

AGREEMENT FOR INDEPENDENT AUDITING SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____,

2016, by and between:

CITY OF POMPANO BEACH, a municipal
corporation of the State of Florida, hereinafter
referred to as "CITY",

and

Marcum LLP, hereinafter referred to as
"AUDITOR".

WITNESSETH:

WHEREAS, the CITY issued a Request for Proposals, RFP L-50-16, *Independent Auditing Services (rebid)*, which is attached hereto and incorporated herein by reference as if set forth in full at **Attachment 1**; and

WHEREAS, the AUDITOR submitted a proposal for RFP L-50-16, Independent Audit Services (rebid) and CITY has selected AUDITOR to provide these services; now, therefore,

It is mutually agreed by and between the parties to this Agreement as follows:

I. SCOPE OF AUDITS.

The scope of work to be performed under this agreement is outlined in more detail in the Request for Proposals, *Independent Auditing Services*, L-50-16, incorporated as **Attachment 1** to this agreement.

II. AUDITING STANDARDS.

The auditing standards to be applied shall be in accordance with generally accepted accounting principles, F.S. Chapter 11.45, *Definitions; duties; authorities; reports; rules*, F.S. Chapter 10.550, *Rules of the Florida Auditor General*, the standards for financial audits set forth in the *Government Auditing Standards*, the provisions of the Federal Single Audit Act of 1984, the State Single Audit Act and the provisions of the U.S. Office of the Office of Management and Budget (OMB) Super Circular.

III. TERMS OF AUDIT.

- A. Audit Procedures. The AUDITOR'S procedures shall include such tests of accounting records as required by Governmental Accounting Standards Board, as mandated by generally accepted auditing standards, and such other auditing procedures they consider appropriate.
- B. Preparation of Financial Statements. CITY is responsible for the financial statements and for adjusting those statements to correct material misstatements. CITY shall also be responsible for:
- establishing and maintaining effective internal control over financial reporting and safeguarding assets and internal control over compliance, including monitoring ongoing activities, and for informing AUDITOR of all significant deficiencies in the design or operation of such controls of which it has knowledge;
 - properly recording transactions in the records;
 - identifying and ensuring that the CITY complies with the laws and regulations applicable to its activities, and for informing AUDITOR about all known material violations of such laws or regulations;
 - the design and implementation of programs and controls to prevent and detect fraud, and for informing AUDITOR about all known or suspected fraud affecting the entity involving management, employees who have significant roles in internal control and others where the fraud could have a material effect on the financial statements;
 - informing AUDITOR of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, regulators, or others;
 - making all financial records and related information available to AUDITOR;
 - for adjusting the financial statements to correct material misstatements;
 - following up and taking corrective action on audit findings, including the preparation of a summary schedule of prior audit findings, and a corrective action plan; and
 - report distribution including submitting the reporting packages.
- C. As required by generally accepted auditing standards, AUDITOR shall make specific inquiries of CITY and others about the representations embodied in the financial statements and the effectiveness of internal control. AUDITOR shall obtain from CITY a representation letter which covers the financial statements and which affirms

that the effects of any uncorrected misstatements are, both individually and in the aggregate, immaterial to the financial statements taken as a whole. The City Commission is responsible for informing AUDITOR of its views about the risks of fraud within the entity. AUDITOR will also determine that certain matters related to the conduct of the audit are communicated to the City Commission including 1) fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements, 2) illegal acts that come to AUDITOR'S attention 3) disagreements with management and other serious difficulties encountered in performing the audit, and 4) various matters related to the entity's accounting policies and financial statements, as required by applicable auditing standards in effect during the course of this agreement.

The results of the audit tests, the responses to AUDITOR'S inquiries and the written representations, constitute the evidential matter upon which AUDITOR shall rely in forming an opinion on the financial statements.

F. Audit Personnel. Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City's Finance Director or designee. However, in either case, the City retains the right to approve or reject replacements.

Consultants and firm specialists mentioned in response to this request for proposal can only be changed with the express prior written permission of the City, which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the AUDITOR provided that replacements have substantially the same or better qualifications or experience.

G. Additional Procedures. During the contractual period covered by this Agreement, CITY may request AUDITOR to provide services in addition to the services provided hereunder. AUDITOR may, at its option, agree to provide such additional services upon terms and conditions mutually agreed upon between CITY and AUDITOR.

IV. AUDIT REPORTS.

Following the completion of the audit of the City's financial statements for the fiscal year ending September 30th, the auditor shall issue, where applicable:

1. A Report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States, pursuant to an audit conducted in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.
2. Single Audit Reports to encompass:

- A Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.
 - A Report on Compliance for Each Major Federal Program and State Project; Report on Internal Control Over Compliance; Report on the Schedule of Expenditures of Federal Awards and State Financial Assistance Required By OMB Super Circular and Chapter 10.550, *Rules of the Florida Auditor General*.
3. Management Letter in Accordance with Chapter 10.550, *Rules of the Florida Auditor General*.
 4. Report to the City Commission to make required written communications to the City's governing board.

Irregularities and illegal acts. The auditors shall be required to make an immediate, written report to the City Manager and the City Commission, if appropriate, of all irregularities and illegal acts or indications of illegal acts of which they become aware.

Reporting to the City Commission. Auditors shall also disclose the following (and any additional disclosures as regulated as mandatory):

1. The auditor's responsibility under generally accepted auditing standards, and assurances that the independent auditor is currently licensed, and that the members of the audit team have the minimum required Continuing Professional Education credits required for performing audits under Governmental Auditing Standards.
2. Significant new or changes in accounting policies and implementation.
3. Significant management judgments and accounting estimates.
4. Significant audit adjustments.
5. Other information in documents containing audited financial statements.
6. Disagreements with management.
7. Consultation with other accountants.
8. Major issues discussed with management prior to retention.
9. Difficulties encountered in performing the audit.

City Commission Presentation - The Auditor shall also make a formal presentation to the City Commission at a City Commission meeting summarizing the results of the reports.

V. DOCUMENTS.

A. To the extent permitted under Chapter 119, Florida Statutes, all work papers of AUDITOR shall remain the property of AUDITOR. In addition, to the extent that AUDITOR utilizes any of its property (including, without limitation, any hardware or software of AUDITOR or any proprietary or confidential information or trade secrets of AUDITOR, as defined per Florida Statutes) in performing the services hereunder, such property shall remain the property of AUDITOR, and the CITY shall acquire no right or interest in such property except as expressly defined below in this section.

B. For a period of three (3) years after completion of any work provided for in this Agreement, the AUDITOR shall make such documents contained in AUDITOR's audit files related to financial statement account analysis and system documentation hereunder and audit evidence relating to such work available to CITY, representatives of the cognizant or oversight agency or its designee, other government audit staffs, and the U.S. Government Accountability Office. Upon reasonable notice to AUDITOR, the CITY and its authorized representatives shall be entitled, during AUDITOR's regular business hours during the said three (3) year period, to inspect any documents and other materials which are not or do not contain any of AUDITOR'S information, which may be exempt per Florida Statutes. In addition, AUDITOR shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance. Access to requested workpapers shall be provided under the supervision of AUDITOR personnel and at a location designated by AUDITOR. During the course of the engagement, AUDITOR may accumulate records containing data, which should be reflected in the CITY's books and records. CITY will determine that all such data, if necessary, will be so reflected. Accordingly, the CITY will not expect AUDITOR to maintain copies of such records in AUDITOR's possession.

C. Public Records.

1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The AUDITOR shall comply with Florida's Public Records Law, as amended. Specifically, the AUDITOR shall:
 - a) Keep and maintain public records required by the City in order to perform the service.
 - b) Upon request from the City's custodian of public records, provide the City with a copy of 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, Florida Statutes 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 AUDITOR

does not transfer the records to the City.

- d) Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the AUDITOR, or keep and maintain public records required by the City to perform the service. If the AUDITOR transfers all public records to the City upon completion of the contract, the AUDITOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the AUDITOR keeps and maintains public records upon completion of the contract, the AUDITOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.
2. Failure of the AUDITOR to provide the above described public records to the City within a reasonable time may subject AUDITOR to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE AUDITOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE AUDITOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

VI. CITY ASSISTANCE.

A. AUDITOR may utilize the Staff of the CITY's Finance Department to assist in preparing schedules, locating and reproducing documents, typing and reproduction of the Financial Report, and all other appropriate services;

B. AUDITOR understands that the CITY's Internal Audit Department is available to provide 100 hours of assistance (Deputy Internal Auditor) to AUDITOR; and

C. CITY understands that the proper and timely completion of AUDITOR's services hereunder requires the reasonable cooperation of CITY, its agencies, and their respective officers, directors, employees, other personnel and agents. CITY agrees to provide all such

reasonable cooperation requested by AUDITOR. The CITY is responsible for the performance of its staff.

VII. PERFORMANCE STANDARDS.

- AUDITOR shall provide adequate staff that possesses the necessary skills to perform and conclude the audit and prepare all required reports in a timely manner. Any interchangeability of staff in the original proposal shall be approved by the CITY.
- All responses to any CITY questions or inquiries should occur within two (2) business days of notification to AUDITOR.
- AUDITOR shall respond to any emergency request for service within eight (8) business hours.
- AUDITOR shall turn around review comments to drafts of the financial statements provided within ten (10) business days from the receipt of such drafts.
- All deadlines shall be met.

The Auditor will be evaluated by CITY staff on a regular basis regarding the quality of service and the timeliness of data exchange. Failure to comply with these requirements will constitute a material contract breach. The Auditor shall exercise the same degree of care, skill and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the Auditor shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care as determined at sole discretion of City.

VIII. TERM.

The term of this Agreement is for the audit of fiscal years ending September 30, 2016 through September 30, 2020.

IX. TERMINATION.

Either CITY or AUDITOR may terminate this agreement for convenience with ninety (90) days written notice, in accordance with Section XIII of this Agreement. Said termination provision is in addition to any other right or remedy provided for within this Agreement.

X. COMPENSATION.

AUDITOR shall be compensated for time charges and expenses in an amount not to exceed \$116,976 for fiscal year 2016. Pricing for subsequent years (2017 through 2020) will be adjusted using the change in the Average Consumer Price Index for All Urban Consumers for all Cities, as published by the U.S. Department of Labor Statistics or its successor agency for the twelve months ending January of each year to be effective for the upcoming fiscal year's

engagement. Such adjustment shall not exceed 3%. It is expressly understood and agreed that in no event will the amounts to be paid by the CITY to the AUDITOR under this Agreement exceed the fees set forth in this Agreement, as more particularly indicated at **Attachment 2.**

AUDITOR agrees that proposed fees in this agreement reflects all accounting and auditing standards issued as of the date the proposal was submitted and as such have been contemplated by AUDITOR in the fee proposal. CITY and AUDITOR recognize that the scope of services and compensation under this Agreement are predicated upon current audit requirements imposed by laws, regulations and professional standards relating to such services. CITY and AUDITOR further recognize that the scope of services and compensation under this Agreement are predicated upon expectations of reasonable cooperation with AUDITOR by CITY pursuant to Section VI herein, and the absence of any irregularities or extraordinary circumstances which might necessitate the extension of audit services beyond the normal scope of auditing services.

Should irregularities, or the absence of such reasonable cooperation increase the level of services required under applicable law, regulations or professional standards, or other unforeseen conditions be encountered which might necessitate the extension of auditing work beyond the scope of normal auditing procedures, AUDITOR agrees to advise CITY promptly in writing of the circumstances and to request an equitable adjustment in the maximum fee (at hourly rates in effect under the terms of this agreement), before significant additional time is incurred by AUDITOR. Any such request for adjustments shall be in writing and shall contain a detailed explanation of why the adjustments are necessary. The City must respond in writing to approve any additional costs to be incurred, as described in this section.

XI. BILLING.

AUDITOR shall be entitled to invoice monthly for the percentage of services completed as accepted by CITY. Upon approval of the invoice by CITY, CITY will make its best efforts to pay AUDITOR within thirty (30) calendar days of the receipt of invoices. The City reserves the right to withhold final payment until receipt of all deliverables or ten percent (10%) of each intermittent payment request received. CITY will receive invoices for the actual hours worked, which will include a breakdown of staff levels for hours being invoiced and a calculation of total amount invoiced.

XII. CONFERENCES.

A. AUDITOR shall, at a minimum, confer with the Finance Director and Controller and such other CITY officials as explicitly outlined herein:

1. During the month of August (No later than mid-month) for the commencement of the interim audit and the month of December (No later than mid-month) for the commencement of the final audit, AUDITOR shall meet, for an entrance conference, with the Finance Director and the Controller, and then again with all key CITY finance department personnel and department heads of key offices or programs. These meetings will be to discuss prior audit problems and the work to be performed. These meetings will also be used to establish

overall liaison for the audit and to make arrangements for workspace and other needs of AUDITOR.

2. On a weekly basis, during the interim and final fieldwork, AUDITOR shall meet with the Controller for a progress conference. During this meeting, the discussion will focus on problems encountered, areas completed and any anticipated delays.
3. Prior to the conclusion of each annual audit, AUDITOR shall meet with CITY for an exit conference. Those present from the CITY may include the City Manager, Finance Director, the Controller, Internal Auditor and Department heads of key offices or programs, as selected by CITY.
4. One on one meetings with the Mayor and each City Commissioner may also be warranted to discuss the results of the audit, prior to the formal communication and presentation at a City Commission meeting.

B. AUDITOR'S comments shall be delivered to the Finance Director, Controller, and Internal Auditor, but only after being vetted with City Departments where the comment may have originated. Independent AUDITOR will subsequently evaluate written responses from management and prepare for an exit conference with the City Manager, Finance Director, Controller, and Internal Auditor to ensure corrections and revision to AUDITOR comments are obtained, as appropriate.

XIII. NOTICES.

Any notice, agreement, or other written communication from AUDITOR to CITY shall be considered delivered when received by certified mail, return receipt requested or delivered in person to the City Manager, or his designee at the address below:

City of Pompano Beach
100 W. Atlantic Blvd.
Pompano Beach, Florida
Attn: City Manager

Copy to:
City of Pompano Beach
Finance Department
100 W. Atlantic Blvd.
Pompano Beach, Florida
Attn: Finance Director, Room 480

Any notice, agreement or other communication from CITY to AUDITOR shall be considered delivered when received by certified mail, return receipt requested to AUDITOR at the address left on file with CITY (as stated below) or delivered in person to AUDITOR or its authorized representative:

Marcum LLP
Suntrust International Center
One SE Third Avenue
Suite 1100
Miami, FL 33131
Attn: Michael D. Futterman, CPA

XIV. SUBLETTING.

AUDITOR shall not sublet, assign, or transfer any work under this Agreement without the written consent of CITY. When applicable and upon receipt of such consent in writing, AUDITOR shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted on the plans, specifications, reports, standards and agreements. In such circumstances, it may be necessary for AUDITOR to disclose confidential client information to approved entities. AUDITOR agrees to enter into confidentiality agreements with all third-party service providers and shall ensure that these third-party service providers have appropriate procedures in place to prevent the unauthorized release of CITY's confidential information to others.

XV. INSURANCE

AUDITOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the CITY's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to CITY staff responsible for oversight of the subject project/contract.

AUDITOR is responsible to deliver to the CITY for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by AUDITOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by AUDITOR under this Agreement.

Throughout the term of this Agreement, AUDITOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440. AUDITOR further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as CITY's interests may appear, on General Liability Insurance only, relative to claims which arise from AUDITOR's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance	Limits of Liability
GENERAL LIABILITY:	Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate
* Policy to be written on a claims incurred basis	
XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
— explosion & collapse hazard	
— underground hazard	
XX products/completed operations hazard	bodily injury and property damage combined
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent contractors	personal injury
XX personal injury	
— sexual abuse/molestation	
— liquor legal liability	
AUTOMOBILE LIABILITY:	Minimum \$500,000 Per Occurrence and \$500,000 Per Aggregate
XX comprehensive form	
— owned	
— hired	

___ non-owned

REAL & PERSONAL PROPERTY

___ comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY		Per Occurrence	Aggregate
XX other than umbrella	bodily injury and property damage combined	\$1,000,000	\$1,000,000

PROFESSIONAL LIABILITY		Per Occurrence	Aggregate
XX * Policy to be written on a claims made basis		\$1,000,000	\$1,000,000

(3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions set forth in the Agreement shall survive the termination or expiration of the Agreement for a period of four (4) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. If required by law, CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the

insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

XVI. WARRANTY.

Other than agreed by CITY, AUDITOR warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for AUDITOR, to solicit or secure this contract, and that he has not paid or agreed to pay any other certified public accounting firm any fee, commission, percentage fee, gift, or any other considerations contingent upon or resulting from the award or making of the contract. For breach or violation of this warranty, CITY shall have the right to annul this contract without liability.

XVII. ATTACHMENTS.

Attachment 1 and Attachment 2 are attached hereto and made a part hereof.

XVIII. INDEMNIFICATION.

AUDITOR shall indemnify and hold harmless CITY, its officers and employees, from any and all claims, suits, actions, liabilities and reasonable defense costs, in each case for damages in connection with the performance of auditing services pursuant to this Agreement, whether directly or indirectly, including damages or bodily injury to persons and tangible property to the extent proximately caused by the negligence or willful misconduct of AUDITOR as a result of AUDITOR's performance of services under this Agreement. Notwithstanding the foregoing, the AUDITOR's indemnity shall not extend to liability for damages to persons or property to the extent such damage was solely caused by an act, omission, or default of CITY, or by the CITY's officers, agents, and employees.

As a condition to the foregoing indemnity obligations of AUDITOR, the CITY shall provide AUDITOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate (and shall cause all agencies thereof to cooperate) with AUDITOR in connection with such claim. AUDITOR shall be entitled to control the handling of any such claim to the extent that the act of AUDITOR requires defense and indemnification as required above, and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

The City agrees that AUDITOR and its partners, principals, and employees indemnification commitment to hold City harmless from all claims, liabilities, losses, does not include costs arising in circumstances where there has been a known misrepresentation or fraud committed by a member of the City's management, regardless of whether such person was acting in the City's interest. This indemnification shall survive termination of this Agreement.

XIX. ENTIRETY OF AGREEMENT.

A. This Agreement, all attachments thereto, along with the Request For Proposal (Attachment 1), and the proposal received from AUDITOR (Attachment 2), states the entire contract between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous understandings, representations and agreements. No alterations, modifications, release or waiver of this Agreement or any of the provisions hereof shall be effective unless in writing, executed by the parties.

B. In the case of a conflict between the language, terms, conditions, or provisions of this Agreement and those contained within the attachments, RFP, or submitted proposal, the specific language contained within this Agreement shall prevail. In the absence of such a conflict, these other documents are intended to supplement and elucidate the intent, purpose and extent of duties and obligations, of the parties hereto.

C. This Agreement shall be governed by and construed according to the laws of the State of Florida.

XX. CONSULTATION.

CITY expressly permits AUDITOR to consult with the Auditor General of the State of Florida, the federally designated "Cognizant Agency" and/or any other federal, state or local governmental agency or authority on any matter pertaining to the services hereunder which in the judgment of the AUDITOR are appropriate to the performance of the services hereunder.

XXI. CLOSING OF CITY'S BOOKS AND RECORDS.

A. CITY understands and agrees that the books and records of account must be properly closed under the laws, regulations and professional standards applicable to the services provided hereunder. All audit work papers will be completed by CITY and available for audit no later than December 26th.

B. Assuming the above timeline is met, AUDITOR shall have all audit reports finalized and ready to be issued by the end of February and all deliverables must be made to the City no later than March 29th, for the preceding fiscal year audit.

XXII. FORCE MAJEURE.

Notwithstanding any other provision in this Agreement, AUDITOR shall not be liable or held responsible for any delays in performing its obligations under this Agreement including, but not limited to, the completion of the audit and issuance of its report thereon, which result from circumstances or causes beyond AUDITOR's control including, without limitation, acts of omissions or the failure to cooperate as described in Section VI by CITY, its agencies, or any of their respective officers, directors, employees, other personnel and agents, fire or casualty, act of God, strike or labor dispute, war or other violence, or any law, order, or requirement of any governmental agency or authority.

XXIII. OTHER MATTERS.

A. AUDITOR shall be an independent contractor under this agreement and as such shall have no authorization to bind the CITY. Neither the AUDITOR nor its agents shall act as officers, employees, or agents of the CITY.

B. AUDITOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this agreement. This shall include compliance with the Americans with Disabilities Act. In addition, AUDITOR'S decisions regarding the delivery of services under this agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

C. Any claim arising out of services rendered pursuant to this agreement shall be resolved in accordance with the laws of Florida. CITY and AUDITOR agree that no claim arising out of services rendered pursuant to this agreement by or on behalf of the CITY shall be asserted more than two years after the date of the last audit report issued by AUDITOR.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their proper and appropriate officials on the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
Lamar Fisher, Mayor

By: _____
Dennis Beach, City Manager

Attest:

Ascleeta Hammond, City Clerk

(SEAL)

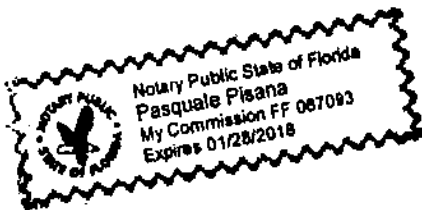
Approved As To Form:

Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14 day of September, 2016 by LAMAR FISHER, as Mayor, DENNIS W. BEACH as City Manager and ASCELETA HAMMOND as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, who are personally known to me.

NOTARY'S SEAL:



Pasquale Pisana
NOTARY PUBLIC, STATE OF FLORIDA

Pasquale Pisana
(Name of Acknowledger Typed, Printed or Stamped)

087093
Commission Number

"AUDITOR":

Witnesses:

MARCUM LLP

[Signature]
[Signature]
[Signature]

By: M. Futterman

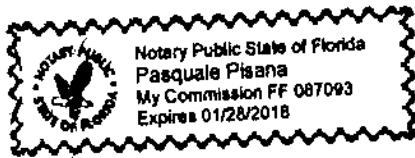
MICHAEL D. FUTTERMAN
Print Name

Title: PARTNER

STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 16 day of September, 2016 by Michael D. Futterman as Partner of MARCUM LLP, a partnership. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Pasquale Pisana
NOTARY PUBLIC, STATE OF Florida
Pasquale Pisana
(Name of Acknowledger Typed, Printed or Stamped)
087093
Commission Number