

OVERSIGHT BOARD RESOLUTION NO. 2014-08

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AGREEMENT FOR CONSULTANT SERVICES (ARBITRAGE COMPLIANCE SPECIALISTS, INC.)

WHEREAS, the Community Development Agency of the City of Mission Viejo (“Agency”) was established as a redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* (“CRL”), and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council of the City of Mission Viejo (“City”); and

WHEREAS, Assembly Bill x1 26 chaptered and effective on June 27, 2011 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484 chaptered and effective on June 27, 2012 (together, the “Dissolution Act”); and

WHEREAS, as of February 1, 2012 the Agency was dissolved pursuant to the Dissolution Act and as a separate legal entity the City serves as the Successor Agency to the Community Development Agency of the City of Mission Viejo (“Successor Agency”); and

WHEREAS, the Successor Agency administers the enforceable obligations of the former Agency and otherwise unwinds the Agency’s affairs, all subject to the review and approval by a seven-member oversight board (“Oversight Board”); and

WHEREAS, pursuant to Section 34179 the Successor Agency’s Oversight Board has been formed and the initial meeting has occurred on March 29, 2012 and

WHEREAS, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Act; and

WHEREAS, Section 34171(d)(1)(F) defines “enforceable obligation” to include: “Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part,...”; and

WHEREAS, the Successor Agency desires to enter into that certain *Agreement for Consultant Services (Arbitrage Compliance Specialists, Inc.)* (“Arbitrage Compliance Services Agreement”) (Attachment 1) for arbitrage compliance services related to the 1999 Variable Rate Demand Revenue Bonds (Mission Viejo Mall Improvement Project); and

WHEREAS, the Oversight Board has reviewed the Arbitrage Compliance Services Agreement and desires to authorize the Successor Agency to enter into such agreement, and subject to approval of such contract by the Successor Agency to cause posting of this Resolution on the Successor Agency website, and to direct transmittal thereof with a copy of such contract to the County Auditor-Controller and Department of Finance (“DOF”); and

WHEREAS, pursuant to Section 34179(h) as amended by Assembly Bill 1484, written notice and information about all actions taken by the Oversight Board shall be

provided to the DOF by electronic means and in a manner of DOF's choosing, and an Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO:

Section 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

Section 2. Pursuant to the Dissolution Act, the Oversight Board authorizes the Successor Agency to enter into the *Agreement for Consultant Services (Arbitrage Compliance Specialists)*, which is incorporated herein by this reference. (Attachment 1)

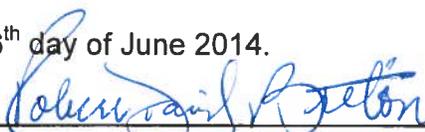
Section 3. The Oversight Board authorizes transmittal of such contract to the County Auditor-Controller and DOF.

Section 4. The City Treasury Manager of the Successor Agency or an authorized designee is directed to post this Resolution on the Successor Agency website pursuant to the Dissolution Act.

Section 5. Pursuant to Section 34179(h) as amended by Assembly Bill 1484, written notice and information about all actions taken by the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing. An Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

Section 6. The Secretary of the Oversight Board shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this 26th day of June 2014.



Robert D. Breton, Chair
Oversight Board of the Successor Agency to the
Community Development Agency of the City of
Mission Viejo

ATTEST



Sherry Merrifield, Secretary
Oversight Board of the Successor Agency
to the Community Development Agency of the City of Mission Viejo

APPROVED AS TO FORM:
HARPER & BURNS LLP



John R. Harper, Esq.
Oversight Board Counsel

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF MISSION VIEJO)

I, Sherry Merrifield, Secretary of the Oversight Board of the Successor Agency to the Community Development Agency of the City of Mission Viejo, hereby certify that the foregoing resolution was duly adopted by the Oversight Board at a regular meeting held on the 26th day of June 2014, and that it was so adopted by the following vote:

AYES: Chairperson Breton, Vice-Chairperson Butterfield, Board Member
 Dyas and Board Member Fitzsimons

NOES: None

ABSENT: Board Member Hampton, Board Member Probolsky and Board Member
 Reardon



Sherry Merrifield, Secretary
Oversight Board of the Successor Agency to the
Community Development Agency of the City of
Mission Viejo

ATTACHMENT 1
to Oversight Board Resolution No. 2014-08
Agreement for Consultant Services (Arbitrage Compliance Specialists)
(attached)

**SUCCESSOR AGENCY OF THE COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF MISSION VIEJO**

**AGREEMENT WITH ARBITRAGE COMPLIANCE SPECIALISTS, INC
FOR ARBITRAGE REBATE CALCULATION SERVICES**

This **AGREEMENT FOR CONSULTANT SERVICES (Arbitrage Compliance Specialists, Inc.)** ("Agreement") is made and effective as of **July 1, 2014**, between the **SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO**, a public body corporate and politic, ("Successor Agency") and **Arbitrage Compliance Specialists, Inc.**, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on **July 1, 2014**, and shall remain and continue in effect until tasks described herein are completed, but in no event later than **June 30, 2015**, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES.** Consultant shall perform the tasks described and set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in **Exhibit A**.

3. **PERFORMANCE.** Consultant shall at all times faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks described herein. Consultant represents to the Successor Agency that it has the qualifications necessary to perform the tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PAYMENT.**

a. Subject to the Dissolution Act, the Successor Agency agrees to pay Consultant quarterly, in accordance with the payment rates and terms and the Compensation schedule set forth in **Exhibit B** attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the tasks described in Exhibit A. This amount shall not exceed **One Thousand Two Hundred Fifty Dollars (\$1,250.00)** for the total one-year term of this Agreement unless additional payment is approved as provided in this Agreement. Any terms or conditions set forth on **Exhibit A or Exhibit B** that do not describe the work to be performed, the payment rates and terms, or the payment schedule have not been agreed to by the Successor Agency and shall not be deemed a part of this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Successor Agency (and approved by the Oversight Board, as and if applicable.) Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the Successor Agency and Consultant at the time Successor Agency's written authorization is given to Consultant for the performance of said services. The Successor Agency may approve additional work not to exceed a cumulative contract total of thirty thousand dollars (\$30,000.00). Any additional work in excess of this amount shall be approved by the Oversight Board and the Successor Agency.

c. Consultant shall submit invoices quarterly for actual services performed. Invoices shall be submitted on or about the first business day of each quarter, for services provided in the previous quarter. Payment shall be made within thirty (30) days of receipt of each invoice as to all undisputed fees. If the Successor Agency disputes any of consultant's fees it shall give written notice to Consultant within 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

d. Notwithstanding the above provisions, Consultant shall not be paid for any work performed until it has submitted to the Successor Agency a fully completed and executed Internal Revenue Service Form W-9.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. The Successor Agency may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice of termination. Successor Agency shall not be obligated to explain its reasons for termination. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Successor Agency suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the Successor Agency shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the Successor Agency. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the Successor Agency pursuant to Section 4.

6. DEFAULT OF CONSULTANT.

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, Successor Agency shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to

the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager acting on behalf of the Successor Agency or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the Successor Agency shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by Successor Agency that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of Successor Agency or its designees at reasonable times to such books and records, shall give Successor Agency the right to examine and audit said books and records, shall permit Successor Agency to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the Successor Agency and may be used, reused or otherwise disposed of by the Successor Agency without the permission of the Consultant. With respect to computer files, Consultant shall make available to the Successor Agency, upon reasonable written request by the Successor Agency, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION. The Consultant agrees to defend, indemnify, protect and hold harmless the Successor Agency, the City of Mission Viejo, and the Mission Viejo Housing Authority and their officers, elected and appointed officials, employees, agents, and volunteers ("Indemnitees") from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the Indemnitees may sustain or incur or which may be imposed upon them

for injury to or death of persons, or damage to property arising out of Consultant's actions, inaction, negligence, intentional misconduct, errors or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the affirmative negligence or willful misconduct of the Successor Agency.

9. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to the Successor Agency a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither Successor Agency nor any of its officers, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the Successor Agency. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against Successor Agency, or bind Successor Agency in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Successor Agency shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Successor Agency. Successor Agency shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The Successor Agency, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

11. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Successor Agency's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager acting on behalf of the Successor Agency or unless requested by the Successor Agency legal counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Successor Agency. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives Successor Agency notice of such court order or subpoena.

b. Consultant shall promptly notify Successor Agency should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any person regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Successor Agency. Successor Agency retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Successor Agency and to provide Successor Agency with the opportunity to review any response to discovery requests provided by Consultant. However, Successor Agency's right to review any such response does not imply or mean the right by Successor Agency to control, direct, or rewrite said response.

12. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

To Successor Agency: Successor Agency of the Community
Development Agency of the City of Mission Viejo
200 Civic Center
Mission Viejo, California 92691
Attention: Successor Agency Director of
Administrative Services

To Consultant: Arbitrage Compliance Specialists, Inc.
5975 S. Quebec St. #205
Centennial, CO 80111
Attention: Robert Goubert

13. ASSIGNMENT. The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the Successor Agency. Because of the personal nature of the services to be rendered pursuant to this Agreement, only **Robert Goubert** shall perform the services described in this Agreement. **Robert Goubert** may use assistants, under their direct supervision, to perform some of the services under this Agreement. Consultant shall provide Successor Agency fourteen (14) days' notice prior to the departure of **Robert Goubert** from Consultant's employ. Should he or she leave Consultant's employ, the Successor Agency shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

14. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

15. GOVERNING LAW. The Successor Agency and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

16. LITIGATION. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the Successor Agency of Mission Viejo. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

17. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CONSULTANT:

Arbitrage Compliance Specialists, Inc.



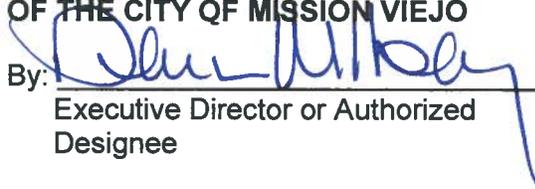
By: Robert Goubert



By: Doug Pahnke

SUCCESSOR AGENCY:

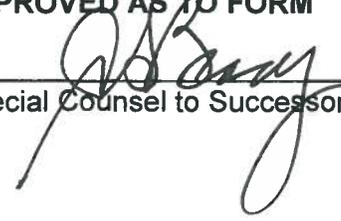
**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF MISSION VIEJO**

By: 
Executive Director or Authorized
Designee

ATTEST:


City Clerk
on behalf of the Successor Agency

APPROVED AS TO FORM


Special Counsel to Successor Agency



February 07, 2014

EXHIBIT A

Ms. Josephine V. Julian, Treasury Manager
City of Mission Viejo, California ("Issuer")
200 Civic Center
Mission Viejo, CA 92691

ENGAGEMENT LETTER FOR ARBITRAGE COMPLIANCE SERVICES

CONTROL #4.00

\$31,100,000.00 VARIABLE RATE DEMAND REVENUE BONDS, 1999 SERIES A

Arbitrage Compliance Specialists, Inc. ("ACS") is pleased to present our fees to provide arbitrage compliance services for the Issuer. Our firm has distinctive legal and accounting experience with arbitrage compliance services dating back to the inception of the arbitrage rebate regulations of 1986. ACS is one of the most prominent and well-respected providers of arbitrage compliance services in the nation. ACS' staff members are accounting professionals who have extensive knowledge of governmental accounting, accounting allocation methods and legal interpretation skills to compute the lowest permissible liability allowed. We pride ourselves on our unprecedented commitment to each and every client we represent.

ACS has provided a fee schedule to encompass the various elements that we may encounter during the calculations. ACS' fees are derived by the number of years included in the calculation. The fee schedule listed on page 2 provides fees for reports covering the applicable periods. Each calculation includes both a legal opinion and a CPA opinion to provide assurance that the calculations were completed according to Section 148(f) of the Internal Revenue Code of 1986 that governs the arbitrage rebate requirements (the "Tax Code").

We appreciate the opportunity to provide assistance to help the Issuer comply with the IRS arbitrage compliance requirements. As always, if we may be of further assistance or if there are any questions, please do not hesitate to call us at (800) 672-9993 ext.7536.

Sincerely,

Arbitrage Compliance Specialists, Inc.

Robert Goubert, Vice President

Please acknowledge acceptance of this engagement by signing and faxing this letter in its entirety to Arbitrage Compliance Specialists, Inc. at (800) 756-6505 or scanning and e-mailing to Robert@rebatebyacs.com.

Accepted by – Signature

Print Name, Title

Date



Bond Compliance Program Services:	Fees
Arbitrage Rebate Calculation 15th Year: 05/19/2013 to 05/19/2014	\$1,250.00
TOTAL	\$1,250.00

Arbitrage Rebate Calculation Services	
Yield Restriction Calculation (Per Report Period)	Included
Spending Exception Calculations (Per 6-Month Report Period)	Included
Commingled Funds and / or Transferred Proceeds	Included
Preparation of IRS Form 8038-T and IRS Filing Instructions	Included
Legal Services	
IRS Audit Assistance (For Bond Issues Completed By ACS)	Included
Post-Calculation Services	
Debt Compliance Monitoring Service	Included
Record Retention Service	Included

Calculation Services

1. Review the documents related to the debt issue to include the Official Statement, Tax Certificate, IRS Form 8038-G and CPA Verification Report.
2. Complete an in-depth analysis of the debt structure by our in-house tax attorney to determine if the debt issue is subject to rebate and/or yield restriction and identify applicable exceptions.
3. Monitor IRS filing deadlines, election requirements and restricted periods in our database tracking system to ensure timely reporting.
4. Perform the rebate, yield restriction/yield reduction or spending exception/penalty calculations in compliance with Internal Revenue Code of 1986.
5. Provide calculations with legal opinion and CPA certified professional opinion that can be relied upon by the Issuer regarding the liability. The report will provide supporting documentation to include the calculation method employed, assumptions and conclusions.
6. Prepare payment Form 8038-T with detailed filing instructions for accurate and timely filing to the IRS, if applicable.

Support Services

7. Discuss the report and findings to ensure a complete understanding of the procedures and recommendations in such report.
8. Prepare a debt compliance monitoring schedule that identifies all-important relevant information by issue including prior calculations, liability amounts, future calculation due dates and important status notes.
9. Advise on how future changes in the Tax Code may affect the debt issue.
10. Provide technical assistance and consultation in matters related to the arbitrage compliance regulations.
11. Assist in the IRS record retention requirements, which include storage of records related to the debt issue.
12. Provide no cost audit support in the event of an IRS audit.