

**BOARD OF SARPY COUNTY AND CITIES WASTEWATER AGENCY****RESOLUTION APPROVING THE FINANCIAL AND PROCUREMENT ADVISORY SERVICES CONTRACT WITH ERNST & YOUNG INFRASTRUCTURE ADVISORS, LLC**

WHEREAS, pursuant to the Interlocal Cooperation Act, set out at Neb. Rev. Stat. § 13-801 et seq., (hereinafter the “Act”), Sarpy County and the Cities of Papillion, Bellevue, Springfield, La Vista and Gretna entered into an agreement, (hereinafter the “Agency Formation Agreement”) and formed the interlocal agency called the Sarpy County and Cities Wastewater Agency (hereinafter the “Agency”); and,

WHEREAS, the Agency is a separate body corporate and politic under the Act; and,

WHEREAS, pursuant to the Agency Formation Agreement, the powers of the Agency as a body are exercised by the Agency Board; and,

WHEREAS, pursuant to Resolution 2018-018, the Agency Board previously approved the distribution of a request for qualifications and proposals for a qualified financial advisor (hereinafter the “RFP”); and,

WHEREAS, the Agency has received the qualifications and proposal from Ernst & Young Infrastructure Advisors, LLC (hereinafter “Ernst & Young”), among others, to provide financial and procurement advisory services; and,

WHEREAS, the Agency, after reviewing the responses, determined that Ernst & Young’s qualifications and proposal best met the criteria of the RFP and has recommended to the Agency Board that Ernst & Young’s proposal be accepted and the Agency enter into a contractual agreement with Ernst & Young, as attached hereto as Exhibit A (hereinafter the “Ernst & Young Advisory Services Contract”); and,

WHEREAS, the Agency Board discussed the Ernst & Young Advisory Services Contract and after discussion the Board deemed it appropriate and advisable to approve the Ernst & Young Advisory Services Contract.

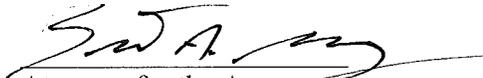
NOW, THEREFORE, BE IT RESOLVED BY THE AGENCY BOARD that the Ernst & Young Advisory Services Contract is hereby approved; and,

NOW, THEREFORE, IT FURTHER BE RESOLVED BY THE AGENCY BOARD that the Agency Board Chairman is hereby authorized to execute, on behalf of the Agency Board, the Ernst & Young Advisory Services Contract and any and all documents associated with or in furtherance of the Ernst & Young Advisory Services Contract.

The above Resolution was approved by a vote of the Sarpy County and Cities Wastewater Agency Board at a public meeting duly held in accordance with applicable law on the 5th day of September 2018.

  
Sarpy County and Cities Wastewater  
Agency Board Chairman

Approved as to Form:

  
Attorney for the Agency

**Exhibit A**

**ERNST & YOUNG ADVISORY SERVICES CONTRACT**

[Attached]



Ernst & Young Infrastructure Advisors, LLC  
5 Times Square  
New York, NY 10036-6530

Tel: +1 212 773 3000  
ey.com

Sarpy County and Cities Wastewater Agency  
Attention: Beth Garber  
Purchasing/Contract Administrator  
Sarpy County Purchasing Department  
1210 Golden Gate Drive  
Papillion, NE 68046

14 August 2018

Dear Beth:

Thank you for choosing Ernst & Young Infrastructure Advisors, LLC (“we” or “EY”) to perform professional services (the “Services”) for the Sarpy County and Cities Wastewater Agency (“you” or “Client”). We appreciate the opportunity to assist you and look forward to working with you.

For each project phase that we agree to undertake for you, we will prepare a Statement of Work describing the particular Services, as well as any advice, presentations, or filings to be made, our fees therefor, and any other project-specific arrangements. All of the Services will be subject to the terms and conditions of this letter, its attachments, including the General Terms and Conditions, and the applicable Statement of Work (together, this “Agreement”).

We may enter into Statements of Work with you for a period of three years following the date of this letter, although we may agree with you to extend that period, including by executing additional Statements of Work referencing this Agreement.

Please sign this letter in the space provided below to indicate your agreement with these arrangements and return it to Stephen Auton-Smith at your earliest convenience. If you have any questions about any of these materials, please do not hesitate to contact Stephen so that we can address any issues you identify before we begin to provide any Services.

Yours sincerely,

Neil McMonagle

Senior Managing Director  
Ernst & Young Infrastructure Advisors, LLC

AGREED:

Sarpy County and Cities Wastewater Agency

By: David R. Kelly

Approved as to Form:

Andrea [Signature]  
Agency Attorney

# General Terms and Conditions

## Our relationship with you

1. We will perform the Services in accordance with applicable professional standards, including those established by the American Institute of Certified Public Accountants (“**AICPA**”).
2. We are a member of the global network of Ernst & Young firms (“**EY Firms**”), each of which is a separate legal entity.
3. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
4. With your prior written consent, we may subcontract portions of the Services to other EY Firms, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Reports (as defined in Section 10), the performance of the Services, and our other obligations under this Agreement. From time to time, non-CPA personnel may perform the Services.
5. We will not assume any of your management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services, although we may otherwise provide advice and recommendations to assist you in your management functions and making decisions.

## Your responsibilities

6. You shall assign a qualified person to oversee the Services. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
7. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including access to records, systems, premises and people) that we reasonably require to perform the Services.
8. To the best of your knowledge, all information provided by you or on your behalf (“**Client Information**”) will be accurate and complete in all material respects. The provision of Client Information to us will not infringe any copyright or other third-party rights.
9. You shall be responsible for your personnel’s compliance with your obligations under this Agreement.

## Our Reports

10. Any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement (“**Reports**”), other than Client Information, are for your internal use only (consistent with the purpose of the particular Services).

Unless mutually agreed to in a Statement of Work, we will not prepare “Ernst & Young” branded Reports under this Agreement. You may incorporate the information, advice, recommendations or other content of our Reports into any memorandum, report, summary or compilation, whether oral or written, produced by you or on your behalf (“**Client Documents**”) and provide such Client Documents to third parties without our further consent or obtaining a non-reliance letter from such third parties, provided that you (i) assume sole responsibility for all such Client Documents as if they had been prepared solely by you and (ii) do not, directly or indirectly, name, refer to or otherwise associate us, any other EY Firm or any personnel thereof in connection with any such Client Documents.

In the event that we agree in a Statement of Work to prepare an “Ernst & Young” branded Report, the following provisions will apply:

You may not disclose a Report (or any portion or summary of a Report) externally (including to your affiliates) or refer to us or to any other EY Firm in connection with the Services, except:

(a) to your lawyers (subject to these disclosure restrictions), who may review it only to give you advice relating to the Services,

(b) to the extent, and for the purposes, required by subpoena or similar legal process (of which you will promptly notify us),

(c) to other persons (including your affiliates) with our prior written consent, who have executed an access letter substantially in the form we prescribe, or

(d) to the extent it contains Tax Advice, as set forth below.

If you are permitted to disclose a Report (or a portion thereof) externally, you shall not alter, edit or modify it from the form we provided.

You may disclose to anyone a Report (or a portion thereof) solely to the extent that it relates to tax matters,

including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate (“**Tax Advice**”). With the exception of tax authorities, you shall inform those to whom you disclose Tax Advice that they may not rely on it for any purpose without our prior written consent

11. You may not rely on any draft Report. We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after its delivery.

## Limitations

12. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, any consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, including any amount for loss of profit, data or goodwill, whether or not the likelihood of such loss or damage was contemplated.
13. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services. This limitation will not apply to losses caused by our fraud or willful misconduct or to the extent prohibited by applicable law or professional regulations.
14. You shall make any claim relating to the Services or otherwise under this Agreement no later than two years after you became aware (or ought reasonably to have become aware) of the facts giving rise to any alleged such claim and in any event, no later than three years after the completion of the particular Services. This limitation will not apply to the extent prohibited by applicable law or professional regulations.
15. You may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm, or our or its subcontractors, members, shareholders, directors, officers, partners, principals or employees (“**EY Persons**”). You shall make any claim or bring proceedings only against us. We will be responsible to you for the Services provided under this Agreement regardless of which EY Firm provides such Services.

## Indemnity

16. To the fullest extent permitted by applicable law and professional regulations, you shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates and attorneys)

and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) arising out of the disclosure of any Report (other than Tax Advice) disclosed to it by you or at your request.

## Intellectual property rights

17. We may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how that we own or license (“**Materials**”) in performing the Services. Notwithstanding the delivery of any Reports, we retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them).
18. Upon payment for particular Services and subject to the other terms of this Agreement, you may use the Reports relating to those Services, as well as any Materials owned by us that are included therein, solely to the extent necessary to use the Reports.

## Confidentiality

19. Except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information (other than Tax Advice) provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Either of us may, however, disclose such information to the extent that it:
  - (a) is or becomes public other than through a breach of this Agreement,
  - (b) is subsequently received by the recipient from a third party who, to the recipient’s knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information,
  - (c) was known to the recipient at the time of disclosure or is thereafter created independently,
  - (d) is disclosed as necessary to enforce the recipient’s rights under this Agreement, or
  - (e) must be disclosed under applicable law, legal process or professional regulations.
20. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.

21. Unless prohibited by applicable law, we may provide Client Information to other EY Firms (which are listed at [www.ey.com](http://www.ey.com)) and EY Persons, as well as external third parties providing services on our behalf, who may collect, use, transfer, store or otherwise process (collectively, “**Process**”) it in various jurisdictions in which they operate in order to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, to provide financial accounting and other administrative support services or for quality and risk management purposes. We shall be responsible to you for maintaining the confidentiality of Client Information, regardless of where or by whom such information is Processed on our behalf.
22. With respect to any Services, if U.S. Securities and Exchange Commission auditor independence requirements apply to the relationship between you or any of your associated entities and any EY Firm, you represent, to the best of your knowledge, as of the date of this Agreement and as of the date of each Statement of Work hereunder, that neither you nor any of your affiliates has agreed, either orally or in writing, with any other advisor to restrict your ability to disclose to anyone the tax treatment or tax structure of any transaction to which the Services relate.

## Data protection

23. If we Process Client Information that can be linked to specific individuals (“**Personal Data**”), we will Process it in accordance with Section 21 of this Agreement, as well as applicable law and professional regulations, including, where applicable, the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework, each administered by the U.S. Department of Commerce and to which EY has self-certified (collectively, the “**Privacy Shield Framework**”). Further information (including disclosures required by the Privacy Shield Framework) is set out at [www.ey.com/us/privacyshield](http://www.ey.com/us/privacyshield). We will require any service provider that Processes Personal Data on our behalf to adhere to such requirements. If any Client Information is protected health information under the Health Insurance Portability and Accountability Act, as amended, this Agreement is deemed to incorporate all of the terms otherwise required to be included in a business associate contract relating to such information.

## Fees and expenses generally

24. You shall pay our professional fees and specific expenses in connection with the Services as detailed in the applicable Statement of Work. You shall also reimburse us for other reasonable expenses incurred in performing the Services, as set forth and agreed in the applicable Statement of Work. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which

you shall pay (other than taxes imposed on our income generally). Unless otherwise set forth in the applicable Statement of Work, payment is due within 30 days following receipt of each of our invoices. We may receive rebates in connection with certain purchases, which we use to reduce charges that we would otherwise pass on to you.

25. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

## Force majeure

26. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

## Term and termination

27. This Agreement applies to the Services whenever performed, as of the date of mutual execution of this Agreement.
28. This Agreement shall terminate upon the completion of the Services. Either of us may terminate it, or any particular Services, earlier upon 30 days’ prior written notice to the other. In addition, we may terminate this Agreement, or any particular Services, upon 30 days’ prior written notice (or such shorter period as required by professional obligations or regulatory requirements) to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations.
29. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 30 days following receipt of our invoice for these amounts.
30. The provisions of this Agreement that give either of us rights or obligations beyond the Agreement’s termination shall survive termination of this Agreement, except that our respective confidentiality obligations shall continue thereafter for three years only.

## Governing law and dispute resolution

31. This Agreement, and any non-contractual matters or obligations arising out of this Agreement or the Services, including (without limitation) claims arising in tort, fraud, under statute or otherwise relating to the

Services, or questions relating to the scope or enforceability of this Section 31, shall be governed by, and construed in accordance with, the laws of Nebraska applicable to agreements made, and fully to be performed, therein by residents thereof. Except for a claim seeking solely injunctive relief, any dispute relating to this Agreement or the Services shall be resolved as set forth in Appendix 1 to these Terms and Conditions.

## Miscellaneous

32. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered. In addition, any policy, protocol, agreement (other than this Agreement) or other instrument, in whatever form, imposed at any time that purports to obligate EY, any other EY Firm or any EY Person with respect to the use of Client Information shall be void and of no further effect, and you shall not seek to enforce any such obligation.
33. Both of us may execute this Agreement (including Statements of Work), as well as any modifications thereto, by electronic means and each of us may sign a different copy of the same document. Both of us must agree in writing to modify this Agreement or any Statement of Work hereunder.
34. Each of us represents to the other that each person signing this Agreement or any Statement of Work hereunder on its behalf is expressly authorized to execute it and to bind such party to its terms. You also represent that this Agreement has, if necessary, been considered and approved by your executive board of directors.
35. You agree that we and the other EY Firms may, subject to professional obligations, act for other clients, including your competitors.
36. Neither of us may assign any of our rights, obligations or claims arising out of or related to this Agreement or any Services, except as expressly approved in writing in advance by each of us.
37. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.
38. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Cover Letter, (b) the applicable Statement of Work and any attachments thereto, (c)

these General Terms and Conditions, and (d) other attachments to this Agreement.

39. Neither of us may use or reference the other's name, logo or trademarks publicly without the other's prior written consent, although we may publicly identify you as a client in connection with specific Services or generally.
40. We shall provide and maintain professional liability insurance coverage with the total limits of \$1 million per occurrence and \$1 million aggregate coverage per year (Professional Liability Insurance), and will provide you with a certificate of insurance evidencing such coverage. If the certificate(s) is shown to expire prior to completion of all the terms of this Agreement, we will furnish evidence of a renewal of such coverage. In addition, we will maintain workers' compensation and employers' liability insurance consistent with Nebraska statutory requirements for Coverage A, Workers' Compensation and \$500,000 for each accident for Coverage B, Employers Liability. We will require any and all subcontractors performing work under this Agreement to maintain the same coverage as set forth in this Section 40, and upon your request will provide a subcontractor certificate of insurance evidencing such coverage.
41. For all Services we perform for you, we will comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. We agree to use a federal immigration verification system to determine the work eligibility status of new employees physically performing the Services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
42. We attest that (1) each EY Person performing the Services is properly classified under the Employee Classification Act, (2) such EY Person has completed a Federal I-9 Immigration Form and has such form on file, (3) such EY Person has complied with Nebraska State Statute §4-114, (4) we have no reasonable basis to believe that any EY Person performing the Services is an undocumented worker, and (5) as of the effective date of this Agreement, no EY Person performing the Services is barred from contracting with the State of Nebraska or any political subdivision pursuant to Nebraska State Statute §48-2907 or §48-2912. We shall follow the provisions of the Employee Classification Act and acknowledge that you may terminate this Agreement if we violate the Act.

## **Appendix 1**

### **Dispute resolution procedures**

#### **Mediation**

A party shall submit a dispute to mediation by written notice to the other party or parties. The mediator shall be selected by the parties. If the parties cannot agree on a mediator, the International Institute for Conflict Prevention and Resolution (“CPR”) shall designate a mediator at the request of a party. Any mediator must be acceptable to all parties and must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or substantial equity owner of any EY audit client.

The mediator shall conduct the mediation as he/she determines, with the agreement of the parties. The parties shall discuss their differences in good faith and attempt, with the mediator’s assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. The mediation proceedings shall not be recorded or transcribed.

Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

If the parties have not resolved a dispute within 90 days after written notice beginning mediation (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the parties may seek other avenues for settling the dispute, whether by arbitration or litigation.