

FINANCE MEMORANDUM
#16-03

DATE: February 8, 2016

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: David Willett, Acting City Manager
Jason Loveland, Director of Finance 

SUBJECT: CR – 19 Investment Adviser Agreement Amendment – Insight Investment

RECOMMENDATION:

Attached to this memorandum is a Council Resolution which, if approved, would amend the Investment Advisory Agreement with Insight Investment. Staff recommends approval of the Resolution.

BACKGROUND:

On August 1, 2006, Cutwater Investor Services Corp. (formerly known as MBIA) now doing business as Insight Investment and the City entered into an Investment Advisory Agreement for the Adviser to provide investment advisory services to the City.

The amendment requires Council approval as Municipal Code Section 6-2-5 Contracts With Investment Advisors states, *“Notwithstanding the purchase authorization provided to the City Manager in this Article 2 of Chapter 6, any contract entered into by the City for the purpose of obtaining investment advice or otherwise managing the funds of the City shall be approved by resolution of the City Council.”*

While the majority of the amendments are administrative in nature, the minimum pricing per month has been changed from \$1,000 to \$2,000. The City’s average monthly charge in 2015 was \$2,681, or approximately \$32,000. The 11 basis points (.0011) per annum has not changed. The adviser currently manages \$29 million of City funds.

The original agreement has been included for reference.

BUDGET IMPACT:

The amendment will not adversely affect the budget, as the associated fees have been accounted for in the 2016 budget.

STAFF REFERENCE:

Contact Jason Loveland at jloveland@northglenn.org or at 303-450-8817.

Attachment 1: MBIA Municipal Investors Service Corporation Investment Advisory Agreement – Non-Discretionary.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-19
Series of 2016

Series of 2016

A RESOLUTION APPROVING AN AMENDMENT TO THE INVESTMENT ADVISORY AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND CUTWATER INVESTOR SERVICES CORP. D/B/A INSIGHT INVESTMENT FOR INVESTMENT ADVISORY SERVICES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Amendment to Investment Advisory Agreement between the City of Northglenn and Cutwater Investor Services Corp. d/b/a Insight Investment, attached hereto, for investment advisory services is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED, at Northglenn, Colorado, this _____ day of _____, 2016.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney



INVESTMENT ADVISORY AGREEMENT

AMENDMENT

On August 1, 2006, Cutwater Investor Services Corp. ("Adviser", formerly known as MBIA Municipal Investors Service Corporation) now doing business as Insight Investment and the City of Northglenn, Colorado ("Client") entered into an Investment Advisory Agreement – Non-Discretionary ("Agreement") for the Adviser to provide investment advisory services to the Client.

Section 13. Termination; Assignment; Amendment, provides that the Agreement may be amended or modified at any time by mutual agreement in writing. The Adviser and Client agree to amend the Agreement, effective December 1, 2015, as follows:

- Section 2. Duties of the Adviser, is modified to add the following language after the second paragraph of this section:

"The Client agrees that the Adviser assumes no responsibility or liability, for any Client investments for which the Adviser has not been appointed as Investment Adviser. The Client understands that this Agreement does not require or obligate the Adviser to provide legal or tax advice services to the Client and that the Adviser is not providing such services to the Client.

The Adviser will not advise or take any action on behalf of the Client or provide advice for any legal proceedings involving securities held in or formerly held in the Advisory Account, including bankruptcies and class actions without the consent of the Client; provided however Client acknowledges the Adviser may participate from time to time on ad hoc or official committees related to the affairs of issuers whose securities or obligations may be held in the Advisory Account. The Adviser will not file proofs of claim relating to the securities comprising the Advisory Account or any other matter and will not notify the Firm or its Custodian of class action settlements or bankruptcies related to the Advisory Account."

- Section 4. Changes in Investment Policies or Assets in the Account, is modified to add the following language to the end of the first sentence:

“,including changes or other actions that are required to be put in place in order to comply with applicable statutory or regulatory provisions”

- Section 16. Term of the Agreement provides that the term of the Agreement, “.....shall be for the period August 1, 2006 through December 31, 2006 and shall automatically renew on annual basis for the years or 2007, 2008, 2009 and 2010, unless the Client notifies the Adviser, prior to the expiration of the applicable term, orally or in writing of the Client’s intent to not renew this Agreement.”

By mutual agreement, the term of the Agreement was extended through December 31, 2015 with amendments to certain provisions of the Agreement. At this time the Adviser and the Client desire





to extend the Agreement, as amended, for an additional one-year period. It is therefore agreed that the term of the Agreement, as amended, is extended to December 31, 2016.

- Section 17. Insurance, is modified to delete the words "be endorsed to" from the first sentence of subsection e.
- Section 17. Insurance, is modified to delete subsection h.
- Section 17. Insurance, subsection i is deleted in its entirety and replaced with the following:

" i. The parties hereto understand and agree that the Client, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently three hundred fifty thousand dollars (\$350,000) per person and nine hundred ninety thousand dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101 et seq., 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the Client, its officers, or its employees."

- Signature Page, Adviser's address has been updated to the following:

"1331 Seventeenth Street, Suite 602, Denver, CO 80202."

- Exhibit B Work to be Performed, 6th bullet point is modified to delete the words "(including balances in local government investment pools)".
- Exhibit B Work to be Performed, 10th bullet point, "Evaluate safekeeping and custodial procedures and agreements." is hereby deleted.
- Exhibit C Fee Schedule for Investment Advisory Services, is deleted in its entirety and replaced with the following:

"The annual fee for providing investment advisory services for the City of Northglenn is as follows:

11 basis points (.11%) per annum

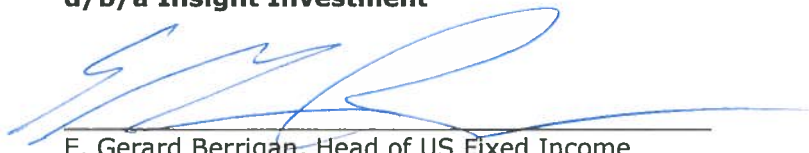
The fees for investment advisory services will be charged monthly based on the average market value of the cash and securities in the portfolio (an average of last month's ending market value and the current month's ending market value). A pro rata portion of the annual fee (1/12) is billed each month for which this Agreement is in effect.

Monthly fees are based on the schedule outlined above, but at no time shall the monthly fee be less than \$2,000."



All other terms and conditions of the Agreement between the Adviser and the Client remain unchanged.

**Cutwater Investor Services Corp.
d/b/a Insight Investment**



E. Gerard Berrigan, Head of US Fixed Income

1/5/16

Date

CITY OF NORTHGLENN, COLORADO

Joyce Downing, Mayor

Date

ATTEST:

Johanna Small, CMC, City Clerk

Date

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

Date

08-01-2006

Attachment 1

2006V00005

MBIA MUNICIPAL INVESTORS SERVICE CORPORATION
Investment Advisory Agreement – Non-Discretionary

This Agreement, dated as of the 1st day of August 2006 (this "Agreement"), is by and between MBIA Municipal Investors Service Corporation (the "Adviser") and the City of Northglenn, Colorado (the "Client"). The parties agree as follows:

1. Appointment

The Client hereby appoints the Adviser as the investment adviser of those assets designated by the Client (the "Advisory Account").

2. Duties of the Adviser

The Adviser shall invest the assets of the Advisory Account as directed by the Client in accordance with the written investment objectives, policies and restrictions of the Client. The Client shall provide the Adviser with an initial Investment Policy or list of authorized investments which shall be incorporated in Exhibit A.

The Adviser will provide to the Client monthly a written report detailing transactions for the period and an inventory of the investments in the Advisory Account. It is agreed that the Adviser, in the maintenance of records, does not assume responsibility for the accuracy of information furnished by the Client or any other person.

Any additional investment management services the Adviser shall provide to the Client are listed in Exhibit B.

3. Non-Discretionary Authority

It is agreed that decisions concerning investments subject to this Agreement shall be made by the Client's authorized representative with the assistance of the Adviser. The approval of the Client is required prior to the execution of any investment transaction for the Advisory Account. The Adviser, when expressly instructed by the Client, will buy or sell securities and place orders for the execution of such transactions with or through such brokers, dealers, or issuers as the Adviser may select, subject to approval by the Client.

4. Changes in Investment Policies or Assets in the Account

The Client is required to notify the Adviser promptly in writing of any modifications to the investment objectives, policies or restrictions applicable to the Advisory Account. The Client agrees to notify the Adviser promptly of any withdrawal of securities from the Advisory Account initiated by the Client.

5. Allocation of Brokerage

When placing orders for the execution of transactions for the Advisory Account, the Adviser will take into consideration not only the available prices but also other relevant factors such as, without limitation, execution capabilities and safekeeping arrangements. The Adviser will exercise good faith in obtaining the best price and execution for each transaction for the Advisory Account.

6. Safekeeping and Custody

The Adviser will not have custody or possession of the assets of the Advisory Account of the Client. The Client shall select and authorize a custodian bank or brokerage firm to hold the assets of the Advisory Account in safekeeping for the Client. The Client shall be solely responsible for all fees involved with any custodial arrangements.

7. Fees

The compensation of the Adviser for its services under this Agreement shall be calculated and paid in accordance with the Fee Schedule in Exhibit C, as the same may be amended from time to time by mutual agreement of the Client and the Adviser.

8. Limitation of Liability

The Adviser will not be liable for any error in judgment or any acts or omissions to act except those resulting from the Adviser's gross negligence, willful misconduct or reckless disregard of its duties and obligations under this Agreement. Nothing herein shall in any way constitute a waiver or limitation of any right of any person under the federal and state securities laws.

9. Services to Other Clients

It is understood that the Adviser performs investment advisory services for other clients. The Client agrees that the Adviser may give advice and take action with respect to any of its other clients which may differ from advice given, or the timing, or nature of action taken, with respect to the Advisory Account.

10. Representations by the Client

The Client represents that the terms of this Agreement do not violate any obligation by which the Client is bound, whether arising by contract, operation of law, or otherwise, and that this Agreement has been duly authorized by appropriate action and is binding upon the Client in accordance with its terms.

11. Acknowledgment of Receipt of Brochure (Form ADV Part II)

The Client hereby acknowledges receipt of the Adviser's Brochure (Form ADV Part II) at least 48 hours prior to the date of execution of this Agreement in compliance with Rule 204-3 of the Investment Advisers Act of 1940 ("the Act").

12. Notice

All notices and other communications shall be deemed effective when received, in writing, at the addresses appearing below. Receipt of written notice shall be presumed if mailed postpaid by registered or certified mail, return receipt requested. Each party shall be entitled to presume the correctness of such address until notified in writing to the contrary.

13. Termination; Assignment; Amendment

This Agreement may be terminated at any time by either party giving to the other at least thirty (30) days' prior notice of such termination confirmed in writing. If any fees have been paid in advance, the Adviser will refund to the Client a prorata share of the fee. No assignment, as that term is defined in the Act, of this Agreement shall be made by either party without the consent of the other. This Agreement may be amended or modified at any time by mutual agreement in writing.

14. Counterparts

This Agreement may be executed in two or more counterparts, each one of which shall be deemed to be an original.

15. Governing Law

To the extent federal law does not apply, this Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

16. Term of the Agreement

The term of this Agreement shall be for the period August 1, 2006 through December 31, 2006, and shall automatically renew on annual basis for the years of 2007, 2008, 2009 and 2010, unless the Client notifies the Advisor, prior to the expiration of the applicable term, orally or in writing of the Client's intent to not renew this Agreement. If this Agreement is renewed, the

Client agrees that it will pay the Adviser all amounts due under this Agreement for its services during the renewal year. If the Client fails to renew this Agreement, Client will have no obligation to pay the Adviser for services beyond the applicable term, nor will the Adviser have any obligation to provide services beyond that time.

17. Insurance

Advisor shall procure and maintain at its own cost, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Client. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Advisor. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- a. Workmen's compensation insurance as required by law.
- b. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations.
- c. Excess/umbrella liability insurance with minimum combined single limits of five million dollars (\$5,000,000) each occurrence and five million dollars (\$5,000,000) general aggregate.
- d. Professional liability insurance (investment advisors errors and omissions insurance) with minimum limits of fifteen million dollars (\$15,000,000) each claim and sixty million dollars (\$60,000,000) general aggregate.
- e. The policies providing the insurance described in Subsections (a), (b) and (c) above shall be endorsed to include the Client and the Client's officers, employees, and consultants as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Client, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Advisor. Advisor shall be solely responsible for any deductible losses under any policy required above.
- f. The certificate of insurance provided for the Client shall be completed by Advisor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Client prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Client. The completed certificate of insurance shall be sent to:

City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061
Attn: Brent Worthington

- g. Failure on the part of Advisor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the Client may immediately terminate this Agreement, or at its discretion, the Client may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Client shall be repaid by Advisor to the Client upon demand, or

the Client may offset the cost of the premiums against any monies due to Advisor from the Client.

h. The Client reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

i. The parties hereto understand and agree that the Client, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101 et seq., 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the Client, its officers, or its employees.

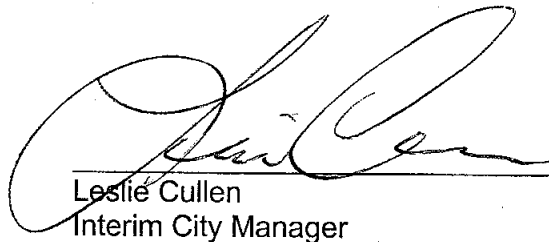
18. Entire Agreement

This Agreement constitutes the entire agreement of the parties with respect to the management of the Advisory Account. The Exhibits referenced herein are incorporated into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective representatives as of the date first above written.

City of Northglenn

APPROVED BY:



Leslie Cullen
Interim City Manager

ADDRESS:

11701 Community Center Drive
Northglenn, CO 80233

MBIA Municipal Investors Service Corporation

BY:



Mary Donovan, CFA
Vice President

ADDRESS:

1700 Broadway, Suite 2050
Denver, CO 80290

Exhibit A

Authorized Investments

Insert a copy of the Client's Investment Policy or a List of Authorized Investments that specifies the types of securities, maximum maturity, credit ratings, diversification or percent of portfolio limits, and any other specified guidelines.

Exhibit B

Work to be Performed

MBIA Municipal Investors Service Corporation will provide the following services for the City of Northglenn:

- Provide full-time non-discretionary management of the Advisory Account.
- Develop and implement investment strategies for the Advisory Account that will seek to enhance portfolio performance under current and future market conditions within the parameters of the investment policy and cash flow needs.
- Provide technical and fundamental market research, including yield curve analysis.
- Obtain and document competitive prices for securities transactions.
- Assist with trade settlements.
- Provide monthly investment reports for the portfolio detailing securities holdings (including balances in local government investment pools), portfolio composition and sector analyses, portfolio return and weighted average maturity, and daily transaction activity.
- Provide separate portfolio performance reports.
- Perform due diligence reviews of current and proposed broker/dealers.
- Monitor the creditworthiness of the investments in the portfolio.
- Evaluate safekeeping and custodial procedures and agreements.
- Review and update the City's investment policy as needed.
- Work with the City to develop and update cash flow projections.
- Provide training to staff on investment management subjects as requested.
- Provide reviews of the investment program and portfolio performance with the finance staff, investment committee and/or governing body upon request.

Exhibit C

Fee Schedule for Investment Advisory Services

The annual fee for providing investment advisory services for the City of Northglenn is as follows:

11 basis points (.11%) per annum
Not to exceed \$49,000 per year

The fees for investment advisory services are based on the average value (cost basis) of assets under management (excluding balances in local government investment pools). A pro rata portion of the annual fee (1/12) is billed each month based on the average asset value of the portfolio for the month. The fee shall be payable upon receipt of billing from the Adviser.

Monthly fees are based on the schedule outlined above, but at no time shall the monthly fee be less than \$1,000. (This minimum monthly fee will not apply to accounts that are entirely comprised of proceeds from the sale of bonds.)