

**RESOLUTION NO. 23-07-61**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,  
VILLAGE OF ISLANDS, FLORIDA, APPROVING A PROPOSAL OF  
MARCUM LLP TO PERFORM AUDIT SERVICES OF A CERTAIN  
WASTEWATER AGREEMENT; AUTHORIZING THE VILLAGE  
MANAGER AND VILLAGE ATTORNEY TO NEGOTIATE AN  
AGREEMENT FOR AUDIT SERVICES; AUTHORIZING THE  
VILLAGE MANAGER TO EXECUTE THE AGREEMENT;  
AUTHORIZING THE VILLAGE MANAGER TO EXPEND  
BUDGETED FUNDS; APPROVING A WAIVER OF COMPETITIVE  
BIDDING; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Islamorada, Village of Islands (the "Village"), issued a RFP 18-02 on January 8, 2018 for various maintenance and repair services for the Village's central wastewater collection and transmission system (the "RFP"); and

**WHEREAS**, the Village received four (4) proposals in response to the RFP. The Village Council of the Village (the "Village Council") approved the ranking and recommendation of the RFP Evaluation Committee, which included all four (4) proposals;

**WHEREAS**, the four (4) contractors that submitted proposals did not offer the same services and the Village entered into Continuing Services Agreements ("CSA") with three (3) of the proposers; and

**WHEREAS**, one of the contractors that entered into a CSA is Page Excavating, Inc. ("Page Excavating"); and

**WHEREAS**, the Village has determined that an audit of the CSA with Page Excavating is needed (the "Audit"); and

**WHEREAS**, Marcum LLP ("Marcum") has submitted a proposal dated June 1, 2023 which is attached hereto as Exhibit "A" (the "Proposal") to provide audit services with respect to the Audit; and

**WHEREAS**, the Village Council finds that acceptance of the Proposal of Marcum, entering into an Agreement for Audit Services with Marcum and waiver of competitive bidding for the Agreement are in the best interest of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1.    Recitals.**    The above recitals are true and correct and incorporated into this Resolution by this reference.

**Section 2.    Approval of Agreement.**    The Village Council hereby accepts the Proposal of Marcum and hereby approves an Agreement for Audit Services with Marcum.

**Section 3.    Authorization of Village Officials.** The Village Manager and/or his designee and the Village Attorney are authorized to negotiate an agreement with Marcum, substantially in the form attached hereto as Exhibit "B", for completion of the Audit in an amount not to exceed Eighty Thousand and 00/100 Dollars (\$80,000.00) and to take all actions necessary to implement the terms and conditions of the Agreement for Audit Services.

**Section 4.    Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village's Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

**Section 5. Execution of Agreement.** The Village Manager is authorized to execute the Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to approval as to form and legality by the Village Attorney.

**Section 6. Waiver of Competitive Bidding.** In accordance with Section 2-328(1) and (3) of the Village Code, the Village Council waives the competitive bidding provisions of the Village Code for these purchases.

**Section 7. Effective Date.** This Resolution shall take effect immediately upon adoption. Motion to adopt by Jolin, second by Pinder.

**FINAL VOTE AT ADOPTION  
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS**

Mayor Joseph B. Pinder	<u>Yes</u>
Vice Mayor Sharon Mahoney	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Henry Rosenthal	<u>Yes</u>

**PASSED AND ADOPTED ON THIS 6th DAY OF JULY, 2023.**



JOSEPH B. PINDER, MAYOR

ATTEST:



MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND  
LEGALITY FOR THE USE AND BENEFIT  
OF ISLAMORADA, VILLAGE OF ISLANDS:



JOHN J. QUICK, INTERIM VILLAGE ATTORNEY

June 1, 2023

Village of Islamorada  
Attn: Ted Yates  
Village Manager  
86800 Overseas Highway  
Islamorada, FL 33036

***Re: Review and Analysis of RFP 18-02 Continuing Services Agreement (“CSA”)***

Dear Mr. Yates:

This engagement letter, including Attachments A and B appended hereto (collectively, the “Agreement”), sets forth the advisory services (the “Services”) Marcum LLP (“Marcum,” “we,” “us” or “our”) will perform for the Village of Islamorada, Florida (“Village,” “you,” or “your”), and the terms and conditions under which Marcum will perform the Services (the “Engagement”).

**Purpose and Intended Use:** Our analysis will be conducted for the Village of Islamorada and its residents and should not be used for any other purpose.

**Services:** Marcum’s Services regarding the above-referenced matter will include:

- Review RFP and bid documents and vendor approval processes for Page Consulting (“Page”) and continuing services agreement (“CSA”) terms and conditions.
- Review Village Resolutions and Work Authorizations for terms and conditions and scope of authorized work.
- Identify all services performed by Page and associated costs incurred for work performed during the period May 24, 2018 (date of CSA agreement) through May 30, 2023.
- Quantify Village disbursements to Page and associated services rendered for the period May 24, 2018 (date of CSA agreement) through May 30, 2023.
- Obtain documentation for vacuum pit ring repairs. Select representative sample and perform visual verification of completion of construction work.
- Identify additional Page construction work (including poly check valve replacement) and consult with Village regarding potential additional engineering testing for confirmation of existence and quality of such work. Note: Engineering testing, if applicable, will result in a separate engagement fee subject to mutual agreement by Marcum and the Village.
- Review grant applications, federal award letter, and expenditures relating to work billed by Page which was funded with federal grant funds. Assess compliance with grant terms and potential remediation, if necessary, of identified non-compliance.

Marcum’s Services are performed in accordance with the American Institute of Certified Public Accountants’ *Statement on Standards for Consulting Services No. 1*.

**Anticipated Deadlines:** You have asked us to provide our [draft] [report/analysis] to you by [x/x/xx]. In order to meet this deadline, you acknowledge that we require all of the information requested by us by [x/x/xx]. Should the receipt of any of the requested information be delayed, or should any information be materially revised (as we in our sole discretion determine), we reserve the right to extend the date our [report/analysis] will be provided. You further acknowledge that we will likely have other projects underway that may affect the timing of the rescheduled deadline.

**Fees:** All fees and expenses shall be paid to Marcum pursuant to this Agreement within [30] days of receipt of an invoice. Fees are your sole responsibility.

Our fee for this Engagement will be \$80,000. Fees will be billed portal to portal from our Miami office.

Marcum's fees consider and are based on many factors including the scope of Services and any changes thereto, the level of assistance provided, the timeliness, accuracy and completeness of information provided to us, firm technology, firm processes, and also actual time incurred at the rates set forth herein plus direct reimbursable expenses, such as travel and other out-of-pocket expenses. Marcum's hourly rates are set forth in Attachment B. These hourly rates may be increased over time in Marcum's discretion in the ordinary course of Marcum's business and you agree to pay the then effective rates.

In accordance with our Firm policies, should any invoice remain unpaid for more than thirty (30) days, we reserve the right to defer providing any additional services until all outstanding invoices are paid in full. Interest at the rate of one percent (1%) per month will accrue on any balance of fees and expenses not paid within sixty (60) days of the invoice date.

You will also be responsible for and reimburse Marcum for costs, expenses, and liabilities relating to a request from a third party (including a subpoena, summons, discovery demand in litigation or other request or form of process) calling for production of privileged information or as a result of your assertion of confidentiality or other privilege, or your direction that Marcum assert privilege on your behalf, or if Marcum determines that it is required by applicable law or rules to assert privilege without having received your direction.

The following charges may be applicable:

- a) In the event we are requested or authorized by you are required by government regulation, subpoena, or other legal process, to produce documents or our personnel as witnesses with respect to this Engagement, you will reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel incurred in responding to such requests;
- b) A minimum fee of four (4) hours will be charged for appearance at depositions and/or court appearances that may be required;
- c) Any out-of-pocket expenses relating to this Engagement, which we will bill to you at our cost. It is possible that we will perform research through computer databases and that we may be required to purchase research materials relating to this Engagement; and

d) Travel and related costs and expenses.

Marcum's fees are not contingent upon any outcome achieved as a result of our Services. The outcome of our analyses and the result or conclusion that we may reach may not be consistent with any objective you may have for our Engagement, based upon the documentation that we may review and the facts that we may ultimately discover.

If you have a question concerning our billing statement, please contact us and we will be happy to explain the charges. It shall be your affirmative obligation to review Marcum's bills as they are rendered and to raise questions concerning such bills in a timely fashion. Failure to raise questions in a timely fashion (regardless of whether or not our firm waives its right under this Agreement to terminate this Engagement if prompt payment is not made) shall be deemed to constitute acceptance of the bill and all charges presented as fair and reasonable. If you fail to dispute any of our statements of an amount due within twenty (20) days of your receipt of same, Marcum shall be entitled to assume and rely upon the fact that you have accepted the obligation to pay such statement in its entirety.

If Marcum pursues collection of any outstanding unpaid balance, then you shall be responsible for our attorneys' fees, collection fees, and court costs. Reasonable attorneys' fees will not exceed one-third (1/3) of any outstanding balance due.

Marcum may terminate this Agreement, or any Services or withdraw from this Engagement if Marcum's fees are not timely paid, with all billed and accrued fees up through the time of the termination or withdrawal payable to Marcum. The undersigned represents and warrants that it has the requisite authority and consents to enter into and perform this Agreement and the obligations herein for and on behalf of **Village of Islamorada, Florida**.

If you agree with these terms, please sign and date below and return to Marcum with the requested retainer. If you have any questions about this letter, contact Moises Ariza. Upon receipt of the signed Agreement, Marcum will commence our Services.

Very truly yours,

Marcum LLP

**Moises D. Ariza, CPA, CGMA**  
**Partner**

Village of Islamorada, Florida

June 5, 2023

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**ACKNOWLEDGMENT:** I HAVE READ, UNDERSTAND AND APPROVE THIS AGREEMENT (INCLUSIVE OF ATTACHMENTS). I AGREE TO ITS TERMS AND CONDITIONS AND ACKNOWLEDGE FULL FINANCIAL RESPONSIBILITY FOR THE FEES AND OTHER AMOUNTS CHARGED OR PAYABLE HEREUNDER.

  
**VILLAGE OF ISLAMORADA, FLORIDA**  
DULY AUTHORIZED SIGNER  
OF THIS AGREEMENT

8/2/23

DATE

Name: Joseph B Pinder III

Title: Mayor

Company: Islamorada, Village of Islands

Email: buddy.pinder@islamorada.fl.us

Address: 86800 Overseas Hwy  
Islamorada, FL 33036

Phone: 305-664-6400

## Attachment A

### Marcum LLP Terms and Conditions

Marcum's Engagement is solely with you. Marcum's Services and deliverables are for the sole internal use and benefit of Counsel ("you" or "your") and not for any third party. No third party shall have any right against Marcum by reason of this Engagement, the Services or deliverables and this Engagement does not create any privity between Marcum and any third party. To the extent requested or directed by you, we may communicate or interact with third parties to perform the Services however we assume no duty, responsibility or liability to such third parties and expressly disclaim any responsibility, duties or liability to all third parties. The terms and conditions in this Attachment A apply to the Engagement letter referencing them. In the event of a conflict between this Attachment A and the Engagement letter, the terms of this Attachment A shall control and prevail. All references to this "Agreement" refer to this Attachment A together with the Engagement letter referencing it.

1. **Scope of Work.** Your use of our work product from this Engagement shall be limited to the stated purpose and use and for no other purpose.

Except as otherwise agreed by the parties in writing, Marcum shall only be obligated to perform the Services or provide the deliverables described under "Services" in this Agreement. You recognize and understand that the scope and type of analyses that Marcum is requested to perform may be changed or other analyses may be required as this matter progresses, and that such change or other analyses requested may affect Marcum's fees and expenses. Changes to the scope of Services or deliverables shall be agreed to by the parties in writing (including by email). You acknowledge responsibility for fees and expenses related to any changes. To the extent all specific details of the scope of work are not so documented, the parties shall work diligently and in good faith to document them at the request of either party. We assume no responsibility under this Agreement other than to perform the Services.

Marcum, in its sole discretion, may determine the methodology or tools to be employed and the extent of review, research, and other preparation to perform the Services or prepare deliverables.

Marcum's Services are not intended to detect fraud *unless that objective is specifically expressed in this Agreement under "Services"*. The procedures used in our analysis are not sufficient to constitute an examination made in accordance with generally accepted accounting practices. You acknowledge and agree that Marcum may rely on the information provided by you or on your behalf as complete and accurate.

The conclusions expressed in any deliverables provided under this Agreement are based upon the applicable laws as of the date of such deliverable, which are subject to change, and upon the facts presented by you. Marcum has no responsibility to, and will not, update any of its

work or conclusions after completion, including as a result of a change in law, unless specifically engaged to do so.

2. **Information.** Marcum will provide a list of information it needs to perform the Services and you shall provide us with all accurate and complete information relevant to performing the Services. You have the requisite right, consent and authority to disclose and make the information available to Marcum under this Agreement. You acknowledge the cost of providing our Services may increase if information is not timely provided, or if information is incomplete, inaccurate, erroneous, or revised.

Marcum may rely on the accuracy, completeness, and reliability of all information provided by you or on your behalf, and on all instructions, decisions and approvals. You shall be solely responsible for applying independent business judgment with respect to the Services for which you are engaging Marcum (including decisions on implementation of other further course(s) of action) and shall be solely and exclusively responsible for such decisions. Further, you are responsible for designating competent management or a qualified individual to be responsible and accountable for overseeing the Services provided. You are solely responsible for management and other decisions and implementing any actions identified during the course of the Services.

Any information that Marcum was not made aware of could materially affect our Services, and Marcum may amend any report, at your sole cost and expense, should any other information be provided, which, in Marcum's opinion, requires such an amendment. Should Marcum become aware that material information was withheld or misrepresented, Marcum may withdraw from the Engagement, with all billed and accrued fees up through the time of the withdrawal payable to us.

In performing the Services, Marcum may require that you retain the services of third-party experts (including without limitation independent asset appraisers). You shall be solely responsible for such third parties and our Services will not include any verification of the work performed by said third party.

3. **Data Access.** You acknowledge that your confidential information may be transmitted to us through an information portal or delivery system established by us or on our behalf. You shall notify us in writing of your employees, representatives, other agents or Designees to be provided access to such portal or system; upon the termination of such status, you shall immediately notify us in writing. You acknowledge that you are responsible for the actions of your current and former employees, representatives, other agents or Designees in connection with the transmission of your information.

If you request that we access files, documents, or other information in a cloud-based or web-accessed hosting service or other third-party system accessed via the Internet, including, without limitation iCloud, Dropbox, Google Docs, Google Drive, a data room hosted by a third party, or a similar service or website (collectively, "Cloud Storage"), you will confirm with any third parties assisting with or hosting the Cloud Storage that either such third party

or you (and not us) is responsible for ensuring the confidentiality of all information while utilizing the Cloud Storage, complying with all applicable laws related to the Cloud Storage and any information contained in the Cloud Storage, providing us access to the information in the Cloud Storage, and protecting the information in the Cloud Storage from any unauthorized access to the information, including, without limitation, unauthorized access to the information when in transit to or from the Cloud Storage. You represent and warrant that you have requisite consent, right and authority to provide us with access to information in the Cloud Storage and that providing us with access to information in the Cloud Storage complies with all applicable laws, regulations, or duties owed to third parties, and you agree to indemnify and hold us harmless from and against any matters relating to or arising from our use of or access to the Cloud Storage. In addition, while Marcum has established procedures designed to protect the confidentiality of your information, you acknowledge and agree that the confidentiality of any communication or material transmitted over the Internet through an unencrypted method cannot be guaranteed and that any breach of confidentiality that occurs thereby shall not be deemed to be a breach of Marcum's confidentiality obligations under this Agreement.

4. **Confidentiality.** "Confidential Information" means non-public information that a party marks as "confidential" or "proprietary" or that otherwise should be understood by a reasonable person to be confidential in nature. All terms of this Agreement, including but not limited to fee and expense structure, are considered Confidential Information. Confidential Information does not include any information which (i) is rightfully known to a recipient prior to its disclosure; (ii) is released to any other person or entity (including governmental agencies) without restriction; (iii) is independently developed by recipient without use of or reliance on Confidential Information; or (iv) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by recipient from a non-party. Each party will protect the confidentiality of Confidential Information that it accesses or receives, except that a party may disclose Confidential Information to the extent required by applicable law, statute, rule, regulation, judicial or administrative process or professional standard or litigation pertaining hereto. If disclosure of Confidential Information is required by law, statute, rule or regulation judicial or administrative process (including any subpoena or other similar form of process), or by professional standards, then the party required to make that disclosure shall (other than in connection with routine supervisory examinations by regulatory or authorities with jurisdiction or professional standards or reviews, and without breaching any legal or regulatory requirement) provide the other party with prior prompt written notice thereof and if practicable under the circumstances, allow the disclosing party to seek a restraining order or other appropriate relief at disclosing party's sole cost and expense.

Client authorizes Marcum to participate in discussions with and to disclose Client's information, including tax return information, to Client's agents, representatives, administrators or professional advisors (including accountants, attorneys, financial and other professional advisors), their respective officers, directors or employees, and other parties as Client may direct. Notwithstanding any other provision of this Agreement, Marcum and the Marcum Subcontractors may use Confidential Information received hereunder, including tax

return information, to develop, enhance, modify and improve technologies, tools, methodologies, services and offerings, and/or for development or performance of data analysis or other insight generation. Information developed in connection with these purposes may be used or disclosed to you or current or prospective clients to provide them services or offerings. Marcum and the Marcum Subcontractors will not use or disclose the Confidential Information in a way that would permit Client to be identified by third parties without Client's consent. With respect to tax return information, Client may request in writing a more limited use and disclosure than the foregoing. The foregoing consents are valid until further notice by Client.

If, as a result of the Services performed under this Agreement, Marcum is requested or required to enter into an additional or separate non-disclosure agreement ("NDA"), the NDA must be in a form acceptable to Marcum and is subject to the liability provisions in this Agreement. This Agreement shall prevail over any inconsistent or conflicting terms in such NDA. For clarity, any parties to or beneficiaries of such NDA shall continue to be deemed third parties for purposes of our Services and this Agreement, including without limitation the indemnification obligations relating to third party claims.

5. **Report.** Marcum will prepare any required or requested written reports, however, Marcum's findings may or may not be documented in a written report based upon events that occur. The absence of a written report shall not diminish our rights to be compensated for all work that we have performed. Certain values, derived from the reports of others, and which are so designated, may be included in Marcum's report however, Marcum accepts no responsibility or liability for those items. Marcum's workpapers and the documentation of our Services pursuant to this Agreement is the property of Marcum and constitutes proprietary information. We will retain the documentation in accordance with our document retention policies, which may be amended from time to time.
6. **Purpose and Limitation on Use.** Any written reports, exhibits, documents, and schedules that we prepare, or any oral information or opinions provided by us, are to be used solely by you and only for the purpose set forth in this Agreement, and may not be published or used for any other purpose by any other party, without the express written consent of Marcum. Marcum's conclusions are limited solely to the matter(s) on which we were engaged.
7. **Third-Party Service Providers.** Marcum may use or subcontract the Services to its affiliates, subsidiaries and/or third parties, including contractors and subcontractors, in each case within or outside of the United States (each, a "Subcontractor") in connection with the provision of Services and/or for internal, administrative and/or regulatory compliance purposes. Client agrees that Marcum may provide confidential and other information Marcum receives in connection with this agreement to Subcontractors for such purposes. Marcum maintains internal policies, procedures and safeguards to protect the confidentiality of your information and Marcum will remain responsible for the work performed by such Subcontractors. Notwithstanding anything to the contrary in this agreement, Client agrees that Marcum may disclose Client's current and/or prior years' tax return information to Subcontractors within or outside the United States for the purposes described above and in

this agreement. Client authorizes Marcum to participate in discussions with and to disclose your information, including your tax return information, to your agents, representatives, administrators or professional advisors (including accountants, attorneys, financial and other professional advisors), their respective officers, directors or employees, and other parties as you may direct.

8. **Litigation.** This matter does not involve litigation and Marcum is not undertaking any responsibilities with regard to litigation, including but not limited to as an expert witness. Should litigation arise or become necessary and services are requested with regard to litigation, the parties will execute a separate Engagement letter.
9. **Use of Counsel.** The parties acknowledge that certain documents and other communications involving and/or disclosed to or by Marcum may be subject to one or more claims of privilege by you. Although you are solely responsible for managing the recognition, establishment, and maintenance (or possible waiver) of these possible protections (and for involving legal counsel as deemed necessary), you will notify Marcum if you wish to invoke the confidentiality privilege and Marcum will cooperate with your reasonable written instructions regarding same. You should be aware that should circumstances arise where you wish to divulge or have Marcum divulge privileged information to other parties, such disclosure may result in a waiver of the confidentiality privilege. If you wish Marcum to divulge privileged information, you must provide Marcum with advance written authority to make such disclosure. Marcum will not decide whether or not a legal privilege or other doctrine applies.

If Marcum receives a third party request (whether a subpoena, summons, or discovery demand in litigation or otherwise) to produce privileged information, Marcum will, to the extent it is not prohibited, notify you and follow your reasonable instructions in responding to such requests before Marcum discloses such privileged information as may be required under applicable laws or rules.

#### **10. Business Risk Allocations.**

*Limitation of liability:* Marcum's aggregate liability arising out of or relating to this Agreement including the Services, work product or deliverables hereunder shall in no event exceed the total amount of fees paid to Marcum for the particular Services giving rise to liability. In no event shall Marcum be liable for any indirect, special, consequential, incidental, punitive, or exemplary damages or loss. This shall be your exclusive remedy. This limitation of liability reflects an allocation of risk between the parties and is neither a penalty nor exclusive. Marcum shall have no responsibility or liability for any hardware, software or any information provided by or at your direction.

*Hold Harmless & Release:* Client agrees to indemnify and hold harmless Marcum, its partners, principals and personnel, affiliates and subsidiaries from and against all third party claims, losses, liabilities, damages, judgments, demands, actions (including court and other costs, expenses, attorneys' and advisors' fees or other costs incurred by penalty or otherwise)

arising from or relating to this agreement, the services, deliverables or Marcum's engagement. Also, because of the importance of the information provided with respect to Marcum's ability to perform the Services, you hereby release Marcum and its partners, principals, directors and employees and affiliates from any liability, damages, claims, judgments, demands, actions (including reasonable costs, fees, expenses and defense costs) arising from or relating to the Services hereunder that are attributable to any information provided by you, your personnel, your agents or otherwise on your behalf that is not complete, accurate, or current.

No action, regardless of form, arising out of the Services provided under this Agreement may be brought by you more than one (1) year after the date of the Services giving rise to the claim.

**11. Waiver of Jury Trial; Jurisdiction and Venue; Governing Law. AS A MATERIAL INDUCEMENT FOR US TO ACCEPT THE ENGAGEMENT AND/OR RENDER THE SERVICES TO YOU IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT:**

Marcum and you each hereby knowingly, voluntarily, and intentionally waive any right either may have to a trial by jury with respect to any litigation based hereon, or arising out of, under, or in connection with this Agreement and/or the Services provided hereunder, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of either party. Marcum and you each expressly agree and acknowledge that the Supreme Court of the State of New York, County of New York, Commercial Division, and the United States District Court for the Southern District of New York, Manhattan Courthouse, shall each have exclusive and sole jurisdiction and venue for any respective state or federal actions arising from, relating to, or in connection with this Agreement, or any course of conduct, course of dealing, statement, or actions of either party. If and only if the action does not satisfy the damage prerequisite for jurisdiction in the County of New York Commercial Division, then any such state court action shall be brought in the County of Suffolk, Commercial Division.

This Agreement, any course of conduct, course of dealing, and/or action of Marcum and/or you and our relationship hereunder shall be governed by and construed the laws of the State of New York to the extent such laws are not inconsistent with the federal securities laws and rules, regulations and standards thereunder. In any litigation brought by either Marcum or you, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred, including through all appeals.

**12. Termination.** Either party may terminate this Agreement or the Services at any time upon prior written notice to the other party. Marcum also may terminate this Agreement or the Services in the event that the Services conflict with, violate or otherwise impair independence or where, in Marcum's judgment, Marcum can no longer rely on the integrity of management, or if there may be a violation of applicable law, rule regulations, or professional standards or guidelines, a potential or actual conflict of interest, or damage to

our reputation). In the event of termination, Client shall pay all direct and indirect charges including out-of-pocket expenses incurred through the date of termination or resignation or thereafter as circumstances and this Agreement may require, plus applicable interest, costs, fees, and attorney's fees. Marcum's engagement ends on the earlier of termination (including without limitation, our resignation or declining to issue a deliverable) or Marcum's delivery of the last deliverable required hereunder.

13. **General.** Marcum shall not be liable for any delay or failure in performance due to circumstances beyond our reasonable control. This Engagement is being undertaken solely for your internal use and benefit and there are no third party beneficiaries and no other person or entity shall be authorized to enforce the terms of this Agreement. Unless otherwise required by applicable law, you shall not make any public announcements in respect of this Agreement or otherwise communicate its terms without Marcum's prior written consent. Each party is an independent contractor with respect to the other and shall not be construed as having a trustee, joint venture, agency, or fiduciary relationship, unless such relationship is specifically stated in this Agreement. Client may not assign or transfer this Agreement, or any rights, licenses, obligations, claims or proceeds from claims arising out of or in any way relating to this Agreement, any Services provided hereunder, or any fees for Services to anyone, by operation of law or otherwise without Marcum's prior written consent and any assignment without consent shall be void and invalid. Marcum may assign this Agreement, including all the rights and benefits hereunder, to any affiliate or acquirer of or successor to its business, or purchaser of all or substantially all of its assets, stock or interests or in the event of a reorganization or restructuring, or in the event of a reorganization or restructuring, and by your signature hereto, you consent to such assignment and the transfer of Client's files and information. If any provision or portion of the Agreement is held invalid, such invalidity shall not affect any of the remaining provisions or portions.

## **Attachment B**

### **Professional Fees**

*Rates in effect at the date of this Agreement*

Partner	\$440 to \$825
Managing Directors and Directors	\$420 to \$645
Managers and Senior Managers	\$260 to \$550
Seniors and Supervisors	\$225 to \$380
Staff	\$155 to \$270
Paraprofessional	\$105 to \$200