

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2013

COUNCIL BILL NO. CB13-0106  
COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

**For an ordinance approving an Agreement between WJ ADVISORS, LLC and the City and County of Denver to obtain professional financial services to assist it's Department of Aviation in connection with its Airport System.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed Agreement between the City and County of Denver and WJ ADVISORS, LLC in the words and figures contained and set forth in that form of Agreement available in the office and the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0108 is hereby approved.

COMMITTEE APPROVAL DATE: February 28, 2013

MAYOR-COUNCIL DATE: March 5, 2013

PASSED BY THE COUNCIL \_\_\_\_\_ 2013  
\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2013

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2013; \_\_\_\_\_ 2013

PREPARED BY: Helen E. Berkman, Assistant City Attorney; DATE: March 7, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney DATE: March 7, 2013



## A G R E E M E N T

**THIS AGREEMENT** is made and entered as of the date set forth on the City's signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation (the "City"), and **WJ ADVISORS LLC**, a limited liability company organized under the laws of the State of Colorado ("Consultant").

### W I T N E S S E T H:

**WHEREAS**, the City owns, operates, and maintains Denver International Airport ("DIA" or the "Airport"); and

**WHEREAS**, the City desires to obtain professional financial services to assist its Department of Aviation in connection with its Airport System, including but not limited to services required by the Airport's General Bond Ordinance; and

**WHEREAS**, the City solicited and received proposals for such services and the Consultant's proposal was selected; and

**WHEREAS**, the Consultant is qualified and ready, willing, and able to perform the services as set forth in this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

**1. LINE OF AUTHORITY:** The City's Manager of Aviation, her designee or successor in function (hereinafter referred to as the "Manager of Aviation" or the "Manager") authorizes all work performed under this Agreement. The Manager hereby delegates her authority over the work described in this Agreement to the Deputy Manager of Aviation/Finance and Administration ("Deputy Manager"), as the Manager's authorized representative for the purpose of administering, coordinating, and approving work under this Agreement. The Consultant shall submit its reports, memoranda, correspondence, and submittals to the Deputy Manager.

**2. PROFESSIONAL SERVICES:**

**A. General:** The Consultant will provide professional airport system financial and consulting services for the financial and economic management of the Airport and the planning and development of Airport Facilities, on projects designated by the Manager or the Deputy Manager from time to time as described in the attached *Exhibit A* ("Scope of Work") and in accordance with schedules and budgets to be mutually agreed upon.

**B. Professional Responsibility:** The Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, training, diligence, and judgment provided by competent professionals who perform work of a similar

nature to the work described in this Agreement. Consultant hereby represents and warrants to the City that it will perform its services in a professional and workmanlike manner.

**3. COMPENSATION AND PAYMENT; MAXIMUM CONTRACT LIABILITY:**

A. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed Two Million Dollars (\$2,000,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services performed by Consultant beyond those specifically described in or requested in accordance with *Exhibit A*. Any services performed beyond those in *Exhibit A* are performed at Consultant's risk and without authorization under the Agreement.

B. 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 the 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.

C. Payment Schedule / Invoicing: Subject to the Maximum Contract Amount set forth at section 3.A. of this Agreement, Consultant's fee shall be paid in the following manner:

i. Hourly Billing Rates: The Consultant shall be paid a fee for its services at the hourly billing rates for the classification of the person performing such services as set forth in Exhibit B.

ii. Expenses: Subject to receipt by the City of acceptable monthly invoices and supporting documentation from the Consultant, expenses incurred in connection with its work under this Agreement shall be reimbursed in accordance with the following schedule:

- |   |         |
|---|---------|
| a. Long Distance Telephone Charges                                  | at cost |
| b. Copying, postage, and courier services                           | at cost |
| c. Specialized computer services                                    | at cost |
| d. Subconsultants   | at cost |
| e. Parking  | at cost |
| f. Travel   | at cost |
| g. Other expenses with prior written approval of the Deputy Manager | at cost |

All reimbursable travel shall have the prior written approval of the Deputy Manager, and be related to and in furtherance of the purposes of Consultant's engagement. Vehicle rental costs are allowed when efficiency and economy are served, taking into consideration the elements of time and distance. Use of such vehicle for personal travel shall not be reimbursed. Sleeping accommodation costs are limited to

a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors. Reimbursement for meals and incidentals is limited to the per diem allowed by the City's fiscal accountability rules. Non-business and strictly personal expenses shall not be reimbursed, and hourly rates will not be paid for any period of time a trip is extended for personal convenience.

**D. Prompt Payment Ordinance:** The City shall process all invoices for payment received from the Consultant on a timely basis in accordance with Denver's Prompt Payment Ordinance, Section 20-107 *et seq.* of the Denver Revised Municipal Code. The City shall not be liable for the payment of taxes, late charges, or penalties except as expressly provided in the Prompt Payment Ordinance.

**E. Source of Funds:** All payments under this Agreement shall be paid from the City and County of Denver Airport Revenue Fund and from no other fund or source. The City is under no obligation to make payments to or to make any future appropriations or allocations to said fund.

**4. TERM:** The term of this Agreement shall commence on January 1, 2013 and shall terminate on December 31, 2015, unless terminated earlier in accordance with this Agreement.

**5. DEFENSE AND INDEMNIFICATION:**

**A.** Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents, and employees against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Consultant or its subcontractors.

**B.** Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant has not been named as a Defendant.

**C.** Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**6. INSURANCE:**

**A.** The Consultant shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit C**, which is incorporated into this Agreement by this reference. The Consultant shall submit to the City fully completed and executed certificates of insurance (ACORD form or equivalent approved by the City) which specifies the issuing company or companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf, and must be submitted to the City at the time the Consultant signs this Agreement.

**B.** All certificates and any required endorsements must be received and approved by the City before any work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project, including any warranty periods. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement. All subcontractors' work shall also be subject to the minimum requirements identified in **Exhibit C**. All subcontractors' certificates and endorsements must be received and approved by the Consultant before work commences. The City reserves the right to request copies of these certificates at any time.

**C.** All certificates required by this Agreement shall be sent directly to Denver International Airport, Risk Management, Airport Office Building, Room 8810, 8500 Peña Boulevard, Denver, Colorado 80249. The City Project/Agreement number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

**D.** The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

**E.** The Consultant shall comply with all conditions and requirements set forth in the insurance certificate for each required form of coverage during all periods in which coverage is in effect.

**F.** The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant under the terms of this Agreement, including the Indemnification provisions herein. The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**7. COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City and County of Denver, its officers, officials and employees.

**8. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and ordinance.

**9. SUBCONSULTANTS AND SUBCONTRACTORS:**

A. Although the Consultant may retain, hire, and contract with outside subconsultants, the use of any subconsultants not expressly identified in Consultant's proposal shall require the prior written consent of the Manager or her authorized representative. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subconsultant, and any other information requested by the Manager. Any final agreement or contract with an approved subconsultant must contain a valid and binding provision whereby the subconsultant waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

B. Because the Consultant's represented professional qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed outside subconsultant or subcontractor deemed by her, in her sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of outside subconsultants or subcontractors or to limit the percentage of work to be performed by them.

**10. ASSIGNMENT:** The Consultant covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of the Manager, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager.

**11. INSPECTION OF RECORDS:**

A. In connection with any consulting services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of the Consultant which are directly

pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. The Consultant further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.

**B.** The Consultant agrees that until the expiration of three years after the final payment under this Agreement, any duly authorized representative of the City, including the Manager or City Auditor or their representatives, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Consultant involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

**12. INFORMATION FURNISHED BY CITY:** The City will furnish to the Consultant available information concerning the Airport and any such other matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Contract. The Consultant shall be responsible for the verification of the information provided to the Consultant.

**13. COLORADO OPEN RECORDS ACT:** The Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.*, and the Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which the Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments, and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

**14. STATUS OF CONSULTANT AS INDEPENDENT CONTRACTOR:** It is understood and agreed by and between the parties hereto that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.(E)(x) of the Charter of the City, and it is not intended nor shall it be construed that the Consultant, its employees or subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

**15. TERMINATION:**

**A.** The City has the right to terminate this Agreement without cause on thirty (30) days written notice to the Consultant and with cause on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.



**B.** If this Agreement is terminated by the Consultant, or if this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City, (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment, and (3) the cost of any work which the Manager approves in writing which she determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.

**C.** If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City. This paragraph specifically excludes any software licenses, and the rights granted to the City thereunder, shall, upon termination, cease and the software programs shall be uninstalled and returned to Consultant or destroyed.

**D.** Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

**E.** The Consultant has the right to terminate this contract with or without cause by giving not less than thirty (30) days prior written notice to the City.

**16. NOTICES:** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement and other notices of similar importance shall be made:

by Consultant to:

Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard  
Denver, Colorado 80249-6340

and by City to:

Warren J. Adams  
WJ Advisors LLC  
11354 East Ida Avenue  
Englewood, CO 80111

**17. NO WAIVER OF RIGHT:** No assent, expressed or implied, to any breach of any one or more of the covenants, terms and provisions of this Agreement shall be deemed or taken to be by the City a waiver of any succeeding or other breach.

**18. ADMINISTRATIVE HEARING:** Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in the Denver Revised Municipal Code §5-17. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to the Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

**19. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

**20. CONFLICT OF INTEREST:** The Consultant agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to the City.

**21. TAXES AND COSTS:** The Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City. If the City is exempt from the payment of such sales or use taxes, the City shall promptly, upon the execution of this Agreement, notify and provide to Consultant a tax-exempt certificate.

**22. COMPLIANCE WITH ALL LAWS AND REGULATIONS:** All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver.

**23. NO THIRD PARTY BENEFICIARIES:** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that subconsultants and any other person

other than the City or the Consultant receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

**24. ADVERTISING AND PUBLIC DISCLOSURES:** The Consultant shall not reference this Agreement or its work hereunder in marketing or public relations materials without first obtaining the written approval of the Manager, which approval will not be unreasonably withheld. Any oral presentation or written materials related to Denver International Airport shall include only presentation materials, work product, designs, renderings and technical data which have been submitted to the Deputy Manager for review and approval. The Deputy Manager shall review and either reject, modify, or approve submittals in a timely manner so that the Scope of Work is not adversely affected. Nothing herein shall preclude the transmittal of by the City any information to officials of the City, including without limitation, the Mayor, the Manager of Aviation, member or members of City Council, or the Auditor.

**25. OWNERSHIP OF WORK PRODUCT:** The City may, without restriction, make use of materials and documents created by Consultant and/or submitted to the City by the Consultant under this Agreement. The product of any custom development work performed by the Consultant specifically for the City shall become the sole property of the City.

**26. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

A. The Agreement is subject to C.R.S. §8-17.5-102 and the Denver Revised Municipal Code §20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.

B. The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in C.R.S. § 8-17.5-101(3.7), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Consultant also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing

its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Consultant will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of C.R.S. § 8-17.5-102(5), or the City Auditor under authority of Denver Revised Municipal Code §20-90.3.

**27. FEDERAL PROVISIONS:** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendix 1 are incorporated herein by reference.

**28. BOND ORDINANCES; GOVERNING LAW; VENUE:** This Agreement shall be deemed to have been made in, and construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to the Airport's General Bond Ordinance any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado.

**29. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Consultant and Consultant's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession, or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Consultant and Consultant's agents from City facilities or participating in City operations.

**30. CITY SMOKING POLICY:** Consultant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Consultant and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 *et. seq.*, the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209,

City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

**31. ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Manager, shall be valid unless they are contained in an instrument which is agreed to by all the parties with the same formality as this Agreement.

**32. SEVERABILITY:** In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

**33. HEADINGS:** The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**34. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** This Agreement consists of Articles 1 through 34, which precede the signature page, and the following exhibits and attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Work
Exhibit B	Schedule of Rates and Fees
Exhibit C	Certificate of Insurance
Appendix No. 1	Standard Federal Assurances and Nondiscrimination

In the event of an irreconcilable conflict (i) between a provision of Articles 1 through 35 and any of the listed exhibits or attachments or (ii) between provisions of any exhibits or attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Appendix No. 1  
Articles 1 through 35 hereof  
Exhibit A  
Exhibit B  
Exhibit C

**35. CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver. This Agreement may be signed electronically by either party in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Consultant, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 7. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The contractor assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

**Contract Control Number:** PLANE-201206746-00

**Contractor Name:** WJ ADVISORS LLC

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PLANE-201206746-00

**Contractor Name:** WJ ADVISORS LLC

By: W. Adams

Name: Warren Adams  
(please print)

Title: Managing Partner  
(please print)

**ATTEST: [if required]**

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

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

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





**EXHIBIT A**  
**SCOPE OF WORK**

Consultant shall provide professional airport system consulting services for the financial and economic management of the Airport and for the planning and development of Airport facilities.

Specifically, services to be performed by Consultant; when and as directed by the Manager of Aviation, shall include, but not be limited to the following:

- A. Development and review of the annual and mid-year calculation of airline rates, fees, and charges relating to the Denver Airport System, which may include improvement, augmentation, modification and simplification of a financial model and assumptions used to calculate such rates. This includes a detailed summary of rates, fees and charges by airline as well as in total for the Airport system.
- B. Create a manual and documentation for the rate model. Develop a user's guide incorporating the rate model operation, architecture and logic as well as provide training for airport staff on how to operate the model.
- C. Prepare a financial feasibility report regarding financing the airport's capital plan. Per requirements of the Airport Consultant's Report, Section 704B of the Airport General Bond Ordinance, prior to the issuance of additional bonds, the Consultant shall issue a report, estimating the current and next three fiscal years, Gross Revenues, Operation and Maintenance Expenses, and other amounts required to be deposited to funds and accounts in support of funding the capital projects as well as the increase in operation and maintenance expenses and the increase in rates, fees, rentals, or other charges that may result from completion of the project(s).

Based upon those estimates, the report must demonstrate that the Net revenues in each such Fiscal Year, together with any Other Available Funds are projected to be sufficient in each such fiscal year to meet the Rate Maintenance Covenant, taking into consideration the debt service requirements of any future series of bonds required to complete the improvement project(s), as estimated by bond advisors, and after giving effect to, among other things, the increase in operation and maintenance expenses and the increase in rates, fees, rentals, or other charges that may result from completion of the Project. The report must comply with the requirements as more fully outlined and described in Section 704 B of the Airport General bond Ordinance.

If this report shows the Airport System not meeting the Rate Maintenance Covenant, the Consultant shall advise the Manager of Aviation and make recommendations as to the revision to rentals, fees and charges to meet this requirement.

In conjunction with issuance of additional revenue bonds, Consultant shall prepare a financial feasibility report regarding improvement projects to be financed. The feasibility report shall be in a format suitable for incorporation into the Official Statement for the sale of such bonds. Services to be provided in connection with the financial feasibility report, or periodically as requested, shall include:

1. an analysis of the economic and air traffic forecasts;
  2. a review and assessment of the requirements for the projects and project cost estimates;
  3. a review of airport financial operations and rate policies;
  4. a review of the projection of airport revenues, expenses, net revenues, and debt service coverage;
  5. coordination with the City's team of investment bankers, bond counsel, and staff in the development of the financing plan for the project, preparation of the financial feasibility study report including black-line drafts for review by the working group, and participation in presentations to the rating services and investor tours/roadshows.
  6. create user's manual for financial model
- D. At the request of the Manager of Aviation, Consultant shall review and advise upon the capital program for the Denver Airport System for compliance with the Bond Ordinance and Airline Use and Lease Agreements.
- E. Consultant shall review and advise the Manager, as requested, with respect to any other matters affecting the Denver Airport System. These matters may include:
1. Performing qualitative and quantitative analyses on a variety of strategic and financial issues, as well as business issues, including but not limited to, analyses relating to the operating & capital planning budget and sensitivity and scenario analyses
  2. Assisting in airline lease negotiations
  3. Services in connection with the planning of present Airport System facilities or those to be acquired or to be developed by the City in the future.
- F. Consultant shall provide qualified persons from its staff to serve as expert witnesses in any judicial or administrative proceeding to which the City may be a party.
- G. Other requested services and special projects that have financial impact on the Airport System, as assigned by Airport management.

**WJ Advisors LLC:**

Hourly Rates for Managing Partner:	Year 1	Year 2	Year 3
Bond Feasibility Work:	\$285	\$285	\$285
Non-bond Feasibility Work:	\$245	\$252	\$265

**Rates for other classifications - years 1 -3:**

Staff Classification	Bond Feasibility Work		Non-bond Feasibility Work	
	low	high	low	high
Associate Director	\$200	\$240	\$180	\$225
Senior Consultant level	\$150	\$190	\$140	\$175
Consultant level	\$115	\$145	\$105	\$130

**Oliver Wyman:**

**Rates for classifications - years 1 -3:**

Classification	Hourly Rate
Partner	\$305
Vice President	\$305
Consultant	\$175
Project Manager	\$305
Senior Specialist	\$255
Manager	\$225
Specialist	\$175
Graphics	\$95

**Airmac LLC**

**Rates for classifications - years 1 -3:**

Hourly rate for Managing Principal	\$140
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**CITY AND COUNTY OF DENVER  
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER  
Attn: Risk Management, Suite 8810  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, Room 8810  
Denver CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201206746 - Financial Consulting Services**

**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability Coverage**

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

**Commercial General Liability Coverage**

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy \_\_\_ Project \_\_\_ Location \_\_\_, if applicable

**Business Automobile Liability Coverage**

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

## **II. ADDITIONAL COVERAGE**

### **Umbrella Liability**

**Coverage:**

<b>Umbrella Liability, Non Restricted Area Minimum Limits of Liability (In Thousands)</b>	<b>Each Occurrence and aggregate</b>	<b>\$1,000</b>
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**Any Policy issued under this section must contain, include or provide for the following:**

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

### **Professional Liability [Professional services other than Information Technology]**

**Coverage: Professional Liability**

<b>Minimum Limits of Liability (In Thousands)</b>	<b>Per Claim</b>	<b>\$1,000</b>
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**Any Policy issued under this section must contain, include or provide for the following:**

1. Policies written on a claims-made basis must remain in force for three years ERP in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.
3. Any cancellation notice required herein must be provided by Certified Mail. Coverage must extend, by endorsement or otherwise, to cover the full scope of all environmental services performed under the insured's contract with the City.

## **III. ADDITIONAL CONDITIONS**

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A-VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### **NOTICE OF CANCELLATION**

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

## EXHIBIT D

### GENERAL GUIDELINES REGARDING FINANCIAL STUDIES FOR PUBLIC OFFERINGS

With regard to services to be provided by WJ Advisors LLC ("Consultant") in connection with the City's proposed airport revenue bond financings, the parties agree to the following general guidelines:

#### A. Purpose of Reports

The purpose of the financial reports for public offerings will be to estimate the ability of the City's Airport System to generate sufficient Net Revenues and Other Available Funds during a defined forecast period to meet the requirements of the Rate Maintenance Covenant of the General Bond Ordinance or Subordinate Bond Ordinance.

#### B. Use of Reports

Any drafts or preliminary financial reports prepared by Consultant are to be used solely for the internal purposes of the City, for discussion and coordination with members of the City's financial working group, and subject to the Consultant's consent, for review by rating agency or other bond credit analysis. Any such draft or preliminary reports are not to be made available to any other party or to be used for securing financing or for any other purpose.

It is understood that Consultant's final report may be included in an official statement or offering circular to be issued in connection with the proposed financing. Consultant will consent to such use of our final report provided that:

- The report with attachments, assumptions, and financial exhibits is included in its entirety in any such official statement or offering circular.
- Consultant approves in advance any reproduction of the report or part thereof, or any reference to the report or to WJ Advisors LLC included in the official statement or offering circular, or transmitted to other parties.

It is understood that Consultant has no obligation to issue any other supplementary letter, certificate or other form of assurance regarding the information or opinions presented in our report, the official statement or offering circular.

It is further understood that any information quoted or abstracted from the report and reproduced in the official statement or offering circular will make appropriate reference to (a) the sources for and assumptions underlying such information, as described in the report, and (b) the need for the report to be read in its entirety for an understanding of the information and the underlying assumptions.

#### C. Information Sources

The data, information, and assumptions used to develop the financial forecasts will be derived from published information and other appropriate sources, which will be described

in the report.

D. Achievability of Forecasts

Any financial forecast is subject to uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized, and unanticipated events and circumstances may occur. There will be differences between the forecast and actual results, and those differences may be material. Therefore, Consultant cannot provide any form of assurance that the forecasts will be achieved. The report will contain statements drawing attention to these uncertainties and a disclaimer to the effect that neither Consultant nor any person acting on its behalf makes any warranty, express or implied, with respect to the information, assumptions, forecasts, opinions, or conclusions disclosed in the report.

E. City Representations

Before Consultant issues a final report, it will require a letter from an authorized representative of the City stating that airport management (a) has made available all documents, records, and other information that it is aware of and believes to be relevant to the financial forecasts, (b) believes such information to be accurate and reliable, (c) has reviewed the report and believes that it appropriately discloses those key factors upon which the future financial results of the airport will depend, (d) has reviewed the assumptions underlying the forecasts and agrees that they are reasonable, appropriate, and reflect management's expected course of action during the forecast period, and (d) agrees that, in management's judgment, the forecasts present fairly the expected financial results of the airport.

F. Project Costs and Schedule

Before Consultant issues a final report, it may require written opinions from the City's legal counsel, professional engineers, or consultants, as appropriate, stating that the projects and improvements to be financed will comply with applicable regulations and that the estimated costs and schedule for the planned projects and the improvements are reasonable and achievable.

G. No Obligation to Update Report

The final report will be dated as of the date Consultant completes the work. It is understood that Consultant will have no obligation to update the final report, revise the associated financial forecasts to reflect events, transactions, or circumstances occurring after the date of the report, or issue any letter, certificate, or other form of comfort or assurance regarding the effects of any such subsequent events, transactions or circumstances on the information or opinions presented in our report or summarized in the official statement or offering circular.

H. No Contingent Fees

It is understood and accepted by both parties that neither the fees nor the payment thereof will be contingent upon the results of Consultant's work or upon the City completing or obtaining the proposed financing.

