

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR ARBITRAGE REBATE COMPLIANCE SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Arbitrage Compliance Services, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide arbitrage rebate compliance services (hereinafter "Services") pursuant to SOQ 04-029; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor shall render Services to County as defined in the Engagement Letter for Arbitrage Compliance Services for Fort Bend County dated August 9, 2017 attached hereto as Exhibit A and incorporated herein for all purposes.

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is twenty thousand dollars and 00/100 (\$20,000.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written amendment executed by the parties.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Auditor, one (1) electronic (pdf) copy and/or one (1) original hard copy of invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of twenty thousand dollars and 00/100 (\$20,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed twenty thousand dollars and 00/100 (\$20,000.00).

Section 5. Time of Performance

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County and end no later than September 30, 2018. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – County may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time

of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Contractor, excluding Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during

or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Auditor's Office Attn: County Auditor 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
Contractor:	Arbitrage Compliance Specialists, Inc. 5975 S. Quebec Street, Suite 205 Centennial, Colorado 80111

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Representation

16.1 Contractor represents to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor represents to County that the Services will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 17. Assignment and Delegation

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the dated signed by the last party hereto.

FORT BEND COUNTY

Robert E. Hebert, County Judge

Date

ATTEST:

Laura Richard, County Clerk

ARBITRAGE COMPLIANCE SERVICES, INC



Authorized Agent- Signature

Doug Pahnke

Authorized Agent- Printed Name

President

Title

Aug. 16, 2017

Date

APPROVED:

Robert Ed Sturdivant, County Auditor

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

EXHIBIT A



August 9, 2017

Mr. Ed Sturdivant, CPA, County Auditor
Fort Bend County
301 Jackson Street, Suite 533
Richmond, Texas 77469

Dear Mr. Sturdivant:

**ENGAGEMENT LETTER FOR ARBITRAGE COMPLIANCE SERVICES FOR
FORT BEND COUNTY**

The purpose of this letter is to propose our engagement to prepare arbitrage compliance computations as required by the Department of the U.S. Treasury, Internal Revenue Service ("IRS") for Fort Bend County ("County").

Arbitrage Compliance Specialists, Inc. ("ACS") has been providing arbitrage rebate services for the County for over ten years. Our fees to complete arbitrage rebate compliance services are included as Attachment A. There have been no fee increases over our last engagement with the County.

This engagement shall become effective at the date of acceptance by the County and remain in effect thereafter, for a period of five years from the date of acceptance. This engagement can be terminated by the County or ACS upon a 30 day written notice.

In conjunction with this engagement, we will provide the applicable report(s) opining to the arbitrage compliance liability for the tax-exempt debt and related services.

We appreciate the opportunity to provide assistance to the County in complying with the IRS arbitrage compliance requirements. As always, if we may be of further assistance or if you have any questions, please do not hesitate to call us at 1-800-672-9993.

Very truly yours,

Matt Collins
Account Manager

Please acknowledge acceptance of this engagement by signing and faxing this letter in its entirety to 1-800-756-6505.

Accepted by – Signature

Date



ATTACHMENT A
FEE SCHEDULE

FEE SCHEDULE

Rebate Report Fees:

Fixed Rate Bonds:

One Year Report (computation period of up to one year)	\$1,500
Two Year Report (computation period of up to two years)	\$2,375
Three Year Report (computation period of up to three years)	\$3,250
Four Year Report (computation period of up to four years)	\$4,125
Five Year Report (computation period of up to five years)	\$5,000

Variable Rate Bonds:

One Year Report (computation period of up to one year)	\$1,800
Two Year Report (computation period of up to two years)	\$2,675
Three Year Report (computation period of up to three years)	\$3,550
Four Year Report (computation period of up to four years)	\$4,425
Five Year Report (computation period of up to five years)	\$5,300

Recovery of Overpayment:

Preparation and Filing Fee for Request to the IRS for Recovery for Overpayment of Rebate... \$4,500
(The fee includes up to 6 hours of follow up calls with the IRS, additional hours will be billed at \$150 per hour.)

Yield Reduction/Restriction Report Fee:

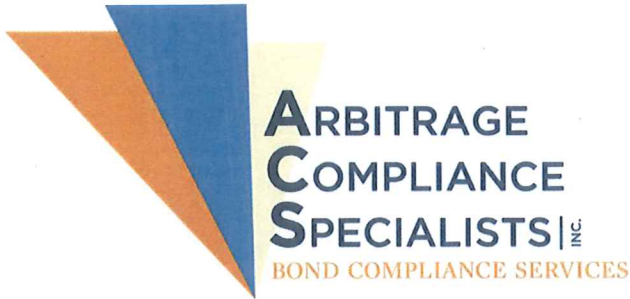
Yield Reduction/Restriction Calculations (per year) \$900

Penalty/Spending Exception Report Fees:

Spending Exception Calculations - Per Semi-Annual Spending Period \$1,000

Rebate Supplemental Fees (per Report):

Refunding Bonds with Transferred Proceeds Allocations Hourly; Rate \$150, not to exceed \$500
Allocation/Review/Verification of Commingled Funds..... Hourly; Rate \$150, not to exceed \$500



Bond Compliance Program Budget

Fort Bend County, Texas

Arbitrage Compliance Specialists, Inc.

10/01/17 to 09/30/18

Phone: (800) 672-9993

Fax: (800) 756-6505

www.rebatebyacs.com

BOND FACTS			REPORT	BUDGET			
Ctrl #	PAR	Bond Issue	Description	Type	Start Date	End Date	Amount
14.00	\$73,430,000.00	Limited Tax and Refunding Bonds, Series 2009	Arbitrage Rebate Calculation Project Yield Restriction Calculation	Final Final	05/14/29 05/14/14	03/01/18 03/01/18	\$1,500.00 \$500.00
15.00	\$48,940,000.00	Unlimited Tax Road Bonds, Series 2009	Arbitrage Rebate Calculation	Final	03/31/17	03/01/18	\$1,500.00
16.00	\$20,780,000.00	Unlimited Tax Road Refunding Bonds, Series 2009	Arbitrage Rebate Calculation	Interim	03/31/17	03/31/18	\$1,500.00
17.00	\$58,220,000.00	Unlimited Tax Road Bonds, Series 2012	Arbitrage Rebate Calculation	Interim	05/01/17	03/31/18	\$1,500.00
18.00	\$30,775,000.00	Senior Lien Toll Road Revenue Bonds, Series 2012	Arbitrage Rebate Calculation	Interim	05/23/17	03/31/18	\$1,500.00
19.00	\$116,940,000.00	Unlimited Tax and Subordinate Lien Toll Road Revenue Refunding Bonds, Series 2012	Arbitrage Rebate Calculation	Interim	07/12/17	03/31/18	\$1,500.00
20.00	\$155,085,000.00	Limited Contract Tax and Subordinate Lien Toll Road Revenue Bonds, Series 2012	Arbitrage Rebate Calculation	Interim	08/22/17	03/31/18	\$1,500.00
21.00	\$18,900,000.00	Unlimited Tax Road Refunding Bonds, Series 2014	Arbitrage Rebate Calculation	Interim	03/31/17	03/31/18	\$1,500.00
22.00	\$45,000,000.00	Senior Lien Toll Road Revenue Bonds, Series 2014	Arbitrage Rebate Calculation	Interim	03/31/17	03/31/18	\$1,500.00
23.00	\$145,590,000.00	\$52.22M Unlimited Tax Road and Refunding Bonds, Series 2015A & \$93.37M Limited Tax Refunding Bonds, Series 2015B	Arbitrage Rebate Calculation	Interim	03/31/17	03/31/18	\$1,500.00
24.00	\$64,440,000.00	Senior Lien Toll Road Revenue Bonds, Series 2016	Arbitrage Rebate Calculation	Interim	03/31/17	03/31/18	\$1,500.00
25.00	\$169,760,000.00	\$75.34M Unlimited Tax Road and Refunding Bonds, Series 2016A and \$94.42M Limited Tax and Refunding Bonds, Series 2016B	Arbitrage Rebate Calculation	Interim	03/31/17	03/31/18	\$1,500.00
26.00	\$3,808,978.00	Tax Note, Series 2017	Arbitrage Rebate Calculation	Interim	01/31/17	01/31/18	\$1,500.00

Total \$20,000.00