

## SECOND AMENDATORY AGREEMENT

**THIS SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ERNST & YOUNG U.S. LLP f/k/a ERNST & YOUNG INFRASTRUCTURE ADVISORS, LLC**, a Delaware limited liability company, doing business at 5 Times Square, New York, New York 10036 (“Consultant” and, together with the City, the “Parties”).

### RECITALS

**A.** The City and Consultant entered into an Agreement dated December 7, 2016 and an Amendatory Agreement dated July 13, 2018, as (collectively the “Agreement”) for Consultant to undertake and perform certain consulting services as set forth in the Agreement.

**B.** The City and Consultant wish to amend the Agreement to extend the term of the Agreement and increase compensation to the Consultant.

**NOW, THEREFORE**, the Parties hereby agree as follows:

**1.** Section 3 of the Agreement, entitled “**TERM**” is hereby amended to read as follows:

“The Agreement will commence upon final execution by all parties and shall terminate on December 31, 2020 unless extended in accordance with the terms of the Agreement (the “Term”).”

**2.** Section 4 of the Agreement, entitled “**COMPENSATION AND PAYMENT**,” is hereby amended to read as follows:

“**a. Fee:** The City shall pay and the Consultant shall accept as the sole compensation for services rendered and costs incurred under the Agreement the amount of Two Million Three Hundred Sixty-Eight Thousand Dollars and No Cents (\$2,368,000.00) for fees. Amounts billed after the execution of this Second Amendatory Agreement may not exceed the rates or budget set forth in **Exhibit A-1**.

**d. Maximum Contract Amount:** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **TWO MILLION THREE HUNDRED SIXTY-EIGHT THOUSAND DOLLARS AND NO CENTS (\$2,368,000.00)** (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Consultant beyond that specifically described in the Work Requests described above. Any services performed beyond those in the Work Requests are performed at Consultant’s risk and without authorization under the Agreement.

The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the

Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

**3.** Except as amended in this Second Amendatory Agreement, the Agreement is affirmed and ratified in each and every particular.

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**Contract Control Number:** FINAN-201631788-02

**Contractor Name:** ERNST YOUNG US LLP

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of  
Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** FINAN-201631788-02

**Contractor Name:** ERNST YOUNG US LLP

By: Tom Rousakis

Name: Tom Rousakis  
(please print)

Title: Senior Managing Director  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



## **EXHIBIT A-1 SCOPE OF SERVICES**

The scope of services to be provided by the Consultant may include, but are not be limited to, the following ongoing and project specific tasks:

### **Performance Based Infrastructure (PBI) Program and Policy Development**

- Assist in reviewing, developing and evaluating financial alternatives, strategies, funding sources, financing mechanisms, and financial risk and exposure with a holistic approach using a Citywide financial objectives and fiscal management focus, for assigned project portfolios (working with other City advisors when applicable).
- Assist in review of program overview, process and methodology guideline documents, as assigned, to provide Department of Finance with key financial parameters and principles for evaluation and consideration.
- Advise the Department of Finance on key financial risks and other considerations to be identified throughout multiple phases of potential PBI project implementation. These considerations may include but are not limited to identification criteria for evaluating potential projects, input on early market sounding activities such as Request for Information (RFI) and Request for Qualifications (RFQ), project procurement eligibility screening criteria and associated scoring methodologies, development of risk transfer guidelines and risk mitigation strategies, input on relevant financial modeling, and guidance on various elements surrounding procurement and other contractual negotiations.
- Assist the Department of Finance in developing ongoing best practices guidelines and policies on financial implementation, tracking, and reporting of PBI projects.
- Work in collaboration with City staff and Strategic PBI Advisor to develop an internal PBI policy to provide a financial framework, guidelines and parameters for evaluating and entering into PBI arrangements and how to most effectively and efficiently implement such structures.

### **Performance Based Infrastructure (PBI) Project Evaluation and Implementation**

- Provide and prepare analysis to assist the City in evaluating PBI projects such as cost benefit analysis, business case studies, value for money (VFM), fiscal sustainability analyses, cash flow analysis, sensitivity analysis, risk modeling, and benchmarking analysis. Train City staff on such analysis and models to help develop internal skill sets and capacity.
- Assist in developing and vetting financial evaluation criteria such as financial metrics and benchmarks, financial models, risk assessment and affordability analysis used in determining the financial feasibility and making the “business case” of solicited and unsolicited PBI proposals.
- Assist the City in analyzing and evaluating the financing mechanisms’ impact on the City’s financial and debt capacity and ratings.
- Assist the City in evaluating financial and regulatory limitations and constraints on financing at the local, state and federal level.
- Assist the City in developing and presenting information to stakeholders including but not limited to, executive management, financial markets, investors, rating agencies.
- Assist the City in negotiating and reviewing financing legal documents, including but not limited to, bond ordinances and indentures, intergovernmental agreements, performance contracts, construction agreements, reimbursement agreements, revenue sharing agreements, etc.
- Assist the City with structuring financings, which includes market timing, syndicate policies, issue price, and bond sale where applicable.
- Provide ongoing advice and guidance on post issuance matters including post transaction monitoring.

Below is an hourly rate schedule for EY Team personnel assuming a no retainer/time and materials only structure. EY will also be reimbursed for travel-related expenses.

<b>Title</b>	<b>\$/Hour</b>
Senior Managing Director	\$550
Managing Director	\$500
Senior Vice President	\$450
Vice President	\$400
Senior Associate	\$350
Analyst	\$275

## EXHIBIT A-1

### BUDGET ESTIMATE FOR FINANCIAL ADVISORY SERVICES City & County of Denver - NWC Triangle + General PBI Support

	Sr Managing Director/Partner	Managing Director	Senior VP/Sr Manager	Vice President	Senior Associate	Analyst	Total Fee/Man-Hours Estimate
	\$550.00	\$500.00	\$450.00	\$400.00	\$350.00	\$275.00	
<b>TASK 1: Financial Analyses, Modelling and Business Case Support/Project Screening</b>							
1a. Read and analyze existing project materials/assumptions	10		40	40	40		\$53,500
1b. Development of high level screening model			20	80	200		\$111,000
1c. Undertake sensitivity testing and risk identification			20	80	200		\$111,000
1d. Analyze impact risk and financial impact to City	10		40	40	100		\$133,700
1e. Develop a VFM/business case analysis	5		40	40	80		\$64,750
Subtotal: Task 1 Hours	25	-	160	280	620	-	1,085
Subtotal: Task 1 Fees	\$13,750	\$0	\$72,000	\$112,000	\$217,000	\$0	\$414,750
<b>TASK 2: Triangle Deal Structuring</b>							
2a. Undertake detailed financial analysis of key transaction structure considerations	5		60	75	150		\$112,250
2b. Analyze sensitivity scenarios and identify risks	5		40	100	150		\$113,250
2c. Participate in meetings, briefings, calls and other structuring discussions as needed	40		200	75	75		\$168,250
Subtotal: Task 2 Hours	50	-	300	250	375	-	975
Subtotal: Task 2 Fees	\$27,500	\$0	\$135,000	\$100,000	\$131,250	\$0	\$393,750
<b>TASK 3: Triangle RFP Solicitation Development &amp; Support</b>							
3a. Assist with preparation of financial and commercial sections of RFP / PPP Agreement	40		200	75	75		\$168,250
3b. Prepare for and participate in one-on-one meetings with developers	48		60	40	40		\$83,400
3c. Respond to requests for clarification from industry on financial inquiries	40		75	40	80		\$99,750
3d. Assist in preparation of RFP addenda as necessary	10		100	40	80		\$94,500
3e. Ongoing shadow bid model updates/refinements to support RFP			60	150	175		\$148,250
Subtotal: Task 3 Hours	138	-	495	345	450	-	1,428
Subtotal: Task 3 Fees	\$75,900	\$0	\$222,750	\$138,000	\$157,500	\$0	\$594,150
<b>TASK 4: Assistance with Proposal Evaluation, Contract Negotiations and Execution</b>							
4a. Assist with preparation of evaluation manual for the RFQ and RFP	5		20	20	20		\$26,750
4b. Assist with evaluation of financial proposals for RFQ and RFP	10		60	80	100		\$99,500
4c. Assist in final negotiations with preferred proposer through commercial close	20		60	20	40		\$60,000
Subtotal: Task 4 Hours	35	-	140	120	160	-	455
Subtotal: Task 4 Fees	\$19,250	\$0	\$63,000	\$48,000	\$56,000	\$0	\$186,250
<b>TASK 5: Ongoing Financial Analysis and Modelling; Financial Close Assistance</b>							
5a. Update financial model; sensitivity testing and pricing / affordability analyses	5		20	40	80		\$55,750
5b. Financial close support (benchmarking, bidder model evaluation / closing protocol)	5		36	60	120		\$84,950
5c. Assist in post-closing business case/VFM and other efforts	10		40	60	60		\$68,500
Subtotal: Task 5 Hours	20	-	96	160	260	-	536
Subtotal: Task 5 Fees	\$11,000	\$0	\$43,200	\$64,000	\$91,000	\$0	\$209,200
<b>DIRECT EXPENSES</b>							
Estimated expenses	\$10,000	\$0	\$0	\$10,000	\$10,000	\$0	\$30,000
Subtotal: Direct Expenses	\$10,000	\$0	\$0	\$10,000	\$10,000	\$0 #	\$30,000
<b>CONTINGENCY</b>							
Additional support required by project workflow and development	13	-	60	58	93	- #	223
Subtotal: Contingency Hours	13	-	60	58	93	-	224
Subtotal: Contingency Fees	\$7,150	\$0	\$27,000	\$23,200	\$32,550	\$0	\$89,900
<b>PROJECT TOTALS / SUMMARY ESTIMATE</b>							
Total Man-Hours	281	-	1,251	1,213	1,958	- #	4,703
Labor	\$147,400	\$0	\$535,950	\$462,000	\$652,750	\$0 #	\$1,798,100
Direct Expenses	\$10,000	\$0	\$0	\$10,000	\$10,000	\$0	\$30,000
Contingency	\$7,150	\$0	\$27,000	\$23,200	\$32,550	\$0	\$89,900
<b>Total Proposed Fee</b>	<b>\$164,550</b>	<b>\$0</b>	<b>\$562,950</b>	<b>\$495,200</b>	<b>\$695,300</b>	<b>\$0</b>	<b>\$1,918,000</b>