



MEMORANDUM

TO: Mayor and Board of Commissioners

FROM: Heather Meacham, Finance Director

SUBJECT: Contract amendment between the Town of Pittsboro and Davenport & Company, LLC for Financial Advisory Services.

DATE: March 27, 2023

Background: The Town originally entered into a contract with Davenport & Company, LLC back in May 2016. This contract would serve as an addendum to that original agreement and includes an Amendment 1 to the contract for Financial Advisory Services with a not to exceed of \$25,000.

Action Requested: That the Board of Commissioners authorize the Interim Town Manager, to sign the attached contract addendum and Amendment 1 to the contract with Davenport & Company, LLC.

**AGREEMENT BETWEEN
TOWN OF PITTSBORO, NORTH CAROLINA AND
DAVENPORT & COMPANY LLC FOR
PROFESSIONAL FINANCIAL ADVISORY SERVICES**

THIS AGREEMENT, made in duplicate in the Town of Pittsboro, North Carolina, on _____ 2023, by and between the Town of Pittsboro, a political subdivision of the State of North Carolina, herein-referred to as the “Town,” and Davenport & Company LLC organized and existing under the laws of the Commonwealth of Virginia, herein referred to as the “Financial Advisor” and/or “Davenport”. This Agreement will serve as an addendum to Davenport’s Agreement with the Town dated May 17, 2016.

WHEREAS, the Town desires to enter into an Agreement with Davenport for professional assistance related to financial advice, counsel and other associated services deemed appropriate by the Town; and

WHEREAS, the Financial Advisor represents that it is duly authorized and qualified to provide the aforesaid services.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

ARTICLE I. PROGRAM ADMINISTRATOR & DAVENPORT PERSONNEL

The Finance Director of the Town of Pittsboro hereinafter referred to, as the “Finance Director” is the administrator in charge of all activities associated with this Agreement. The Financial Advisor represents that it has, or will secure at its own expense all personnel required in performing the services under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with, the Town. Further, all services required hereunder will be performed by the Financial Advisor or under its supervision, and all personnel engaged in the work shall be fully qualified to perform such services.

ARTICLE II. SCOPE OF SERVICES

A. Advisory & Consulting Services.

The Financial Advisor shall, using its professional staff members, provide financial advice, counsel and other associated services deemed appropriate to the Town.

B. Non-Transaction Related Services.

For non-transaction related activities, the services to be provided shall include, but not be limited to the following:

1. Provide pertinent advice and counsel for the duration of this contract to the Town concerning developments in the financial community in general and municipal finance in particular, to enable the Town to remain in the best possible financial posture.
2. Develop financial analysis programs and computer models to be used in conjunction with the Town's capital planning and financing program(s).
3. Review and advise on special projects involving potential Town financing as requested by the Finance Director.
4. Provide such other financial advisory services deemed appropriate by the Town.
5. Present, as requested, a Report to the Town Board on the status of the Town's debt, capital planning, and credit profile.
6. Meet with Town Staff and the Town Board on an as-needed basis to discuss, review, revise any Capital Plans.

C. Transaction Related Services.

Upon request of the Town, the Financial Advisor shall provide Transaction Related Services. The Town is under no obligation to request the Financial Advisor's Transaction Services. For each financial transaction, the services to be provided will be set forth in writing and may include, but not be limited to, the following:

1. Assist Town officials in developing information to be presented to bond rating agencies in order to achieve the highest bond rating realistically achievable. Accompany Town officials on all presentations to the rating services.
2. Review capital projects contemplated by the Town and work with the Finance Director and other officials in developing options, plans and strategies for financing planned capital improvements, taking into consideration costs and the effects that various alternatives have on the Town's financial position.
3. The Financial Advisor shall develop a time schedule to ensure that all work is begun and completed in a timely manner including all work associated with any financings.
4. The Financial Advisor shall analyze and make recommendations with respect to whether the sale of bonds should be a competitive sale, a negotiated sale, or a direct bank loan.
5. The Financial Advisor shall assist the Town's staff in the selection of a financing team for the sale of bonds. The Financial Advisor's functions in this regard shall include the following basic actions:
 - a. Developing requests for proposals;
 - b. Conducting a conference with Town staff to facilitate evaluating the financing team proposals;
 - c. Upon selection of the financing team, the Financial Advisor shall assist the Town staff and Bond Counsel in bringing said team on board and up-to-date in as timely a fashion as possible, providing a smooth transition in order that the Town's ongoing process of issuing bonds will experience no delay or inconvenience.
6. The Financial Advisor shall assist and advise in the development of debt service coverage ratios, reserve funds or other structural components as requested.
7. The Financial Advisor shall assist in the procurement and negotiation of credit support mechanisms as needed.

8. The Financial Advisor shall assist in the preparation and development of the financing documents, any credit presentations to the rating agencies and the printing of the Official Statement or other offering document. It is understood by the parties hereto that primary responsibilities for the above-mentioned legal functions will rest with the Bond Counsel, the Town Attorney and, as such, the Financial Advisor will not assume primary responsibility for any legal documents.
 - a. However, upon request, the Financial Advisor shall be responsible for reviewing all documents and attending all sessions and presentations, as well as reviewing and providing financial comments upon all documents as to form and content in order to best protect the Town’s interests in any and all such documents and presentations; and
 - b. The Financial Advisor shall assist, as necessary, together with the Town and the Local Government Commission (“LGC”), in the preparation of the offering document used in conjunction with the sale of bonds.
9. In the event of a competitive or negotiated sale of bonds, the Financial Advisor shall assist the Town in the sale of bonds to the Investment Bank. Relative to this process, the Financial Advisor shall recommend to the Town the general timing for the competitive or negotiated sale of said bonds, specific bond purchase contract requirements, good faith deposit checks, as necessary, bond maturities, interest rates and the discount or premiums being offered by the Investment Bank.
10. The Financial Advisor shall be responsible for working with the Town’s staff to ensure the proper and appropriate interest rates are being offered.
11. Provide such other financial advisory services deemed appropriate by the Town.

ARTICLE III. COMPENSATION

A. Advisory & Consulting Services and Non-Transaction Related Services (check one option):

 Option 1 (Hourly Fees): The Town and Financial Advisor will agree to a fee arrangement for Advisory and Non-Transaction Services in advance of commencing work on any task. This fee will be based on the expected scope of work and the level of resources required of the Financial Advisor. As the task evolves, the Town and the Financial Advisor may negotiate changes to the original fee based upon changes in the related scope of work. Fees for these tasks will be based on the schedule of hourly rates outlined below (subject to adjustment based on CPI):

- Senior Vice President	\$300
- First Vice President	\$275
- Vice President	\$250
- Associate Vice President	\$225
- Analyst/Associate	\$200

During each month, or as otherwise mutually agreed, Davenport will receive from the Town compensation for the provision of Advisory and Consulting Services and Non-Transaction Related Services as requested by the Town and billed in accordance with the hourly fee above. The Town agrees to pay at the rate specified for Services satisfactorily performed or provided in accordance with this

Agreement. As agreed upon by the Town and the Financial Advisor, these fees can be incorporated with the Transaction Related fees addressed below to be paid from debt proceeds.

___ *Option 2 (Annual Retainer)*: For all Advisory and Non-Transaction Services the Financial Advisor shall be compensated through an annual retainer in the amount of \$35,000 payable annually in arrears on December 31 (subject to adjustment based on CPI). As agreed upon by the Town and the Financial Advisor, these fees can be incorporated with the Transaction Related fees addressed below to be paid from debt proceeds.

B. Transaction Related Services:

If the Town elects to utilize the Financial Advisor’s Transaction Related Services, the Town and the Financial Advisor agree that the Financial Advisor shall be compensated based on an agreed upon completion fee. Such fee shall be negotiated prior to the completion of the transaction and shall be based on the size and complexity of the proposed issuance. As part of this engagement, Davenport proposes the following not-to-exceed costs for certain financing approaches (the actual fee amount will be determined based upon complexity and scope of work for individual transactions. These fee amounts are subject to adjustment based on CPI).

Credit	Public Offering with Bond Rating	Bank Placement without Bond Rating
General Obligation Bonds	NTE \$70,000	NTE \$55,000
Limited Obligation Bonds	NTE \$80,000	NTE \$65,000
Revenue Bonds	NTE \$90,000	NTE \$75,000
Refunding Component Upcharge	NTE \$30,000	NTE \$30,000
Other Financing Structures (e.g. Special Obligations Bonds, Special Assessment Financings, Tax Increment Financings, Variable Rate Demand Obligations, etc.) would be negotiated on a transaction by transaction basis.		

The Financial Advisor shall be compensated for any issuance of bonds and/or notes upon successful completion and closing of such financing, according to the provisions above. Should the Town terminate a financing prior to closing, the Financial Advisor shall be compensated for services provided prior to such termination according to the schedule of hourly rates found in Article III A.

C. Special Projects:

The Town, in its sole discretion, may deem certain activities of the Financial Advisor to constitute a Special Project. A Special Project is one that either, in the sole opinion of the Town, involves the professional resources of the Financial Advisor to a degree above and beyond that already provided for under Article III A and B of this contract, or, that involves the bidding of an investment portfolio or investment agreement, a tax credit/federal subsidy-related financing (e.g. BAB’s, RZEDB’s, QSCBs, RZFB’s, USDA/RD debt), a 2/3rds General Obligation Bond offering, or a Special Revenue Bond offering, a Public Private Partnership Financing (e.g. Tax Increment Financing, Special Assessment District

Financing, Privatization Financing Arrangements). In any of these events, the Town and the Financial Advisor shall negotiate prior to the beginning of the Project on a fair and equitable basis for compensation.

D. Additional Fees and Expenses:

Davenport will charge an additional fee equal to 4% of our compensation. Reasonable and necessary direct out-of-pocket expenses (e.g. mileage (billed at prevailing IRS limits), meals and lodging) incurred by Davenport shall be billed to the Town, at least annually, at cost. Davenport will strive to limit direct expenses where possible while still providing for the timely and professional delivery of services.

ARTICLE IV. TERM OF AGREEMENT

This Agreement shall be considered to be in effect until such time as either the Town or Davenport terminates the Agreement. The Town or Davenport may terminate this agreement at any time upon thirty (30) days written notice without cause. Davenport will be reimbursed for its reasonable and necessary out-of-pocket expenses and services provided prior to termination.

ARTICLE V. E-VERIFY

Each Party hereto shall comply with the requirements of Article 2 of Chapter 64 of the N C General Statutes. Further, if any party hereto utilizes a subcontractor, such party shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the N C General Statutes.

ARTICLE VI. IRAN DIVESTMENT ACT CERTIFICATION

Pursuant to N.C.G.S. 143-6A-5 (a), each party hereto does hereby truthfully certify at the time of executing this agreement that in accordance with the Iran Divestment Act, the supplier is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed at the place and on the day hereinabove first mentioned.

TOWN OF PITTSBORO, NORTH CAROLINA

By: _____
Name: _____
Title: _____

DAVENPORT & COMPANY LLC

By: _____
Ted Cole
Senior Vice President

PRE-AUDIT CERTIFICATE

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This the _____ day of March, 2023.

Town of Pittsboro Finance Officer

Addendum #1: Dated _____ 2023.

This addendum will govern Davenport’s advisory activities specific to work that Davenport might be asked to perform related to the Town’s utility system including, but not limited to:

- The potential utility merger with Sanford
- Participation in certain regional utility projects
- The issuance of debt to support utility projects
- Making applications to the Local Government Commission
- Reviewing and/or completing utility-related analyses
- Participation at meetings and conference calls

Based on discussions with Town staff, Davenport will keep track of its hours associated with the work described above and provide that information to Town staff as requested, but no less frequently than monthly (at the end of the month) and will invoice the Town once this information has been submitted and approved by Town staff. As per your request, Davenport will not perform work that will exceed the sum of \$25,000 without an amendment to this addendum approved by the Town.

Invoices under this addendum will be presented to Town staff in accordance with the compensation language described in Article III A and D of this agreement. As part of this addendum, it is acknowledged that Davenport has accumulated \$7,500 in fees associated with the work described above for work performed between the dates on 1/9/23 and 3/9/23. This amount shall be invoice upon the approval of this addendum.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed at the place and on the day hereinabove first mentioned.

TOWN OF PITTSBORO, NORTH CAROLINA

By: _____
Name: _____
Title: _____

DAVENPORT & COMPANY LLC

By: _____
Ted Cole
Senior Vice President

PRE-AUDIT CERTIFICATE

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This the _____ day of March, 2023.

Town of Pittsboro Finance Officer