

**City of Fayetteville Staff Review Form**

**2016-0387**

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Legistar File ID

**9/6/2016**

\_\_\_\_\_  
City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Marsha Hertweck

8/17/2016

Accounting & Audit /  
Finance & Internal Services Department

\_\_\_\_\_  
**Submitted By**

\_\_\_\_\_  
**Submitted Date**

\_\_\_\_\_  
**Division / Department**

**Action Recommendation:**

Request approval of a five year contract with First Security Bank for investment management services.

**Budget Impact:**

Account Number	various Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>No</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
<b>Does item have a cost?</b> <u>Yes</u>	Item Cost
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_


Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

To: Mayor and City Council

Thru: Paul Becker, Finance Director

From: Marsha Hertweck, Accounting Director 

Date: August 17, 2016

**Recommendation**

Staff recommends approval of a five year contract with First Security Bank for investment management services.

**Background**

In 1999, the State of Arkansas approved Act 1341 which provided for expanded investment opportunities for local municipalities. After the changes to the State Law the City's Investment Policy was amended and City staff felt it was prudent to solicit investment management services.

The investment of the City's funds is governed by the City's Investment Policy and City staff works closely with the investment manager to ensure prudent care over the City's assets. There is approximately 101 million dollars in the City's current investment portfolio.

**Discussion**

In June 2016, the City formed a selection committee and solicited proposals for investment services. Following the applicable rules and regulations of the procurement process, First Security Bank was selected by the committee to provide these services and a contract is being presented at this time for investment management services.

**Costs**

The fee for investment management services with First Security Bancorp is 10 basis points of the value of the account assets if the balance is over \$25,000,000. This is the same price as the past contract.



City of Fayetteville, Arkansas

Vendor: First Security Bank

Contract: Investment Management Services

Renewable Terms: One year with four one-year renewals

THIS INVESTMENT MANAGEMENT AGREEMENT ("Agreement") is made and entered into by and between the CITY OF FAYETTEVILLE, ARKANSAS, an Arkansas municipal corporation, by its Mayor and City Clerk, duly authorized by action of its City Council (the "City") and FIRST SECURITY BANK, an Arkansas banking corporation, by its Sr. Vice President and Trust Officer, duly authorized by its Board of Directors ("FSB").

WHEREAS, the City of Fayetteville solicited Requests for Statements of Qualifications for Investment Management Services pursuant to its RFQ No. 16-08; and

WHEREAS, First Security Bank submitted a response to the Request for Statements of Qualifications which was, after examination of responses received from other qualified persons, accepted by proper action of the City Council of the City of Fayetteville.

Now THEREFORE, in consideration of the mutual promises and obligations of the parties hereto, for other good and valuable consideration, and intending to be bound, the parties agree as follows:

01. **Appointment of Investment Manager:** The City of Fayetteville hereby appoints First Security Bank to act as investment manager with respect to those financial assets of the City of Fayetteville (the "Account Assets"). First Security Bank will furnish an investment program to maximize the financial returns on the Account Assets while adhering to the City of Fayetteville's Investment Policy and consideration of investment risks.
02. **Custody of Account Assets:** First Security Bank will act as custodian for all of the Account Assets acting through its Trust Division. All Account Assets shall remain in the physical possession of First Security Bank as custodian. First Security Bank shall, during the effectiveness hereof, maintain fiduciary liability insurance with limits of liability not less than \$2,000,000. A copy of said policy shall be presented to the City of Fayetteville within ten (10) business days of contract award.
03. **Management Authority:** The City of Fayetteville hereby authorizes First Security Bank to place orders or otherwise give instructions for the purchase, sale, or exchange of securities on behalf of the City of Fayetteville which are included in the Account Assets without prior consultation or ratification by the City of Fayetteville, giving and granting to First Security Bank, complete discretion as to the nature, amount and timing of all securities transactions, subject only to those restrictions, limitations and guidelines which are set out in the City of Fayetteville, Arkansas, Investment Management Policy which is attached hereto as Appendix A and made a part hereof by this reference, which is incorporated in Resolution No. 169-99, duly adopted by the City Council of the City on December 21, 1999 (the "Investment Policy"). The City of Fayetteville reserves the right to revise or modify the Investment Policy at any time, and from time to time, provided that, no such revision or modification shall be binding upon First Security Bank until written notice thereof is received by First Security Bank. All purchases of securities which will become a part of the Account Assets shall be on a delivery versus payment basis.

04. **Fees:** As compensation for its services pursuant hereto, First Security Bank will be paid a fee equal to 14 basis points of the average Account Assets if the average market value of the Account Assets are less than \$25 million during a calendar month; and a fee equal to 10 basis points of the average market value of the Account Assets if the average market value of the Account Assets are greater than \$25 million during a calendar month. The foregoing fees of First Security Bank do not include fees for brokerage services, if incurred, in connection with the purchase or sale of any security which is or is to become a part of the Account Assets. All fees of First Security Bank and any brokerage fees payable with respect to the Account Assets shall be paid from the Account Assets and shall be separately accounted for in all reports provided to the City of Fayetteville.

05. **Changes in Scope or Price:** Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

06. **Brokerage:**

- a. Selection of Broker. The City of Fayetteville authorizes First Security Bank to place orders for purchases and sales of securities and financial assets through any broker or dealer it chooses, including a broker or dealer which is affiliated with or under common control with First Security Bank. In selecting a broker or dealer for any transaction or series of transactions, First Security Bank will consider such factors as net price, execution, availability of research, and other factors which First Security Bank reasonably believes to be appropriate for purposes of making that decision. The fact that the fees paid for brokerage services for the broker or dealer selected by First Security Bank are greater than fees for which similar services could be obtained, shall not be a basis for liability to First Security Bank.
- b. Aggregation of Purchases. The City of Fayetteville agrees that First Security Bank may aggregate sale and purchase orders of securities with similar orders being made simultaneously for other accounts managed by First Security Bank, or for accounts of affiliates of First Security Bank if, in the judgment of First Security Bank, aggregation of such orders will result in a net savings to the City of Fayetteville with respect to the purchase or sale order for the particular security.

07. **Monthly Reports:** The Custodian shall provide the City of Fayetteville with monthly reports of the Account Assets in a format consistent with the reporting requirements of the Governmental Accounting Standards Board and otherwise reasonably acceptable to the City of Fayetteville. The Custodian and First Security Bank shall provide such other and further information as the City of Fayetteville may reasonably require in connection with the Account Assets.

08. **Voting of Equity Securities:** Unless otherwise directed by the City of Fayetteville, First Security Bank is authorized, in its discretion, to take such action as it deems appropriate with respect to any proxy received with respect to any equity securities which may be or become a part of the Account Assets from time to time.

09. **Investment Risks:** The City of Fayetteville acknowledges that there are risks inherent in all investments, and that some investments will result in profits and some investments will result in loss. **First Security Bank** shall not be liable to the City of Fayetteville for any error of judgment or mistake of law in the execution of its responsibilities hereunder, or for any loss suffered with respect to the Account Assets, or any other matter arising out of this Agreement, excepting only losses suffered as a result of negligence, bad faith, or willful misconduct of **First Security Bank**.

10. **Term and Termination:** This Agreement shall be effective upon execution by both parties and shall continue in force until modified by mutual agreement of the parties in writing, or until terminated on thirty (30) days prior written notice by either party to the other. Upon notice to the Custodian of any such termination, the Custodian shall deliver the Account Assets to, or as directed in writing by, the City of Fayetteville.

11. **Documents Comprising Contract:** The contract shall include this Agreement for investment management services, as well as the following documents, which are incorporated herein by reference.

- a. City of Fayetteville's Request for Statements of Qualification (RFQ 16-03) and all of its addenda and attachments;
- b. First Security's submitted Statement of Qualification
- c. First Security's Certificate of Insurance as required, listing the City as an additional insured
- d. Appendix A: City of Fayetteville, Policy No. AC-02, City Investment Policy

12. **Miscellaneous Provisions:**

- a. **Other Activities of First Security Bank:** Nothing in this Agreement shall be deemed to restrict **First Security Bank** or its affiliates from engaging in any other business or in rendering any other investment agency services to any other person.
- b. **No Assignment:** **First Security Bank** shall not assign this Agreement, or delegate its duties hereunder to any non-affiliated third party without the prior written consent of the City of Fayetteville.
- c. **Notices:** All notices required or permitted hereunder shall be in writing, and shall be delivered by U.S. Mail, return receipt requested, or via confirmed facsimile, and addressed as listed below. All notices shall be deemed delivered when received, or the first day delivery is refused.

**If to the City of Fayetteville**  
City of Fayetteville, Arkansas  
113 W. Mountain St.  
Fayetteville, Arkansas 72701  
Attention: Mayor  
Facsimile: 479-575-8257

**If to First Security Bank:**  
First Security Bank  
314 N. Spring  
Searcy, AR 72145-1006  
Attn: Frank Faust, President, Trust Division  
Facsimile: 501-278-2175

**With Copy to First Security Bank:**  
First Security Bank  
1219 E. Joyce Blvd

Fayetteville, Arkansas 72703  
Attn: Adam Rutledge  
Facsimile: 479-527-7001

- d. Entire Agreement: This Agreement, together with the Exhibit hereto, is the entire agreement of the parties and may be modified only by a writing executed by all parties, except that the **City of Fayetteville** may modify the Investment Policy at any time, from time to time, without the consent of First Security Bank.
- e. Governing Law: This Agreement has been executed in and shall be construed under the laws of the state of Arkansas.
- f. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall be one and the same instrument.
- g. Severability: If any one or more of the provisions hereof are determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect upon the remaining provisions hereof, which shall remain valid and enforceable in accordance with their terms.

13. **Freedom of Information Act**: **City of Fayetteville** contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the **City of Fayetteville**, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.

First Security Bank

City of Fayetteville, Arkansas

By: Frank Faust  
Frank Faust, President, Trust Division

\_\_\_\_\_  
Lionel Jordan, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Company Secretary

\_\_\_\_\_  
Sondra E. Smith, City Clerk

\_\_\_\_\_  
Business Address

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
City, State & Zip Code

Date Signed: \_\_\_\_\_