

## AGREEMENT FOR SERVICES #418-S1510

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**THIS AGREEMENT** made and entered by and between the COUNTY OF EL DORADO, a political subdivision of the State of California (hereinafter referred to as "County") and BLX Group, LLC, a Limited Liability Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 777 S. Figueroa Street, Suite 3200, Los Angeles, CA 90017, (herein referred to as "Consultant").

### WITNESSETH

**WHEREAS**, County has determined that it is necessary to obtain a Consultant to provide services relating to arbitrage and rebate calculations; and

**WHEREAS**, Consultant has represented to County that they are specially trained, experienced, expert and competent to perform the special services required hereunder, and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provisions of such services provided by Consultant are in the public's best interest, are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

#### **ARTICLE I**

**Scope of Services:** Consultant agrees to furnish personnel and services necessary to perform arbitrage rebate analysis to the Auditor-Controller, as provided hereafter. Arbitrage rebate calculations shall be provided by BLX Group, LLC. The detail of these services as authorized by the County are set forth in Exhibit "A", marked "Scope of Service", which is incorporated herein and made by reference a part hereof. Consultant shall provide County with reports on required due dates in either electronic format or paper format, whichever is requested from County.

## ARTICLE II

**Term:** This Agreement shall become effective May 1, 2015 and shall expire April 30, 2018.

## ARTICLE III

**Compensation for Services:** For services provided herein, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. Invoices shall be computed using the billing rates as specified in Exhibit "B", marked "Fee Schedule." The total amount of this Agreement shall not exceed \$50,000.00.

## ARTICLE IV

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

## ARTICLE V

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

## ARTICLE VI

**Assignment and Delegation:** Consultant is engaged by the County for its unique qualifications and skills, as well as, those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

Consultant will engage with Orrick, Herrington & Sutcliffe, LLP ("Orrick") to provide legal oversight and review as Consultant deems necessary to render its opinion that the computations shown in the report were performed in accordance with applicable law and regulations.

## ARTICLE VII

**Independent Consultant/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it perform services required by terms of this Agreement. Consultant exclusively assume responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

## **ARTICLE VIII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of the Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be cancelled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE IX**

### **Default, Termination, and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

- B. **Ceasing Performance:** County may terminate this Agreement in the event Consultant cease to operate as a business, or otherwise become unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

#### **ARTICLE X**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO  
AUDITOR-CONTROLLER  
360 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: Joe Harn, Auditor-Controller

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

BLX Group, LLC  
777 SOUTH FIGUEROA STREET, SUITE 3200  
LOS ANGELES, CA 90017  
ATTN: Craig Underwood

or to such other location as Consultant directs.

#### **ARTICLE XI**

**Change of Address:** In the event of a change in address for Contractor's/Consultant's principal place of business, Contractor's/Consultant's Agent for Service of Process, or Notices to Contractor/Consultant, Contractor/Consultant shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no

further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XII**

**Indemnity:** The Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees and the public, or damage to property or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Consultant's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Consultant, sub-contractor(s) and employee(s) or any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XIII**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintain insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is licensed professionals, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is required.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agree that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year.

New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fail to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE XIV**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XV**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by the Consultant.

#### **ARTICLE XVI**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

Consultant may have client relationships with other parties involved in some manner with the Bonds or the County (for example, underwriters, trustees, rating agencies, insurers, credit providers, lenders, contractors, developers, advisors, investment advisors/providers/brokers, public entities and others) whether with respect to the Bonds or some unrelated matter(s). However, to the extent that a conflict-of-interest is created by this engagement, the County hereby waives any such conflict.

#### **ARTICLE XVII**

**California Residency (Form 590):** If applicable, all independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

#### **ARTICLE XVIII**

**Taxpayer Identification Number (Form W-9):** All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number. Consultant's taxpayer identification number is 51-0404065.

#### **ARTICLE XIX**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

#### **ARTICLE XX**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Joe Harn, Auditor-Controller, or successor.

#### **ARTICLE XXI**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

#### **ARTICLE XXII**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE XXIII**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

#### **ARTICLE XXIV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

#### **ARTICLE XXV**

**Confidentiality:** Consultant agrees that consultant may obtain confidential information from County or County's trustee, as defined in Exhibit B, and Consultant agrees that any information so obtained



and not otherwise in the public domain shall be deemed confidential and shall not be disclosed to any third party or used for any purpose, except as set forth in this Agreement, without the County's written consent or as required by court order.

**ARTICLE XXVI**

**Attorney's Fees:** In the event of any dispute arising under the terms of this Agreement, the prevailing party shall be entitled to its attorney's fees and costs.

**ARTICLE XXVII**

**Audit by California State Auditor:** Consultant/Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Consultant/Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

**ARTICLE XXVIII**

**Taxes:** Contractor/Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor/Consultant to County. Contractor/Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

**REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Joe Harn  
Auditor-Controller

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Pamela Knorr, Purchasing Agent  
Chief Administrative Office  
"County"

-- CONSULTANT --

Dated: \_\_\_\_\_

By: \_\_\_\_\_

BLX Group, LLC  
Craig Underwood  
President  
"Consultant"

## EXHIBIT A

### SCOPE OF SERVICE

Bond Logistix (“BLX”) will calculate the amount of rebate liability with respect to tax exempt government securities (“Securities”) as requested by County in writing, and as of the final maturity or redemption of a County’s Security (each such date on which a rebate calculation is performed is referred to herein as a “Rebate Calculation Date”) applying regulations of the United States Department of the Treasury (“Treasury”) in effect on such Rebate Calculation Date. In addition, if a “penalty in lieu of rebate” election under Code Section 148(f)(4)(C)(vii) has been made by the County with respect to a Security, BLX will calculate, every six months, the amount of such “penalty” as of the end of each six-month period beginning on the date of issue of the Security (each such date on which a penalty calculation is performed is referred to herein as “Penalty Calculation Date”). (The term “Calculation Date” as used herein shall refer to a Rebate Calculation Date or a Penalty Calculation Date, as appropriate.) In addition, if required or requested by the County in writing, BLX will include in each report delivered to the County an analysis of compliance with applicable arbitrage yield restrictions.

With respect to each Calculation Date, BLX will prepare or cause to be prepared schedules reflecting the relevant calculations and the assumptions involved and will deliver a rebate or penalty liability report addressed to the County as to the amount of the rebate or penalty liability as of such Calculation Date.

At the County’s election, each such rebate or penalty liability report will include a legal opinion provided by the law firm Orrick, Herrington & Sutcliffe, LLP (“Orrick”). BLX will engage Orrick to provide legal oversight and review as it deems necessary to render its opinion that the computations shown in the report were performed in accordance with applicable federal law and regulations.

The County undertakes to provide or cause to be provided to BLX all such relevant data (the “Data”), as specified by BLX from time to time, and shall cooperate with all reasonable requests of BLX in connection therewith. BLX is authorized hereby to obtain Data held by a Trust Bank (the “Trustee”) concerning funds and accounts established with regard to the Securities of the County. If available, BLX is authorized to obtain access to view and download said Data from any “online” or “internet based” system or application maintained by the Trustee for such purposes. If such systems or applications are not maintained by the Trustee, BLX is authorized to request the Data from the Trustee in a format useful to BLX, and otherwise available to the Trustee. The County also agrees to inform BLX of any actual or planned early redemption of a Security at its earliest opportunity.

Orrick shall perform tax analysis and other optional services as requested by BLX .

**EXHIBIT B  
FEE SCHEDULE  
ARBITRAGE REBATE COMPLIANCE SERVICES**

**BLX GROUP, LLC**

**BASE FEE**

<u>Service</u>	<u>Fee</u>
Engagement Fee (one-time fee, per issue)	\$500
Report Fee (per report)	\$2,250
Disbursement Fee (per report)	
Electronic Report Format (PDF file format)	\$25
Paper Report Format (one copy)	\$50
Additional Paper Copies (per copy)	\$10

**ADDITIONAL FEES**

*Per report, as appropriate*

*Fees vary according to service and must be approved by County in writing before Consultant proceeds*

<u>Service</u>	<u>Fee</u>
Variable Rate Issue	+\$500-\$1,000
Transferred Proceeds Analysis	+\$500-\$1,500
Commingled Funds Analysis	+\$500-\$1,500
Yield Restriction Analysis	+\$500-\$2,500
Cash Flow Recreation/Incomplete Records	+\$500-\$1,500
Final or 5 <sup>th</sup> Year Report	+\$500
Computation Periods in Excess of 12 Months (Per additional year of fraction thereof)	+\$500

**OPTIONAL FEES**

*Other services as requested by County in writing will be at the following hourly rate:*

<u>Personnel</u>	<u>Fee</u>
President	\$625
Managing Director	\$570
Associate Director	\$510
Managing Consultant	\$455
Senior Consultant	\$400
Consultant	\$345
Senior Tax Attorney Review	\$750
Tax Attorney Review	\$570