

**CONTRACT**

THIS CONTRACT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF CLEARWATER, a Florida municipal corporation, hereinafter referred to as "City, " P.O. Box 4748, Clearwater, Florida 33758 and Arbitrage Compliance Specialists, Inc. ("ACS"), a Colorado corporation, hereinafter referred to as "ACS", 5975 Quebec St. #205, Centennial, Colorado 80111.

WHEREAS, the City finances long-term capital projects with tax-exempt bond issues and seeks a qualified firm to provide arbitrage compliance services; and

WHEREAS, ACS agrees to Provide appropriate advisory services to the City to ensure compliance with arbitrage regulations concerning but not limited to various areas such as spending exceptions, and yield restrictions;

NOW THEREFORE, in consideration of the promises stated herein, the City and ACS mutually agree as follows:

**1. SCOPE OF PROJECT.**

ACS agrees to provide arbitrage services under the terms and conditions set forth in Request for Proposal (RFP) No. 40-16, Arbitrage Compliance Services, and ACS's response dated 7-25-16, and described in attached **Exhibit A – Scope of Work.**

**2. TIME OF PERFORMANCE.**

The initial Contract Term shall commence on October 1, 2016 and end September 30, 2021. The City reserves the right to extend the term of this

contract, provided however, that the City shall give written notice of its intentions to extend this contract no later than thirty (30) days prior to the expiration date of the contract.

**3. COMPENSATION.**

The City will pay ACS as described in attached **Exhibit B – Fee Schedule**, inclusive of all reasonable and necessary direct expenses, if applicable. The City may, from time to time, require changes in the scope of the project of ACS to be performed hereunder. Such changes, including any increase or decrease in the amount of ACS's compensation and changes in the terms of this Contract which are mutually agreed upon by and between City and ACS shall be effective when incorporated in written amendment to this Contract.

**4. METHOD OF PAYMENT.**

ACS's invoices shall be submitted to the City for approval for payment on a monthly basis. The City agrees to pay after approval under the terms of the Florida Prompt Payment Act F.S. 218.70.

The City's performance and obligation to pay under this Contract is contingent upon an annual appropriation of the City's budget.

**5. NOTICES AND CHANGES OF ADDRESS.**

Any notice required or permitted to be given by the provisions of this Contract shall be conclusively deemed to have been received by a party hereto on the date it is hand delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or

if sent by registered or certified mail (postage prepaid) on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

ACS

City of Clearwater

Doug Pahnke, CPA  
Managing Director  
5975 S. Quebec St. #205  
Centennial, Colorado 80111  
Telephone (800) 672-7526  
Fax (800) 756-6505

Brian Jay Ravins  
Finance Director  
P.O. Box 4748  
Clearwater, Florida 33758  
Telephone (727)562-4538  
Fax (727) 562-4535

**6. TERMINATION OF CONTRACT.**

Termination by the City is pursuant to RFP No. 40-16 Terms and Conditions.

**7. INDEMNIFICATION AND INSURANCE.**

ACS agrees to comply with all terms, provisions, and requirements contained in RFP No. 40-16, made a part hereof as if said document were fully set forth at length herein.

**8. PROPRIETARY MATERIALS.**

Upon termination of this Contract, ACS shall transfer, assign and make available to City or its representatives all property and materials in ACS's possession belonging to or paid for by the City.

**9. INTERESTS OF PARTIES.**

ACS covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance and/or provision of services required under the terms and conditions of this Contract.

**10. CONFORMANCE WITH LAWS.**

(ACS) agrees to comply with all applicable federal, state and local laws during the life of this Contract.

**11. ATTORNEY FEES.**

In the event that either party seeks to enforce this Contract through attorneys at law, then the parties agree that each party shall bear its own attorney fees and costs.

**12. GOVERNING LAW AND VENUE.**

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.

**13. CONDITIONS AND ASSURANCES.**

A. Access to Records: Consultant agrees that Client or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant for the purposes of making audit, examination, excerpt, and transcripts.

B. Retention of Records: The Consultant will be required to comply with Section 119.0701, Florida Statutes, specifically to:

- a. Keep and maintain public records required by the City of Clearwater to perform the service;
- b. Upon request from the City's Custodian of Records, provide the City of Clearwater with a copy of the requested records or allow the records to be inspected or

copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;

- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer to the City of Clearwater; and
- d. Upon completion of the contract, transfer, at no cost, to the City of Clearwater all public records in possession of the contractor or keep and maintain public records required by the City of Clearwater to perform the service. If the Consultant transfers all public records to the City of Clearwater upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Clearwater, upon request from the City of Clearwater's

Custodian of Public Records, in a format that is compatible with the information technology systems of the City of Clearwater.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, ROSEMARIE CALL AT 727-562-4090, [rosemarie.call@mclearwater.com](mailto:rosemarie.call@mclearwater.com), and/or 112 S. Osceola Ave., Clearwater, FL, 33617

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date set forth above.

CITY OF CLEARWATER, FLORIDA

Countersigned:

George N. Cretkos  
Mayor

By: \_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

Pamela K. Akin  
City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

Attest:

Print Name: \_\_\_\_\_  
Secretary

Arbitrage Compliance Specialists, Inc.

By:   
Print Name: Doug Pankke  
Title: CPA, Managing Director

## Exhibit A- Scope of Work

### **Scope of Work**

Annually: prepare the required computations and rebate reports to determine the amount of arbitrage rebate, if any, due to the Internal Revenue Service for each outstanding tax-exempt bond issue as of September 30. Complete the IRS Form 8038-T for filing with the IRS. When appropriate confirm that a Debt Service Fund meets the requirements of a bona fide debt service fund.

Provide appropriate advisory services to the City to ensure compliance with arbitrage regulations concerning but not limited to various areas such as spending exceptions, and yield restrictions.

### **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 City 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.

## Exhibit B- Fee Schedule

### Fixed Project Fee Schedule

Fees are quoted on a per project basis for the arbitrage rebate calculation and report portion of this fee schedule.

- i. Annual calculation fee, per debt issue, if gross proceeds remain during the current computation period. Includes spending exception analysis, yield restriction analysis, transferred proceeds analysis, commingled fund analysis and bona fide debt service fund analysis.

Fee per year of calculation: \$495.00\*

Estimated hours per calculation: 5 - 10 hours

Price increase for years two (2) through five (5), and each applicable extension(s): \$0.00, ACS will not increase the price.

- \* *Reduction* in annual calculation fee, per debt issue, if gross proceeds were spent prior to the current computation period. Includes bona fide debt service fund analysis (other types of analysis would be unnecessary).

Fee per year of calculation: \$100.00

Estimated hours per calculation: 1 - 3 hours

Price increase for years two (2) through five (5), and each applicable extension(s): \$0.00, ACS will not increase the price.

### Hourly Fee Schedule

Licensed Manager (Tax Attorney)

Fee per hour - \$0.00 (*Waived*. Normally \$250.00 per hour.)

Licensed Manager (CPA)

Fee per hour - \$0.00 (*Waived*. Normally \$150.00 per hour.)

Non-Licensed Manager (Managing Director, Vice President)

Fee per hour - \$0.00 (*Waived*. Normally \$75.00 - 125.00 per hour.)