



**Memorandum**

**To:** City Council  
**From:** Ben Cowan  
**Date:** 4/2/2015  
**Re:** Bond Arbitrage Compliance

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The 2014 budget included \$10,000 for a Bond Arbitrage Compliance Study. This project was not completed during 2014.

It is necessary to complete at least a cursory review to ensure the City is compliant with two active bond issues:

- 2007 Sales and Use Tax Revenue Bonds - \$8.33 million (Community Center Expansion)
- 1997 Multifamily Housing Mortgage Revenue Bonds Tax Exempt Series - \$4.5 million (FHA Insured Mortgage Loan – Tenderfoot Apartments Project)

While our investment bank was of the opinion that the City was non-compliant, Tom Peltz, with Kutak Rock LLP, believes we are not out of compliance since the City issued its bonds prior to recent rule changes and the requirements are not retroactive. Additionally, issuers are required to report “material” rating changes. The city’s bond insurer experienced at least a couple downgrades which formerly were viewed as being material. However, during the “Great Recession,” the market was well aware of rating changes attributable to the falling credit worthiness of bond insurers, so we can likely take the position that those events were immaterial.

The attached engagement letter details some of the activities ACS can assist the City in either verifying compliance or making recommendations for appropriate actions to bring us in compliance in the event we discover a deficiency.

I recommend that the City moves forward with the:

Bond Compliance Review	\$400
Arbitrage Rebate Estimate Letter	\$500
<b>TOTAL</b>	<b>\$900</b>

Although I expect we do not need to move forward with the Arbitrage Rebate and Yield Restriction Calculation for an additional \$1,500, I would like the budget amendment to allow the flexibility for this in the event the estimate indicates it is necessary or if we need to engage Kutak Rock to prepare attorney letters that the City was out of compliance but plans to maintain compliance moving forward. Therefore, this is a request for a budget transfer for \$4,000 to allow for the aforementioned costs. The 2015 budget in the Finance Department has availability in its 4101 “Wages” account due to salary savings sufficient to accommodate this request.

**Action Requested:** A motion to preliminarily approve a budget transfer of \$4,000 for bond arbitrage compliance from account 01-4006-4101 “Finance-Wages” to account 01-4039-9265 “Bond Arbitrage Compliance”.



March 31, 2015

Mr. Ben Cowan, Finance Director  
City of Gunnison (the "City")  
P.O. Box 239  
Gunnison, Colorado 81230

**ENGAGEMENT LETTER FOR BOND COMPLIANCE SERVICES**

Arbitrage Compliance Specialists, Inc. ("ACS") is pleased to present our fees to provide bond compliance services for the City. Our firm has distinctive legal and accounting experience with bond 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 bond 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 review and/or calculation(s). 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"). This agreement shall become effective at the date of acceptance by the Issuer and remain in effect until canceled. The City or Arbitrage Compliance Specialist, Inc. can terminate this Engagement upon a 30 day written notice. This engagement supersedes all engagements previously sent to the City.

We appreciate the opportunity to provide assistance to help the City comply with the IRS bond compliance requirements. As always, if we may be of further assistance or if there are any questions, please do not hesitate to call me at (800) 672-9993 ext. 7530.

Sincerely,

Stephen H. Broden, Vice President  
Arbitrage Compliance Specialists, Inc.

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 [Stephen@RebateByACS.com](mailto:Stephen@RebateByACS.com).

\_\_\_\_\_  
Accepted by – Signature

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

\_\_\_\_\_  
Date



Bond Compliance Review		Fees
<b>City Review (Includes All Outstanding Issues Listed Below)</b>		
<u>Issue</u>	<u>PAR Value</u>	\$400
1997	\$4,500,000	
2007	\$8,330,000	

### Review 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. Prepare a City review which is designed to provide assurance that each debt issued by the City has satisfied the post compliance requirements that were provided to the City in the tax certificate.
  - a. Provides an executive summary of our findings.
  - b. Confirms status of arbitrage rebate reporting, spending exception reporting, yield restriction reporting and record retention requirements.
  - c. Does not confirm status of private business use or continuing disclosure.
    - i. For both these services we recommend either Kutak Rock or DAC Bond.
  - d. Provides 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.
4. Provide a post-issuance compliance policy and procedure manual.
5. Recommend further action items such as: Completion of arbitrage rebate, spending exception, yield restriction, or related reporting.
6. 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.
7. Advise on how future changes in the Tax Code may affect the debt issue.
8. Provide technical assistance and consultation in matters related to the arbitrage compliance regulations.
9. Assist in the IRS record retention requirements, which include storage of records related to the debt issue.
10. Discuss the review to ensure a complete understanding of the procedures and recommendations in the review.

Arbitrage Rebate Compliance Calculations and/or Estimates	Fees
Arbitrage Rebate and Yield Restriction Calculation (Maximum Fee Per Issue Per Five Year Period)	\$1,500
<b>OR</b>	
Arbitrage Rebate Estimate Letter (Fee Per Issue Per Five Year Period, In Lieu of a Report)	\$500

**Calculation Services**

1. Monitor IRS filing deadlines, election requirements and restricted periods in our database tracking system to ensure timely reporting.
2. Obtain information on the investments for the gross proceeds for the entire computation period.
3. Perform the arbitrage rebate, yield restriction or spending exception calculations in compliance with the Tax Code.
4. 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.
5. Prepare payment Form 8038-T with detailed filing instructions for accurate and timely filing to the IRS, if applicable.
6. 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.
7. Discuss the calculation(s) to ensure a complete understanding of the procedures and recommendations in the calculation(s).
8. Provide no cost audit support in the event of an IRS audit.

**Estimate Letter Services**

1. Monitor IRS filing deadlines, election requirements and restricted periods in our database tracking system to ensure timely reporting.
2. Obtain information on the investments for the gross proceeds for the entire computation period.
3. Review the information relating to the investments for the purpose of validating that no liability should be due.
4. Provide a letter which will indicate whether a liability is due or not due as of the date of the estimate.
5. Discuss the estimate(s) to ensure a complete understanding of the procedures and recommendations in the letter(s).