

OVERSIGHT BOARD RESOLUTION NO. 2017-03

**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 AMEND 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 amend certain *Agreement for Consultant Services (Arbitrage Compliance Specialists, Inc.)* ("Arbitrage Compliance Services Agreement") 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 Second Amendment (Attachment 1) to the Arbitrage Compliance Services Agreement and desires to authorize the Successor Agency to enter into the Second Amendment 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 the Second Amendment to the 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 *Second Amendment to Agreement for Consultant Services (Arbitrage Compliance Specialists)*, which is incorporated herein by this reference. (Attachment 1)

**Section 3.** The Oversight Board authorizes transmittal of the Second Amendment to the 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 26<sup>th</sup> day of January 2017.



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Brian Probolsky, Chairperson  
Oversight Board of the Successor Agency to the  
Community Development Agency of the City of Mission  
Viejo

APPROVED AS TO FORM:  
HARPER & BURNS LLP



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John R. Harper, Esq.  
Oversight Board Counsel

ATTEST

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

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 26<sup>th</sup> day of January 2017, and that it was so adopted by the following vote:

- AYES:            Chairperson Probolsky, Vice-Chair Butterfield, Board Member Breton,  
                    Board Member Dyas, Board Member Kelley and Board Member McCord
- NOES:           None
- ABSENT:        Board Member Hampton

*Sherry Merrifield*  
\_\_\_\_\_  
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. 2017-03**  
**Second Amendment to Agreement for Consultant Services**  
**(Arbitrage Compliance Specialists)**  
**(attached)**

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

**SECOND AMENDMENT TO AGREEMENT  
WITH ARBITRAGE COMPLIANCE SPECIALISTS, INC.  
FOR ARBITRAGE REBATE CALCULATION SERVICES**

THIS SECOND AMENDMENT TO CONSULTANT AGREEMENT (hereafter "Second Amendment") is made and effective as of July 1, 2016, by and between the SUCCESSOR AGENCY OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO, a public body corporate and politic, (hereafter "Successor Agency") and Arbitrage Compliance Specialist, Inc., a California corporation (hereafter "Consultant"). In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

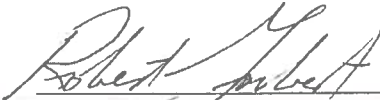
1. This Second Amendment is made and entered into with respect to the following facts:
  - a. On July 1, 2014, the Successor Agency and Consultant entered into that certain agreement entitled "Successor Agency of the Community Development Agency of the City of Mission Viejo Agreement with Arbitrage Compliance Specialists, Inc. for Arbitrage Rebate Calculation Services" in which the Consultant agreed to provide certain services for the Successor Agency (hereafter "Agreement"). The California Department of Finance approved this Agreement in a letter dated August 19, 2014.
  - b. On July 1, 2015, the Successor Agency and Consultant entered into a First Amendment to Agreement extending the term of this Agreement to June 30, 2016. The Department of Finance approved this First Amendment to Agreement in a letter dated November 9, 2015.
  - c. Successor Agency and Consultant desire to make certain modification to the Agreement as set forth in this Second Amendment
2. Section 1, 2 and 4 a. of the Agreement is hereby amended to read 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, 2019, unless sooner terminated pursuant to the provisions of this Agreement.
  2. SERVICES. Consultant shall perform the tasks described and set forth in Exhibit A-2, 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-2.

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 A-2 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-2. This amount shall not exceed Two Thousand Nine Hundred Fifty Dollars (\$2,950.00) for the additional term of this Agreement. Any terms or conditions set forth on Exhibit A-2 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.

3. Except as otherwise specifically provided in this Second Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

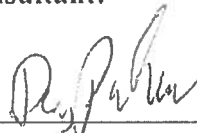
**Consultant:**

  
By: Robert Goubert                      2/1/17  
Date

**SUCCESSOR AGENCY:**

Successor Agency to the Community  
Development Agency of the City of  
Mission Viejo

**Consultant:**

  
By: Doug Pahnke                      2/1/17  
Date

By: Dennis Wilberg                      Date  
Title: City Manager

**Attest:**

\_\_\_\_\_  
Karen Hamman                      Date  
City Clerk  
On behalf of the Successor Agency

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 A-2 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-2. This amount shall not exceed Two Thousand Nine Hundred Fifty Dollars (\$2,950.00) for the additional term of this Agreement. Any terms or conditions set forth on Exhibit A-2 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.

3. Except as otherwise specifically provided in this Second Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

**Consultant:**

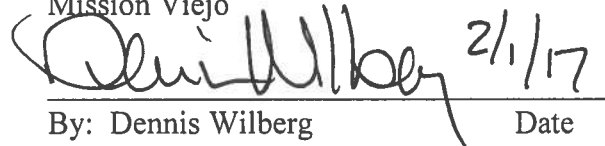
\_\_\_\_\_  
By: Robert Goubert                      Date

**Consultant:**

\_\_\_\_\_  
By: Doug Rannke                      Date

**SUCCESSOR AGENCY:**

Successor Agency to the Community  
Development Agency of the City of  
Mission Viejo

 2/1/17  
\_\_\_\_\_  
By: Dennis Wilberg                      Date

Title: City Manager

**Attest:**

 2/1/17  
\_\_\_\_\_  
Karen Hamman                      Date

City Clerk

On behalf of the Successor Agency



January 10, 2017

Exhibit A-2

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](mailto:Robert@rebatebyacs.com).

\_\_\_\_\_  
Accepted by – Signature

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Date





<b>Bond Compliance Program Services:</b>	<b>Fees</b>
Arbitrage Rebate Calculation 20th Year: 05/19/2016 to 05/19/2019	\$2,950.00
<b>TOTAL</b>	<b>\$2,950.00</b>

<b>Arbitrage Rebate Calculation Services</b>	
Comprehensive Arbitrage Compliance Analysis/Set-Up	Included
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
<b>Legal Services</b>	
IRS Audit Assistance (For Bond Issues Completed By ACS)	Included
<b>Post-Calculation Services</b>	
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.