


MEMORANDUM

TO: Honorable Mayor and City Council Members
FROM: Christine C. Davis, Finance Director 
DATE: November 10, 2008
SUBJECT: Wells Fargo Custody Agreement Resolution No. 497-08

PURPOSE

Resolution No. 497-08 is being presented for approval in order for the City to engage the services of Wells Fargo to act on the City's behalf in providing custodial services for certain assets of the City as directed by the City or the duly appointed investment advisor, Davidson Fixed Income Management.

BACKGROUND

The City entered into an Investment Advisor agreement with Davidson Fixed Income Management in order to provide investment opportunities that will add diversification to the City's investment portfolio during the very uncertain times in the market. The Wells Fargo custody agreement will enable the city to hold overnight investments. The overnight investments will be comprised of 12-15 vetted, government-only money market funds and the City's exposure in any one investment will be capped at 15% of our portfolio. These types of investments are very secure and very liquid. Another added benefit is that with the Wells Fargo custody agreement all city funds are recorded on the Trust side of the bank and therefore they are recognized by the Federal Reserve as being assets owned by the City and not the bank.

The City's Investment Advisor, Glenn Scott will be present at the meeting. He will be discussing his recommendation and will be able to answer questions you may have. Please feel free to submit any questions you may have prior to the meeting and we will endeavor to respond either prior to the meeting or at the meeting.

RECOMMENDATION

Staff recommends that the City Council approve Resolution No. 497-08.

RESOLUTION NO. 497-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT WITH DAVIDSON FIXED INCOME MANAGEMENT TO SERVE AS THE CITY'S INVESTMENT ADVISOR; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, due to the current instability of the financial markets, our Investment Advisor, Davidson Fixed Income Management has recommended, and Council has agreed, that it would be in the best interests of the citizens of Orange City to retain the services of Wells Fargo for custodial services to be provided through a Custody Agreement; and

WHEREAS, it is recommended by the City's Investment Advisor, Davidson fixed Income Management, the City of Orange City wishes to retain the services of Wells Fargo for custodial services.

NOW, THEREFORE, BE IT RESOLVED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. The City Council of the City of Orange City, Florida hereby authorizes the Interim City Manager to execute an agreement with Wells Fargo to provide custodial services for certain city assets.

SECTION 3. A copy of the agreement for services is attached to this resolution as Exhibit "A".

SECTION 4. That this resolution shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

Jim Mahoney	_____	Donald C. Sherrill	_____
Donald Sandford	_____	Tom Abraham	_____
Tom Laputka	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ADOPTED THIS _____ DAY OF _____, 2008.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

This Resolution approved
as to form and legal sufficiency:

W. E. Reischmann, City Attorney

CUSTODY AGREEMENT

Account No. 23271900
(and all related sub-accounts)

THIS CUSTODY AGREEMENT is made by and between the **City of Orange City**, (herein Owner) and Wells Fargo Bank, National Association, (herein Custodian), on the ____ day of _____, 2008.

WHEREAS, the Owner desires to engage the services of the Custodian to act on its behalf in providing custodial services for certain assets under the Owner's management or the management of its duly appointed investment advisor, *Davidson Fixed Income Management*.

WHEREAS, the Custodian is willing to act as Owner's custodian to provide these services for the Owner.

NOW, THEREFORE, the parties hereto agree as follows:

1. Services to be Provided by Custodian. The Custodian shall:
 - a. Open and maintain a custody account in the name of the Owner and hold in such an account all cash and securities initially deposited plus any additional cash and securities that may be received from time to time for the account.
 - b. Act upon written direction from the Owner or from one or more investment advisors duly appointed in writing by the Owner.
 - c. Settle securities transactions for the account with brokers or others in accordance with the Owner's and/or duly appointed investment advisor's written direction.
 - d. Issue advices to Owner and/or duly appointed investment advisors setting forth particulars of purchases, sales receipts, deliveries, and principal collection.
 - e. Be responsible for the collection of all investment income relating to the assets in the account.
 - f. Present for payment all maturing securities or any securities called for redemption and collect proceeds therefrom.
 - g. Deliver cash or securities in such manner as the Owner or duly appointed investment advisors may direct in writing.
 - h. Deliver proxy and other materials for securities held in the Account, including offers to tender or exchange such securities, as the Owner or duly appointed investment advisors may direct in writing.
2. Powers of the Custodian. The Custodian is authorized and empowered to:
 - a. Hold assets in the nominee selected by the Custodian.
 - b. Employ agents other than persons on its regular payroll and delegate to them such ministerial and other non-discretionary duties as it sees fit and to rely upon such information furnished by such agents.
 - c. Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any other instruments that may be necessary or appropriate to carry out the custodianship duties and powers.

d. Invest money or assets of the Account in any collective investment fund established and maintained by a bank or trust company affiliated with Wells Fargo as the Owner or investment manager may direct in writing. The governing document of any such fund in which assets of this account are invested is hereby incorporated and made a part hereof as if fully set forth at length herein. Assets of this Account invested in such fund shall be held and administered by the trustee of the fund in accordance with the terms and under the powers granted in said governing document.

3. Reports. Custodian shall furnish to the Owner and the duly appointed investment advisors a monthly statement of account reflecting an inventory of assets in the account, all activity during the previous month, and a market value for the assets of the account. Custodian shall furnish to the Owner a Tax Information Summary Letter, if applicable, for Owner's tax year-end. The Custodian will furnish such other reports as the Owner may reasonably request, including reports to the Owner's accountants or other examiners as may be necessary.

4. ~~Fees. Custodian shall receive compensation as set forth in the published fee schedule attached to this Agreement as amended from time to time by the parties, and fees for any overdrafts that result from other than Custodian's error, by having these fees: (check one) deducted from account billed to Owner. If Owner elects to be billed for Custodian's services, Custodian is directed, nevertheless, to deduct its fee from the account if any bill is not paid in 90 days.~~

~~Reasonable compensation includes float received from the use of uninvested funds by the Custodian and its affiliates which accrues on payments made from the Account (such as distributions and expense payments) on contributions or other funds received too late in the day to be invested same day for the Account. Distribution payments begin to accrue as of the check date, when funds are transferred to a separate clearing account, and ends on the date the check clears against this separate account or is returned to the Account, if the governing document provides for such return. Periodic payments, such as pension payments, are generally mailed five business days before the actual date on the check. In these instances, funds are not transferred to the separate check-clearing account, and consequently float does not begin to accrue, until the check date (i.e., five days from the mail date). Non-periodic payments are generally mailed on check date. Earnings on the float depend on the specific investment, the current rate, which is generally the Fed Funds rate or a money market rate, and the period of time during which the funds are available.~~

Fees are covered within the 9 basis points in our investment agreement with Davidson.

5. Authorized Persons. The Owner and each duly appointed investment advisor shall furnish a list to the Custodian (and from time to time whenever there are changes therein) of transmitting instructions to the Custodian concerning the assets in the account. The Custodian shall treat as genuine and may rely on any notice or communication without further verification, that it reasonably believes is from an authorized party, as defined above, and shall be protected in doing so by the Owner.

6. Amendment and Termination. This Agreement may be amended by written agreement of the parties at any time. This Agreement shall continue in effect unless or until terminated by either party upon 30 days' written notice to the other party. Upon termination, all securities held in the account shall be delivered by the Custodian to the Owner or in accordance with the Owner's written instruction. Any fees remaining outstanding and balances owing to the Custodian may be withheld from the assets delivered to the Owner or under the Owner's direction.

7. Indemnification. Owner hereby agrees to indemnify and hold Custodian harmless from and against any and all claims, liabilities, and expenses (including attorney's fees), which Custodian may incur by reason of its acting as Custodian under this Agreement. Notwithstanding the foregoing, it is specifically understood and agreed that in the event Custodian has committed negligence or malfeasance in the exercise of its responsibilities hereunder, the indemnification provisions of this Agreement shall not apply.

8. Notices. Notices to the Owner shall be directed and mailed as follows:

City of Orange City
Attn: Christine Davie S
205 E. Graves Avenue
Orange City, FL 32763

Notices to the Custodian shall be directed and mailed as follows:

Wells Fargo Bank, N.A.
Institutional Trust Services
MAC: C7300-105
1740 Broadway
Denver, CO 80274

- 9. Severability. If any provisions of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provisions had not been included.
- 10. Inspection Privileges. The books, records, documents, accounting procedures, and practices of the Custodian relevant to this Agreement are subject to examination by the Owner.
- 11. Governing Law. This Agreement and all transactions hereunder shall be governed by, interpreted, and construed and enforced in accordance with the laws of the State of ~~Colorado~~ Florida
- 12. Effective Date. This Agreement shall be effective _____.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

OWNER
City of Orange City

By: _____

Its: _____

By: _____

Its: _____

CUSTODIAN
Wells Fargo Bank, National Association

By: _____
Andrea Stellish

Its: _____
Assistant Vice President

