montana, under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) shall be final, and may be entered into any court having jurisdiction. In this connection, Client acknowledges that:

(a) Arbitration is final and binding on the Parties.

(b) The Parties are waiving their right to seek remedies in court, including the right to jury trial, except to the extent such a waiver would violate applicable law.

(c) Pre-arbitration discovery is generally more limited than and potentially different in form and scope from court proceedings.

(d) The arbitration award is not required to include factual findings or legal reasoning and any Party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

(e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

12. General Provisions.

(a) This Agreement is not assignable by either Party without the prior written consent of the other Party.

(b) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, survivors, administrators and assigns.

(c) Any and all notices required or permitted under this Agreement shall be in writing and shall be sufficient in all respects if (i) delivered personally, (ii) mailed by registered or certified mail, return receipt requested and postage prepaid, (iii) sent via a nationally recognized overnight courier service, or (iv) sent via electronic mail and confirmed in writing to:

If to Advisor:

D.A. Davidson & Co.
8 Third Street North
Great Falls, Montana 59401

If to Client: to the address set out on the signature page

or such other address or electronic mail as either Party shall have designated by notice in writing to the other. All notices shall be deemed to have been given or made when delivered by hand or courier, or when sent by electronic mail, or if mailed, on the third business day after being so mailed.

(d) If any one or more of the provisions of this Agreement (other than the provisions of Section 8) shall, for any reason, be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be enforced as if such illegal or invalid provision had not been contained herein.

(e) All headings used herein are for ease of reference only and in no way shall be construed as interpreting, decreasing or enlarging the provisions of this Agreement.

(f) This Agreement constitutes and contains the entire understanding between the Parties and supersedes all prior oral or written statements dealing with the subject matter herein.

(g) Except to the extent preempted, the laws of the State of Montana shall govern this Agreement in all respects, including but not limited to the construction and enforcement thereof. All disputes, actions or controversies arising out of or related to this Agreement or any relationship created hereby between the Parties shall be settled by binding arbitration in accordance with Section 11, where permitted, in Great Falls, Montana.

(h) This Agreement may be modified by a written agreement signed by the Parties. This Agreement may also be modified, including without limitation the services to be provided by Advisor or the fees charged by Advisor, in the manner set forth herein.

Advisor may propose to increase or otherwise change the fees charged, to change the services provided or otherwise modify this Agreement by giving Client reasonable advance notice of the proposed change. The notice shall be given in the manner described in this Agreement. The notice will (1) explain the proposed modification of the fees, services or other provisions; (2) fully disclose any resulting changes in the fees to be charged as a result of any proposed change in the services or other changes to this Agreement; (3) identify the effective date of the change; (4) explain Client's right to reject the change or terminate this Agreement; and (5) state that pursuant to the provisions of this Agreement, if Client fails to object to the proposed change(s) before the date on which the change(s) become

effective Client will be deemed to have consented to the proposed change(s).

If Client objects to any change to this Agreement proposed by Advisor, Advisor shall not be authorized to make the proposed change. In that event Client shall have an additional 60 days from the proposed effective date (or such additional time beyond 60 days as may be agreed by Adviser) to locate a service provider in place and instead of Advisor. If at the end of such additional 60 day period (or such additional time period as agreed by Advisor), the Parties have not reached Agreement on the proposed changes, this Agreement shall automatically terminate.

(i) The Parties acknowledge that the Services and information related to the Plan are provided through electronic means. Client represents that it has provided to Advisor a valid electronic mail address ("E-Mail Address") and consented to having communication between Client and Advisor sent to that E-Mail Address ("Advisor Communications"), and Client represents to Advisor that its E-Mail Address allows it to read and print Advisor Communications. Client agrees that such electronic delivery shall be deemed by Advisor as effective delivery to Client whether or not Client accesses or reviews the Advisor Communications. To receive electronic delivery of Advisor Communications, Client represents to Advisor that it has a computer with Internet access and an E-Mail Address. Client also represents to Advisor that it can download and save or download and print Advisor Communications so as to retain the Advisor Communication for its records. Client may withdraw or revoke its consent to receiving Advisor Communications electronically at any time by notifying Advisor. However, by doing so, Client understands that it may affect its ability to use the Services.

[signatures appear on next page]

The Parties have caused this Agreement (which includes a binding arbitration provision as set forth in Section 11) to be executed by their duly authorized representatives as of the date set forth above.

The City of La Vista (Nebraska)

D.A. Davidson & Co.

8116 Park View Blvd.

450 Regency Pkwy, Ste. 400

La Vista, NE 68128

Omaha, NE 68114

Plan Name: City of La Vista (Seven Total Plans) Four: City of La Vista 401(a) Plans

Three: City of La Vista 457 Plans

By: _____

By: _____

Hon. Douglas Kindig

Jeff Ziemba, AIF®, CPFA, CRPS®

Responsible Plan Fiduciary

Financial Advisor

Date: _____

Date: _____

By: _____

D.A. Davidson Authorized Signer

Date: _____

APPENDIX A SERVICES

Advisor shall perform all services evidenced by the mark next to the item:

Services	Description
☒ Vendor Searches	Assist in performing a vendor (recordkeeper/investment platform) search including the preparation, distribution and evaluation of request for proposals, as well as assistance in conduction finalist interviews and conversion support (if Client converts to another vendor) . Client shall have the ultimate responsibility and authority to select the vendor for the Plan.
☒ Plan Reporting	Prepare <u>quarterly</u> reports to monitor the independent investment managers' performance relative to the Plan's written investment policy. <i>(Additional reports requested outside of the agreed upon schedule may be subject to an additional fee)</i>
☒ Plan Meetings	Conduct <u>quarterly</u> meetings to review the Plan with the Plan investment committee. <i>(Additional meetings requested outside of the agreed upon schedule may be subject to an additional fee)</i>
☒ Investment Policy	Assist in the development of a written investment policy or review the existing investment policy, which establishes the specific standards and processes for investments of the Plan.
☐ Investment Advice (Non-discretionary)* * For the avoidance of doubt, the advice provided shall be limited to those investment alternatives available on the Plan platform or similar arrangement selected by the Client.	Provide non-discretionary investment advice to Client with respect to the selection, removal and replacement of investments for Client under the Plan in accordance with the Plan's investment policies (if any) and Client's objectives, other than excluded assets. Make recommendations regarding the removal and replacement of designated investment alternatives available under the terms of the Plan, other than excluded assets
☒ Discretionary Investment Advice (Investment Management)** ** For the avoidance of doubt, the investment management services provided shall be limited to those investment alternatives available on the Plan platform or similar arrangement selected by the Client. If this service is selected, one of the first three (3) payment methods in Appendix B must be selected.	Select, on a discretionary basis, the investments for Client under the Plan in accordance with the Plan's investment policies (if any) and Client's objectives, other than excluded assets. Remove and replace, on a discretionary basis, designated investment alternatives available under the terms of the Plan, other than excluded assets
Other Excluded Assets: <u>Additional Services: 1) Will assist Client with establishment of Plan procedures.</u> <u>2) Provide education meetings to Plan participants.</u>	

**APPENDIX B
FEE SCHEDULE**

Asset-based fees are calculated with reference to “basis points” (or “bps”). One (1) bps is equal to 0.01% of plan assets. For example, 10bps is equal to .10% of plan assets.

The Advisor’s fees under this Agreement shall be \$29,000/annually or \$7,250/quarterly - total for all 7 plans.

In all cases the fees payable to Advisor shall be limited to the level dollar or asset-based fee described above, and in no case shall the amount of the Advisor’s fees be influenced by the investment advice (whether non-discretionary or discretionary) provided by the Advisor under this Agreement.

 1. Bill to Client. Fees will be billed to Client and are due and payable within a reasonable period following receipt of the invoice. If not paid within 90 days, then Advisor will stop work.

 2. Direct Payment from Plan/Account Assets (Other than Revenue Sharing/Expense Account). Such fees are due and payable within a reasonable period after the date of Advisor's invoice to Client, with a copy to the custodian of the Plan's assets. Client hereby authorizes the custodian to pay such fees out of the Plan assets unless Client provides written objection to Advisor's invoice within 15 days after receipt. If the Advisor provides investment advice (whether non-discretionary or discretionary) with respect to one or more self-directed brokerage accounts of Client, Client hereby authorizes the direct payment of fees attributable to such services from the affected brokerage accounts according to the same timing rules set forth in the previous sentence.

☒ **3. Direct Payment from Plan Assets – Revenue Sharing/Expense Account.** Fees will be paid from an account maintained by the Plan's custodian/recordkeeper. The custodian/recordkeeper collects all third party indirect payments (e.g., 12b-1 fees, revenue sharing payments, etc.) and holds them in a compensation account that is used to pay the fees of other service providers, including those of Advisor. The Plan custodian/recordkeeper will provide Client with a breakdown showing the service providers paid from this account and the amounts being paid, plus an annual reconciliation of the total payments. Advisor shall have no responsibility to ensure that Client receives such notice. To the extent that the account does not hold sufficient assets to pay Advisor's fee, Plan assets will be debited.

 4. Indirect Payment from Plan Vendor. Pursuant to an arrangement with the Plan’s third-party vendor, _____, it is intended that the Advisor will be compensated for all its services under this Agreement through 12b-1 fees generated by the Plan’s mutual fund investments; provided that the arrangement provides that the Advisor shall receive the same level of 12b-1 fees with respect to all investment alternatives available to the Plan under the vendor’s platform, which correspond to the asset-based fee set forth above in this Appendix B (any excess over such fee shall be paid to or otherwise credited to the Plan).

If this (fourth) option is selected:

- (i) for the avoidance of doubt, the Plan shall at all times remain responsible for paying Advisor’s fees, provided that the Parties intend that these contractual fee obligations shall be offset (reduced) on a dollar-for-dollar basis by the 12-b1 fee revenue, with any excess paid or credited to the Pla; and
- (ii) for the further avoidance of doubt, no provision under “Payment Frequency, Etc.” below shall be construed as prohibiting the calculation of the Advisor’s fee on a daily asset basis by the Plan’s third-party vendor.

Payment Frequency, Etc.

The Advisor's fees shall be invoiced or otherwise paid as described above, according to the following frequency, and either in advance or in arrears, as selected and evidenced by the mark next to the selection:

_____ Monthly, In Advance

_____ Monthly, In Arrears.

_____ Quarterly, In Advance

_____ Quarterly, In Arrears

_____ Annually, In Advance

_____ Annually, In Arrears

If any of the fees paid to Advisor are shown above as a percentage of assets, such fees shall be based on the value of the Plan's assets as of the last business day of (i) the preceding calendar month/quarter if payable monthly/quarterly in advance; (ii) the applicable calendar month/quarter if payable monthly/quarterly in arrears; (iii) the preceding calendar year if payable if payable annually in advance; or (iv) the applicable calendar year if payable annually in arrears, in each case as determined by the custodian. The fees for a partial period shall be prorated based on the number of days in the month, quarter or year (as applicable) during which Advisor provided Services hereunder, and in the case of fees payable in advance, any previously paid but unearned fees (as to the portion of a period after Advisor ceases to provide Services) shall be refunded to the Plan in full.

No fees or other compensation under this Agreement shall be paid among the Advisor and any affiliate or subcontractor that is set on a transaction basis or is charged against the Plan's investments. In addition, Advisor shall receive no special compensation if this Agreement should be terminated, other than its normal fees (see above) prorated through the effective date of termination.

Ver. May 23