

**RESOLUTION NO. 2012 – 008**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE SELECTION COMMITTEE'S RECOMMENDATIONS AND RANKING FOR EXTERNAL AUDIT SERVICES; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT, WITH MARCUM, LLP, THE TOP RANKED VENDOR, IN SUBSTANTIALLY THE SAME FORM AS EXHIBIT "A"; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on August 31, 2011, in furtherance of the Town's Procurement Code, the Town published a Request for Proposals (RFP) procuring qualified consultants for External Audit Services; and

**WHEREAS**, on September 16, 2011, the Town received seven (7) responses to its request; and

**WHEREAS**, on October 6, 2011 the Town's Selection Committee ("SC"), at a publicly advertised meeting, ranked Marcum LLC as the highest ranked proposal; and

**WHEREAS**, Marcum LLC, represents that it is willing and able to provide the required services to assist the Town in providing External Audit Services; and

**WHEREAS**, the Town Council has determined that the recommendation and ranking of the SC is in the best interests of the Town.

**WHEREAS**, the Town Council desires to enter into an Agreement with the top ranked vendor to perform the required external audit services in accordance with generally accepted auditing standards and the standards for financial audits set forth in the U.S. General Accounting Office's (GAO) Government Auditing Standards, the provisions of the Federal Single Audit Act Amendments of 1996, U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and the provisions of the Florida Single Audit Act, F.S. 215.97, and F.S. 218.39, Comprehensive Annual Financial Report (CAFR).

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1.** The above recitals are true and correct and are incorporated herein by reference.

**Section 2.** The Town Council hereby approves the SC's ranking of the respondents to the Town's procurement relating to the External Audit Services as follows:

RANK	FIRM	POINTS
1	Marcum LLP	350
2	Keefe, McCullough & Co., LLP	314
3	Alberni Caballero & Co., LLP	310
4	Grau & Associates	275
5	GLSC & Company, PLLC	266
6	Gerstle, Rosen & Goldenberg, P.A.	246

**Section 3:** The Town Council of the Town of Southwest Ranches hereby authorizes the Mayor, Town Administrator, and Town Attorney to enter into an Agreement with the top ranked firm, Marcum LLC, in the amount specified in the Agreement, attached hereto as Exhibit "A", to perform the required External Audit Services.

**Section 4:** The Town Council authorizes the Mayor, Town Administrator, and Town Attorney to enter into an Agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

**Section 5:** This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 27<sup>th</sup> day of October, 2011, on a motion by Council Member Breitkreuz and seconded by Council Member Jablonski.

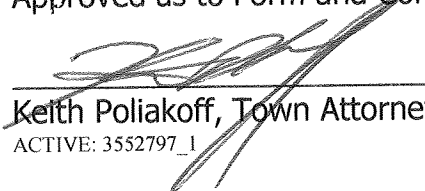
Nelson	<u>YES</u>	Ayes	<u>4</u>
Fisikelli	<u>YES</u>	Nays	<u>0</u>
Breitkreuz	<u>YES</u>	Absent	<u>1</u>
Jablonski	<u>YES</u>	Abstaining	<u>0</u>
McKay	<u>ABSENT</u>		

  
Jeff Nelson, Mayor

ATTEST:

  
Erika Gonzalez-Santamaria, CMC Town Clerk

Approved as to Form and Correctness:

  
Keith Poliakoff, Town Attorney  
ACTIVE: 3552797\_1

**AGREEMENT BETWEEN**  
**MARCUM LLP**  
**AND**  
**TOWN OF SOUTHWEST RANCHES**  
**PROVIDING FOR**  
**ANNUAL AUDIT SERVICES**

This Agreement is made by and between MARCUM LLP, a Florida corporation (hereinafter referred to as "MARCUM"), and the TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida (hereinafter referred to as "TOWN").

WHEREAS, on August 31, 2011, in furtherance of the Town's Procurement Code, the Town published a Request for Proposals (RFP) procuring qualified consultants for External Audit Services; and

WHEREAS, on September 16, 2011, the Town received seven (7) responses to its request; and

WHEREAS, on October 6, 2011 the Town's Selection Committee ("SC"), at a publicly advertised meeting, ranked Marcum LLP as the highest ranked proposal; and

WHEREAS, Marcum LLP, represents that it is willing and able to provide the required services to assist the Town in providing External Audit Services; and

WHEREAS, the Town Council has determined that the recommendation and ranking of the SC is in the best interests of the Town.

WHEREAS, the Town Council desires to enter into an Agreement with the top ranked vendor to perform the required external audit services in accordance with generally accepted auditing standards and the standards for financial audits set forth in the U.S. General Accounting Office's (GAO) Government Auditing Standards, the provisions of the Federal Single Audit Act Amendments of 1996, U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and the provisions of the Florida Single Audit Act, F.S. 215.97, and F.S. 218.39, Comprehensive Annual Financial Report (CAFR).

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, MARCUM and TOWN do hereby agree as follows:

**ARTICLE I**  
**BACKGROUND, PURPOSE AND INTENT**

- 1.1 The above recitals are true and correct and incorporated herein as if set forth in full hereunder.
- 1.2 The TOWN and MARCUM find that the method of delivery of Annual Audit Services set forth in this Agreement is in the best interest of the public and can be best accomplished through coordination of the provisions of such services as set forth herein.

**ARTICLE 2**  
**SCOPE OF SERVICES**

- 2.1 MARCUM agrees to provide Annual Audit Services in accordance with its response to the Town's Request for Proposals, attached hereto and incorporated herein by reference as Exhibit "A", and in accordance with the requirements identified in RFP 11-009, Request for Proposals for External Audit Services, attached hereto and incorporated herein by reference as Exhibit "B" (hereinafter collectively Exhibit "A" and Exhibit "B" combined shall be referred to as "Scope of Services or "Work". In the event of any inconsistency between the terms of the RFP and applicable law, the more stringent requirement for the services to be performed shall apply.
- 2.2 MARCUM shall be required to make an immediate written report of all irregularities and illegal acts or indications of illegal acts of which they become aware of directly to the Town Council.
- 2.3 MARCUM agrees that certain books and records may be made available prior to the time when others may be made available, and certain funds may be audited and such audit for those funds completed prior to the time that other funds are so audited and completed. It is contemplated that those funds audited separately and reported separately will be completed and the audit report furnished as soon as possible. Provided no delays are caused by the Town, the financial audit report shall be furnished to the TOWN no later than March 10, for the previous fiscal year ending September 30, along with the required reports on internal control structure and compliance with laws and regulations.

The TOWN agrees that all records, documentation, and information requested in connection with the audit will be made available subject to Florida Statutes, that all material information will be disclosed, and that MARCUM will have the full cooperation of the TOWN and the Town's agents. As required by generally accepted auditing standards, MARCUM will make specific inquiries of the TOWN about the representations embodied in the financial statements, the effectiveness of the internal control structure, the TOWN'S compliance with certain laws and regulations, and obtain a representation letter from the TOWN about these matters. The responses to MARCUM'S inquiries, the written representations and the results of audit tests comprise the evidential matter that will be relied upon in forming an opinion on the financial statements.

- 2.4 MARCUM agrees and acknowledges that MARCUM is prohibited from exempting provisions in the RFP or in this Agreement in any of AUDITOR'S reports prepared pursuant to this Agreement.
- 2.5 MARCUM agrees and acknowledges that the Town Attorney shall review and approve the litigation disclosures, if any, of the Comprehensive Annual Financial Report (CAFR) prior to its publication.
- 2.6 MARCUM agrees and acknowledges that upon execution of this Agreement, MARCUM shall provide in writing, to the Town Administrator, MARCUM's contact person, who shall be responsible for the TOWN'S audit. In no event shall MARCUM be permitted to subcontract its work to a third party.
- 2.7 Following the completion of the audit of the fiscal year's financial statements, MARCUM shall issue the following to the TOWN: a report on the fair presentation of the basic financial statements as a whole, in conformity with accounting principles generally accepted in the U.S.; a report on the internal control structure based on the auditor's understanding of the control structure and assessment of control risk; a report on compliance with laws and regulations; a "Management Letter" as referenced at Florida Statutes, Section 11.45(1)(f), and as may be required by Sections 215.97 and 218.39, Florida Statutes; and any reports required by the Single Audit Act of 1996 and OMB Circular A-133.
- 2.8 MARCUM will use best efforts to have continuity for any MARCUM employee that works on TOWN's audit will be returned each year to the TOWN audit if they are still employed by MARCUM in their Assurance Services Department.
- 2.9 The auditor will offer, at no expense to the Town, an annual government-training seminar to the Town's accounting staff. This seminar will be offered locally and shall award eight (8) hours of CPE credits, subject to Broward County's Ethics Rules.
- 2.10 MARCUM may be requested to perform other auditing services at the discretion of the TOWN. Any such additional work agreed to between TOWN and MARCUM shall be performed only upon a written agreement, which shall state the specific cost for such services, prior to the initiation of such services. The Town shall not be liable for any costs or expenses incurred for any work performed without a valid work authorization.

### **ARTICLE 3 TERM OF AGREEMENT**

- 3.1 This Agreement is for an initial five (5) year period beginning with the fiscal year ending September 30, 2011, and may be renewed annually thereafter upon the approval of both parties for an additional three (3) years; and pursuant to the terms set forth in Section 4.1 below, unless earlier terminated in accordance with paragraph 3.2 hereof.
- 3.2 Notwithstanding any other provision of this Agreement, this Agreement is terminable at will by the TOWN, with or without cause. MARCUM may terminate this Agreement if

MARCUM determines, within thirty (30) days of the TOWN'S receipt of written notice, that MARCUM is unable to obtain necessary information from the TOWN to complete the Work. Notice of termination shall be provided in accordance with the "NOTICE" section of this Agreement. The terminating party must provide thirty (30) days written notice. In the event that MARCUM is terminating for cause, the TOWN shall be given thirty (30) days to cure the alleged default. In the event that this Agreement is terminated, MARCUM shall solely be paid for any Work performed up to the date this Agreement is terminated and MARCUM shall not be entitled to any additional compensation, of any kind or in any amount, from TOWN as a result of being terminated. MARCUM specifically waives any and all rights to seek any additional sums or damages from TOWN due to being terminated other than MARCUM's sole right to be paid for any Work performed up to the date this Agreement is terminated. Upon termination, MARCUM shall immediately refrain from performing further Work for the TOWN or incurring additional expenses.

- 3.3 In the event of termination or expiration of this Agreement, MARCUM and TOWN shall cooperate in good faith in order to effectuate a smooth and harmonious transition from MARCUM to such other person or entity designated by the TOWN, who will assume Annual Audit Services, including the transfers to the TOWN of all files and records in possession of MARCUM which relate to the TOWN'S Annual Audit Services, which are not deemed to be proprietary in nature.
- 3.4 The TOWN'S fiscal year is from October 1 through September 30. The audit field work should be substantially completed no later than February 28th of each fiscal year and the financial statements and the final signed report delivered to the TOWN by March 10th of each fiscal year. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement; however, these dates may be changed each year by the TOWN and MARCUM.

#### **ARTICLE 4 COMPENSATION**

- 4.1 MARCUM shall provide Annual Audit Services, as described in the Scope of Work, to the TOWN for a maximum Annual Fee, which shall be paid in accordance with MARCUM'S flat rate for services, as delineated in its response to the Town's Request for Proposals (Exhibit "A") and as specifically attached hereto as Exhibit "C". The Town, in its sole discretion may add the services specified for Federal Single Audit and Florida Single Audit at the rate contained therein. After the initial Five Year Term of this Agreement, the maximum Annual Fee shall be negotiated in good faith by both parties. MARCUM acknowledges and agrees that the Annual Fee is the maximum payable to MARCUM and constitutes a limitation upon the TOWN'S obligation to compensate MARCUM for its services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon MARCUM'S obligation to perform all of the work required by or which can be reasonably inferred by from the Scope of Services.

- 4.2 Reimbursable Expenses: The parties acknowledge and agree that the Annual Fee includes all miscellaneous costs, and that no further fees, except the flat rate shall be billed to the Town.
- 4.3 By the fifteenth (15th) day of each month, MARCUM shall submit an invoice for its prior month's services. TOWN shall pay MARCUM within thirty (30) calendar days of receipt of MARCUM'S proper invoice. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Town Administrator. MARCUM shall provide a complete copy of the working papers to TOWN upon request, unless subject to the Public Records Laws of the State of Florida. TOWN may withhold ten percent (10%) from each billing pending delivery of MARCUM'S final reports. Additionally, payment may be withheld by the Town Administrator, for failure of AUDITOR to comply with a term, condition or requirement of this Agreement.
- 4.4 Notwithstanding any provision of the Agreement to the contrary, the Town Administrator may withhold, in whole or in part, payment (in addition to the ten percent (10%) described above) to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Town Administrator. The amount withheld shall not be subject to payment of interest by TOWN.
- 4.5 Payment shall be made to AUDITOR at:
- MARCUM LLP  
450 East Las Olas Blvd, 9<sup>th</sup> Floor  
Fort Lauderdale, FL 33301
- 4.6 MARCUM agrees to keep such records and accounts as may be necessary for a period of at least three years after completion of the Work provided for in this Agreement. Such books and records shall be available at all reasonable times for examination and audit by TOWN.
- 4.7 If it should become necessary for TOWN to request MARCUM to render any additional services to either supplement the services described in the RFP or to perform additional work as a result of the specific recommendations included in any report issued pursuant to this Agreement, such additional work shall be performed only if set forth in an addendum to this Agreement, Work Authorization or written Agreement, which shall be executed in the same formality of the instant Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees and expenses included in the sealed dollar cost bid, or if in subsequent fiscal years, at the agreed upon schedule. The Town shall not be liable for any costs or expenses incurred for any work performed that fails to comply with the requirements of this Paragraph.



control and conduct of its employees and for any injury sustained by such employees in the course of their completion of the audit.

- 5.4.2 Automobile Liability Insurance, MARCUM to provide automobile liability insurance to cover any auto with a limit of coverage of at least One Hundred Thousand (\$100,000) per occurrence and Three Hundred Thousand (\$300,000) dollars aggregate and \$50,000/\$50,000 for property damage.
- 5.4.3 Professional Liability (Errors and Omissions): MARCUM to provide professional liability insurance for errors and omissions with minimum limit of coverage of Two Million Dollars (\$2,000,000.00) per occurrence. The deductible shall not be more than Fifty Thousand Dollars (\$50,000.00).
- 5.4.4 Excess Liability: Umbrella form bodily injury and property damage with a minimum limit of coverage of One Million Dollars (\$1,000,000) per occurrence.
- 5.4.5 General Liability Insurance, MARCUM, to provide general liability insurance in the amount of at least \$100,000/\$300,000 dollars.
- 5.4.6 MARCUM shall provide to TOWN a certificate of Insurance and a copy of required insurance policies as required by this Section. All certificates and endorsements required herein shall state that TOWN shall be given thirty (30) days notice prior to expiration or cancellation of said policy.
- 5.5 If the initial insurance expires prior to the completion of the Work, renewal copies of Policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 5.6 Notice of Cancellation and/or Restriction--The Policy(ies) must be endorsed to provide TOWN with at least thirty (30) days notice of cancellation and/or restriction.
- 5.7 MARCUM shall furnish to the Town Administrator Certificates of Insurance or endorsements evidencing the insurance Coverage and the insurance policies specified above prior to the execution of the Agreement. The required Certificates of Insurance shall name the types of policies provided. Approval of the insurance for the coverage amounts set forth herein shall not relieve or decrease the liability of the MARCUM in any way. Certificates of Insurance shall contain transcripts of the policies authenticated by the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location of the office where communications and notices to and from the insurer shall be issued.
- 5.8 UPON EXECUTION OF THIS AGREEMENT, MARCUM SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE TOWN OF SOUTHWEST RANCHES IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF MARCUM UNDER THE AGREEMENT.

**ARTICLE 5**  
**INDEMNIFICATION, LIABILITY & INSURANCE**

- 5.1 To the fullest extent permitted by laws and regulations of the State of Florida, MARCUM shall indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or alleged to have arisen out of or in consequence of the operations or services furnished by MARCUM or its subcontractors, agents, officers, employees or independent contractors pursuant to the Contract.
- 5.2 Patent and Copyright Indemnification: MARCUM agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of this Agreement.
- 5.3 Work pursuant to this Agreement. TOWN and MARCUM agree that 1% of the compensation due to MARCUM from TOWN pursuant to this Agreement is offered and accepted as sufficient separate consideration for MARCUM's agreement to indemnify TOWN and TOWN'S officers, contractors, agents, and employees as provided for in this paragraph. This specific consideration for MARCUM's agreement to indemnify is already incorporated in the rate agreed to between TOWN and MARCUM. MARCUM agrees to be fully responsible for acts and omissions of its respective agents or employees. Nothing herein is intended to serve as a waiver of sovereign immunity by the TOWN to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter, whether arising out of this Agreement or any other contract. To the extent considered necessary by the Town Administrator and the Town Attorney, any sums due to MARCUM under this Agreement may be retained by TOWN until all of TOWN'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by TOWN.
- 5.4 Without limiting any of the other obligations or liabilities of MARCUM, MARCUM shall provide, pay for, and maintain in force all insurance specified herein. The TOWN shall be named as an additional insured of all the insurance policies to be acquired by MARCUM for the Work provided by MARCUM pursuant to this Agreement and shall also be identified as the certificate holder on all certificates of insurance. The insurance required by this Agreement shall be written by a company licensed in Florida and the company must reasonably be acceptable to the TOWN. The insurance coverage to be acquired and maintained by the MARCUM is as follows:
- 5.4.1 Worker's Compensation Insurance covering all employees and providing benefits as required by Florida State Statute, Chapter 440, regardless of the size of the company (number of employees). The firm further agrees to be responsible for employment,

- 5.9 Cessation of Insurance - All insurance coverage required under this section shall remain in full force and effect for, at least, one (1) year after the termination, cancellation or expiration of this Agreement.
- 5.10 The official title of the owner is Town of Southwest Ranches. This official title shall be used in all insurance documentation.
- 5.11 These insurance requirements shall not relieve or limit the liability of MARCUM. TOWN does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect MARCUM's interests or liabilities but are merely minimum requirements established by the Town Administrator.
- 5.12 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 5.13 MARCUM shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- 5.14 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which TOWN is named as an additional named insured shall not apply to TOWN. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days of TOWN's actual notice of such event.

## **ARTICLE 6 RELATIONSHIP**

- 6.1 MARCUM shall perform all of the work enumerated in this Agreement solely as an independent contractor, and not as an employee of the TOWN. Services provided by MARCUM shall be subject to the supervision of MARCUM. In providing the services, MARCUM or its agents shall not be acting and shall not be deemed as acting as officers, employees or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of MARCUM. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 6.2 Neither MARCUM nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of

them based upon this Agreement.

## **ARTICLE 7 AUDIT RIGHT AND RETENTION OF RECORDS**

- 7.1 TOWN shall have the right to audit the nonproprietary books, records, computer records, electronic stored data, and accounts that are related to this Agreement. MARCUM shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. MARCUM shall preserve and make available, at reasonable times for examination and audit, all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes). If copies of all records are not turned over to the TOWN upon termination, then MARCUM shall retain such records for the required retention period of the Florida Public Records Act. If the Florida Public Records Act is applicable to TOWN's and/or to MARCUM's records, parties shall comply with all requirements thereof. In order to protect the confidentiality or non-disclosure requirements of either federal or state law, all requests for public records shall be made to the TOWN. MARCUM will provide the requested information to the TOWN. In addition, MARCUM shall respond to, the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance. In addition, MARCUM shall provide a complete copy of all working papers to the TOWN upon request, unless subject to the Public Records Laws of the State of Florida.
- 7.2 All working papers and reports must be retained in accordance with requirements and procedures set forth by the General Records Schedule for Local Government Agencies as promulgated by the Division of Archives, History and Records Management (a division of the Florida Department of State) at the auditor's expense, unless the firm is notified in writing by the Town of Southwest Ranches of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees: TOWN, U.S. General Accounting Office (GAO), auditors of entities of which the TOWN is a sub-recipient of grant funds, parties designated by the federal or state governments or by the TOWN as part of an audit quarterly review process.

## **ARTICLE 8 REPORTS**

- 8.1 MARCUM and TOWN shall develop an annual work plan that will specify the Work activities and establish estimated time frame for the delivery of reports during the year.
- 8.2 MARCUM agrees to furnish TOWN with one unbound original and 15 bound copies of the annual audit report.

## **ARTICLE 9 SUBCONTRACTING**

- 9.1 No work shall be subcontracted to other parties, firms, or individuals by MARCUM without the prior written consent of the Town Council, which consent may be unreasonably withheld. MARCUM shall ensure that all subcontractors or sub-consultants performing any Work under this Agreement are bound in writing to all applicable terms and conditions of this Agreement.
- 9.2 MARCUM shall include the foregoing provision in all agreements between itself and its sub-consultants.

## **ARTICLE 10 OWNERSHIP RIGHTS**

- 10.1 With the exception of working papers, all work performed and materials created under this Agreement shall be considered work product and shall be the exclusive intellectual property of the TOWN. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by MARCUM, including but not limited to working papers, unless subject to the Public Records Laws of the State of Florida, whether finished or unfinished, shall be delivered by MARCUM to the Town Administrator within seven (7) days of termination of this Agreement. Any compensation due to MARCUM shall be withheld without interest until all documents are received as provided herein.

## **ARTICLE 11 COOPERATION**

- 11.1 MARCUM agrees to timely provide the Work specified in this Agreement and further agrees to conduct their work in a cooperative and professional manner. TOWN agrees to timely provide any and all information requested in connection with projects contained in the approved work plan.

## **ARTICLE 12 NONDISCRIMINATION & PUBLIC ENTITY CRIME ACT**

- 12.1 MARCUM 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. MARCUM shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, MARCUM shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

- 12.2 MARCUM'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.
- 12.3 Public Entity Crime Act. MARCUM represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to TOWN, may not submit a bid on a contract with TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to TOWN, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with TOWN, and may not transact any business with TOWN in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN'S competitive procurement activities. In addition to the foregoing, MARCUM further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether MARCUM has been placed on the convicted vendor list.

### **ARTICLE 13 ENTIRE AGREEMENT**

- 13.1 This Agreement and its attachments constitute the entire Agreement between MARCUM and TOWN, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

### **ARTICLE 14 CONSTRUCTION**

- 14.1 This Agreement has been a joint effort of the parties, and the resulting documents, solely as a matter of judicial construction, shall not be construed more severely against one of the parties than the other.

### **ARTICLE 15 FURTHER ASSURANCES**

- 15.1 TOWN and MARCUM agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto solely consistent with applicable Federal, State and local laws, rules or regulations. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

#### **ARTICLE 16 COUNTERPARTS**

- 16.1 This Agreement may be fully executed in three (3) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.

#### **ARTICLE 17 NO AMENDMENT OR WAIVER**

- 17.1 This Agreement may not be changed, altered or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement, prior to the initiation of any Work reflecting such change.

#### **ARTICLE 18 SEVERABILITY**

- 18.1 In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect unless the TOWN elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

#### **ARTICLE 19 PROFESSIONAL ASSURANCES**

- 19.1 MARCUM shall perform all services under this Agreement in accordance with the highest standard of care used by similar professional auditors in Broward County, Florida, under similar circumstances and shall exercise a reasonable degree of skill and care, as determined by the degree of skill and care ordinarily employed by others of the same profession. MARCUM represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education or a combination thereof, to adequately and competently perform the duties, obligations and services set forth in the RFP and to provide and perform such services to TOWN'S satisfaction for the agreed compensation, subject to the TOWN providing adequate and accurate books and records. MARCUM shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner. The quality of MARCUM'S performance and all interim and final product(s) provided to or on behalf of TOWN shall

be comparable to the best local and national standards.

## **ARTICLE 20 NOTICE**

- 20.1 Whenever either party desires to give notice unto the other, such notice must be provided thirty (30) days in advance in writing, sent by certified United States Mail, postage prepaid, receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present the parties designate the following as the respective places for giving of notice:

For TOWN:

Town of Southwest Ranches  
Town Administrator  
6589 S.W. 160th Avenue  
Southwest Ranches, FL 33331

And

with a copy to the Town Attorney  
Keith M. Poliakoff  
Becker & Poliakoff, P.A.  
3111 Stirling Road  
Ft. Lauderdale, FL 33312

MARCUM LLP  
450 East Las Olas Blvd, 9<sup>th</sup> Floor  
Fort Lauderdale, FL 33301

## **ARTICLE 21 RESOLUTION OF DISPUTES**

- 21.1 To prevent litigation, the parties shall endeavor to resolve any and all claims arising from this Contract by mediation. A request for mediation shall be filed, in writing, with the other party to the Contract. To the extent litigation is permitted under this Contract, the request shall be made prior to the filing of a legal or equitable proceeding, which shall not be filed prior to the outcome of mediation which will be completed within sixty (60) consecutive calendar days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) consecutive calendar days, from the date a request for mediation has been submitted, either party can request the American



Arbitration Association to appoint a mediator with experience to serve as mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The mediation shall be conducted in Broward County, Florida.

**ARTICLE 22**  
**APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL**

- 22.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction and venue of an appropriate Court of competent jurisdiction in the Seventeenth Judicial Circuit of Broward County, Florida.

BY ENTERING INTO THIS AGREEMENT, MARCUM AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

**ARTICLE 23**  
**ENFORCEMENT; ATTORNEY'S FEES**

- 23.1 The TOWN and MARCUM are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. In the event of any litigation between the TOWN and MARCUM resulting from and/or arising out of this Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party at all tribunal levels, to the extent caused by the malfeasance, negligence, recklessness, or intentional wrongful misconduct of MARCUM and persons employed or utilized by MARCUM in the performance of this Agreement.

**ARTICLE 24**  
**REPRESENTATION OF AUTHORITY**

- 24.1 The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

**ARTICLE 25**  
**SURVIVABILITY**

- 25.1 ARTICLE 5 of this Agreement entitled "INDEMNIFICATION, LIABILITY & INSURANCE"; ARTICLE 7 of this Agreement entitled "AUDIT RIGHT AND RETENTION OF RECORDS"; ARTICLE 10 of this Agreement entitled "OWNERSHIP

RIGHTS"; ARTICLE 15 of this Agreement entitled "FURTHER ASSURANCES"; ARTICLE 21 of this Agreement entitled "RESOLUTION OF DISPUTES"; ARTICLE 22 of this Agreement entitled "APPLICABLE LAW & VENUE; WAIVER OF JURY TRIAL"; and ARTICLE 23 of this Agreement entitled "ENFORCEMENT; ATTORNEY'S FEES" shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

## **ARTICLE 26 COMPLIANCE WITH LAWS**

- 26.1 MARCUM shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

## **ARTICLE 27 MISCELLANEOUS**

- 27.1 Materiality and Waiver of Breach: MARCUM and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 27.2 Conflicts: Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with that party's loyal and conscientious exercise of judgment related to its performance under this Agreement. The parties agree that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other in any legal or administrative proceeding related to performance under this Agreement in which he or she is not a party, unless compelled by court process. Further, the parties agree that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the other party or in connection with any such pending or threatened legal or administrative proceeding related to the performance under this Agreement. The limitations of this section shall not preclude either party or any other persons from representing themselves in any action or in any administrative or legal proceeding related to the performance under this Agreement. In the event MARCUM is permitted to utilize subcontractors to perform any services required by this Agreement, MARCUM agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.
- 27.3 MARCUM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for MARCUM, to solicit or secure this

Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for MARCUM, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

- 27.4 Drug-Free Workplace. MARCUM shall maintain a drug-free workplace.
- 27.5 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 27.6 Truth-in-Negotiation Certificate. Signature of this Agreement by MARCUM shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.
- 27.7 If there is a conflict or inconsistency between any term, statement, requirement or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 6 of this Agreement shall prevail and be given effect.
- 27.8 Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 27.9 MARCUM warrants and represents that it has not employed or retained any company or person, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Town shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

## **ARTICLE 28**

### **THIRD PARTY COSTS**

- 28.1 In the event, MARCUM is required to create information or documentation for a third party, which is not currently a public record, but would require the creation of a new record in connection with a legal or administrative proceeding in which MARCUM is not

a party; MARCUM's efforts in complying with such requests or demands will be deemed a part of this Agreement. MARCUM shall be entitled to compensation for its time for creating and completing the necessary documentation, including out of pocket expenses and legal fees, if any, associated with the creating the information requested by the third party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: MARCUM LP and THE TOWN OF SOUTHWEST RANCHES, signing by and through its Mayor duly authorized to execute same by Council action, on the 16<sup>th</sup> day of November 2011.

**WITNESSES:**

Gefesa Cochran  
J. C. [Signature]

**WITNESSES:**

Janita Bonance  
Susan Kuf

**ATTEST:**

Erika Santamaria  
Erika Santamaria, CMC, Town Clerk

**APPROVED AS TO FORM AND CORRECTNESS:**

[Signature]  
Keith A. Poliakoff, Town Attorney  
ACTIVE: 3542340

**CONTRACTOR:**

MARCUM LLP

By: Michael Just

11 day of NOVEMBER 2011

**TOWN:**

TOWN OF SOUTHWEST RANCHES

By: [Signature]  
Jeff Nelson, Mayor

16<sup>th</sup> day of November 2011

By: [Signature]  
Bert Wrains, Interim Town Administrator