



## BNY MELLON

September 11, 2012

Corporate Trust

Ms. Teresa Martinez  
Santa Fe County, New Mexico  
102 Grant Avenue  
Santa Fe, NM 87501

**\$20,000,000**  
**Santa Fe County, New Mexico**  
**General Obligation Bonds**  
**Series 2007B**

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Dear Ms. Martinez:

This letter (this "Agreement") sets forth the terms and conditions on which The Bank of New York Mellon Trust Company, N.A. ("we" or "BNY Mellon") will perform the services outlined below (the "Services") for Santa Fe County, New Mexico ("you" or "Client") as they relate to arbitrage rebate calculations for the above-captioned bond issue (the "Bonds").

### Scope of Services

1. BNY Mellon will prepare a computation to determine the arbitrage rebate amount (the "Rebate Amount") for the Bonds as described in §148(f)(2) of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulations Section 1.148 (the "Regulations"). The Rebate Amount is equal to the excess of the amount earned on the investment of all gross proceeds over the amount that would have been earned if such gross proceeds were invested at the bond yield.
  - A. **Preparation of Arbitrage Rebate Calculations.** In preparing the rebate calculations, we will evaluate cash flows from investments made with gross proceeds of the Bonds. This evaluation will include an analysis of the relevant funds associated with the Bonds, such as reserve funds, construction funds, capitalized interest funds, debt service funds, etc. The cash flows from includable funds are future valued to the computation date using the bond yield to determine if the issue has accrued a rebate liability. In addition, for bond years with gross proceeds subject to the rebate requirements, a computation credit is included in the calculation of the rebate liability.

In determining the Rebate Amount, a test is performed each year on any "Debt Service Fund" established for the Bonds. If the Debt Service Fund, as defined in the bond documents, meets certain requirements specified in the Regulations, it is deemed a "Bona Fide Debt Service Fund" and, therefore, is excluded from the rebate calculation. If the Debt Service Fund fails to meet these requirements, the Debt Service Fund must be included in the determination of the Rebate Amount for the Bonds. As described in the Fees and Expenses section of this

Agreement, additional fees will be charged for calculations involving a Debt Service Fund that fails to qualify as a Bona Fide Debt Service Fund.

- B. Application of Spending Exceptions.** The Regulations offer a few exceptions to the arbitrage rebate rules if the proceeds of a bond issue are spent within a specific time frame. All or a portion of the proceeds of the Bonds may qualify for certain exceptions to the rebate requirements (the 6-month, 18-month or 2-year spending exceptions). If these proceeds and the earnings on the proceeds are spent in accordance with the requirements specified in the Regulations, these exceptions are available to be applied to the Bonds.

Spending exceptions to the rebate requirement are optional and, as a result, are only beneficial if these proceeds are generating a positive Rebate Amount. Therefore, it is necessary to first determine the Rebate Amount for these funds and then, if appropriate, apply the applicable spending exception. With the exception of the six-month spending exception, we will evaluate application of the spending exceptions after the second anniversary of the issuance of the Bonds to determine if an exception would reduce the positive Rebate Amount. If an exception to rebate appears to provide a favorable alternative, we will issue an additional report setting forth these results. The fees to prepare a report relating to the appropriate spending exception will be separate from the standard rebate calculation fees and will be discussed with you before these opportunities are pursued.

- C. Calculation of the Yield Reduction Payments.** Certain accounts or funds are subject to the yield restriction requirement of the Regulations in addition to the rebate requirement. These accounts are included in the determination of required yield reduction payments after the expiration of certain defined temporary periods established by the Regulations and disclosed in the bond documents.

In preparing the yield restriction analysis, the cash flows for the yield restricted investments must be isolated for the time period after the expiration of the appropriate temporary periods. The cash flows are then future valued to the computation date using a "materially higher bond yield," as defined in the Regulations, to determine if the issue has violated the yield restriction requirement. Certain violations of the yield restriction requirement can be resolved by the computation and payment of a Yield Reduction Payment. The fees to compute the Yield Reduction Payment will be separate from the standard rebate calculation fees as explained in the Fees and Expenses section of this Agreement.

- D. Bond Yield Election Analysis for Variable Rate Issues.** For variable rate bond issues, our fees assume the Rebate Amount is computed using a composite bond yield, in accordance with the Regulations, and that no yield period election has been made. If the Bonds have accrued a positive Rebate Amount using the composite yield, it may be possible to recompute the Rebate Amount using alternate yield periods and reduce the rebate liability. However, the alternate yield period methodology could increase the rebate liability, in which case, the composite yield computation would be used to determine the Rebate Amount. If you desire the alternate yield period calculations to be done, additional fees will be incurred. This work will only be done with your consent and at an agreed upon price.

2. Upon the completion of our work, we will provide a rebate report for the Bonds, which will contain a signed opinion and detailed supporting schedules indicating the Rebate Amount,

computed in accordance with the Code and the Regulations. If a remittance is due to the United States Treasury, we will assist you in completing the Internal Revenue Service Form 8038-T and will provide you with filing instructions to make the payment.

**Fees and Expenses**

3. Our fees to compute the Rebate Amount for the Bonds for the computation period of October 16, 2007 through October 16, 2012 will be \$4,000. An invoice will be issued at the time the completed report is sent to you and is payable no later than 45 days after receipt.
4. These fees assume that the accounts that comprise the Debt Service Fund qualify as a Bona Fide Debt Service Fund and therefore can be excluded from the computation of the Rebate Amount. If the Debt Service Fund fails to qualify for this exception and must be included in the computation of the Rebate Amount, an additional fee, as stated below, will be charged to analyze and include in the determination of the Rebate Amount the investment activity in each of the accounts that comprise the Debt Service Fund for the Bonds.
5. The structure and complexity of certain bond issues may require or benefit from additional services for which additional fees will be charged, generally at a rate of \$500 per additional service per Bond Year. Examples of these services include, but are not limited to, the following:

<b>Additional Charges for Special Services Related to:</b>	<b>Fees Per Issue</b>
Inclusion of hedge bond transactions in bond yield calculation	\$1,000
Inclusion of Debt Service Fund not meeting debt service fund exception	\$500 per fund
Allocations required for bond proceeds invested in a commingled fund	\$500 per fund
Transferred proceeds transactions due to refundings	\$500 per refunding
Yield Restriction Analysis and Yield Reduction Payment Computation	\$500
Application of the Universal Cap rules	\$500

6. We do not bill for minor routine consultation and advice. To the extent requests for special services may result in additional fees, we will provide you with an estimate of such costs in advance and will only proceed with your approval.
7. The efficiency with which we can complete the rebate calculation is greatly impacted by the number of times we have to request additional information. Our fees detailed above are based on the assumption that you will provide appropriate assistance and information, including sufficient investment records, and that all requested information will be provided on a timely basis. Failure to provide necessary information in a timely manner or the delivery of investment information requiring additional inquiries, such as expenditure of professional time to interpret nonstandard transactions, increases the time necessary to complete the calculation and may result in additional fees being charged.

### **No Coordination with Private Activity Regulations**

8. The purpose of our engagement is to determine the Rebate Amount pursuant to §148(f)(2) of the Code. Sections 141-147 of the Code and the related Treasury Regulations set forth requirements with respect to the amount of bond proceeds that may be used for the benefit of a private person or entity. Treasury Regulations Section 1.141-6(a) requires that allocations of expenditures of bond proceeds for purposes of computing the Rebate Amount must be the same as the allocations of expenditures used to test the private use of projects financed with proceeds of the Bonds.
9. For purposes of calculating the Rebate Amount, our calculations assume that the allocation of the expenditures of Bond proceeds as provided to us are the same for both purposes of Sections 141-147 and Section 148 of the Code. The scope of this engagement does not include procedures to analyze the private use limitations associated with the Bonds.

### **Term of the Agreement**

10. This Agreement will commence on the date hereof and shall terminate upon completion of the Services outlined above. It is anticipated that these Services should be completed no later than April 1, 2013. Both the Client and BNY Mellon may cancel this Agreement with 30 days written notice with or without cause. The Client shall pay for work-in-progress, completed Services and expenses incurred by BNY Mellon through the effective date of any termination.

### **Concerning BNY Mellon**

11. Notwithstanding any provision contained herein to the contrary, BNY Mellon, including its officers, directors, employees and agents, shall:
  - a. have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any documents or instruments submitted to it in connection with its duties hereunder; and
  - b. be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind.

Any banking association or corporation into which BNY Mellon may be merged, converted or with which BNY Mellon may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which BNY Mellon shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of BNY Mellon shall be transferred, shall succeed to all BNY Mellon's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

### **Limitation of Liability**

12. The total aggregate liability of BNY Mellon under this Agreement shall be limited to any penalty and/or interest imposed on the Client by the United States Internal Revenue Service on any additional Rebate Amount which results from a proven error by BNY Mellon in rendering the Services outlined in this Agreement. The Client, and not BNY Mellon, shall be responsible for paying the correct Rebate Amount due.
13. Neither of us will, in any event, be liable to the other, for any reason, for any consequential, incidental, special, punitive or indirect damages, including loss of profits, revenue, data, use of money or business opportunities, regardless of whether notice has been given or there is an awareness that such damages have been or may be incurred.

### **Dispute Resolution**

14. Each party hereto hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement, or any claim, counterclaim or other action arising in connection herewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.

### **Other Terms**

15. The Client will timely notify BNY Mellon of any refunding or defeasance transactions involving any bond subject to this Agreement. Such notification is critical as a refunding or defeasance transaction may accelerate the required calculation of the Rebate Amount. Failure to notify BNY Mellon of refunding or defeasance transactions could cause a filing with the United States Treasury to be late, which could result in penalties and interest.
16. The Services provided hereunder are solely for the calculation of the Rebate Amount, and are to be used for no other purpose. We assume no responsibility to keep you apprised of developments in the tax law relative to this engagement after it has been completed. We will not audit the information provided to us and will express no opinion as to the completeness, accuracy, or sufficiency of such information for purposes of calculating the Rebate Amount.
17. BNY Mellon shall own all work papers prepared by it to document, in accordance with professional obligations, performance of the Services, and it may retain, in confidence, copies of reports and other documents prepared by it.

### **Agreement**

18. This Agreement constitutes the entire agreement between the Client and BNY Mellon, and merges all prior and contemporaneous communications, with respect to the Services and the other matters contemplated by this Agreement; BNY Mellon shall have only those duties as are specifically provided herein and no additional obligations of BNY Mellon shall be inferred from the terms of this Agreement or any other agreement. This Agreement may not be modified

except in writing signed by both parties. If any provision of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or part, the other provisions shall remain in full force and effect.

19. Unless this Agreement is accepted below, the fees for the Services detailed in this Agreement are valid for only ninety days from the date hereof.

**Primary Contact Information**

20. During the computation and review process, questions may arise concerning specific transactions or additional information may be needed. Please designate the name of the person we should contact with questions.

Contact Name: EVELYN VALENCIA  
Title: Accountant Senior  
Phone Number: 505-986-6363  
E-mail Address: evalencia@co.santa-fe.nm.us

**Report Format (Select One)**

21. In an effort to minimize paper usage, our standard practice is to provide our report in an electronic format upon completion of the work. Please select the report format you prefer:

**Electronic Version.** Report is provided via e-mail in a portable document format (PDF), which can be read using Acrobat Adobe Reader.

**Paper Version.** A single copy of our report is provided in a spiral bound format. If additional copies are needed, please contact us.

Ms. Teresa Martinez  
Santa Fe County, New Mexico

September 11, 2012  
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If the terms of this Agreement are satisfactory, please sign one copy of this Agreement acknowledging our agreement and return it to BNY Mellon.

We very much appreciate the opportunity to serve you. If you have any questions, please contact me at (214) 580-1234 or Mr. Terry Burke at (214) 580-1230.

Very truly yours,

The Bank of New York Mellon Trust Company, N.A.

By Brian Helming  
Name: Brian Helming  
Title: Vice President

Accepted and Agreed:

*Santa Fe County, New Mexico*

Katherine Miller  
Signature

9.27.12  
Date

Katherine Miller  
Printed Name

SFC manager  
Title

Approved as to form

Santa Fe County Attorney

By: [Signature]

Date: Sept 19, 2012  
[Signature]