

**CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 24 day of September, 2014 by and between the City of North Miami, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and Marcum LLP, a limited liability partnership registered and existing under the laws of the State of Florida, having a principal business address at One S.E. Third Avenue, Miami, FL 33131 ("Marcum"). The City and Marcum shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, on or about August 26, 2014, the Internal Revenue Service ("IRS") notified the City of North Miami ("City") of its intent to examine a variety of documents and records relating to City federal tax returns for the year ending December 31, 2012; and

WHEREAS, the City has requested quotations from qualified accounting and auditing firms to represent the City before the IRS, for the duration of the proposed review of City federal tax returns; and

WHEREAS, the City Manager has obtained an engagement letter from Marcum to provide accounting/auditing representation services in accordance with the American Institute of Certified Public Accountants, including meetings with IRS personnel, review of information requested by the IRS, review of proposed IRS adjustments (if any), advice on available options to the City, and other related services as more particularly delineated in Marcum's engagement letter and engagement terms ("Services"); and

WHEREAS, the City Manager finds that entering into this Agreement with Marcum is an essential step to ensure an accurate, thorough and timely response to the IRS.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 Marcum's engagement letter and engagement terms for the provision of Services dated September 8, 2014, attached hereto as "Exhibit A"; and

2.1.2 Any additional documents which are required to be submitted by Marcum pursuant to Contract Documents.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

- 2.2.1 Specific written direction from the City Manager or City Manager's designee.
- 2.2.2 This Agreement.
- 2.2.3 Marcum's engagement letter and engagement terms.

ARTICLE 3 – TERM OF AGREEMENT

3.1 The initial term of this Agreement shall not exceed twelve (12) months from the date of execution or until such time the IRS completes its review, whichever occurs first ("Initial Term").

3.2 Following the Initial Term, the Parties shall have the option to renew this Agreement in writing for an additional period as may reasonably be required for the IRS to complete its review.

3.3 Marcum agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion of Services within the agreed term. Failure to render Services timely shall be regarded as a material breach of this Agreement, subject to the appropriate remedies available at law.

3.4 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to Marcum's ability to perform Services or any portion thereof, the City may request that Marcum, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Marcum's ability to perform in accordance with terms of this Agreement. In the event that Marcum fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 - COMPENSATION

4.1 Subject to City authorized adjustments, Marcum shall be paid an amount not to exceed Five Thousand Five Hundred Dollars (\$5,000.00) plus travel and other out-of-pocket costs incurred in the provision of Services. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Marcum.

4.2 The City shall pay Marcum within forty-five (45) days of receipt of invoice the total shown to be due on such invoice, provided the City has accepted the Services.

ARTICLE 5 - MARCUM'S RESPONSIBILITIES

5.1 As an inducement for the City to enter into this Agreement, Marcum has represented an expertise in the provision of Services to other similar public entities. In reliance upon these

representations, the City has entered into this Agreement with Marcum for the provision of Services.

5.2 Marcum shall supervise and direct the work competently and efficiently, devoting such attention and applying Marcum's best skill, attention and expertise. Marcum shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of the work and shall ensure that the finished Services accurately comply with the Contract Documents, state and federal laws.

5.4 Marcum shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

ARTICLE 6 - SCOPE OF SERVICES

6.1 Marcum shall provide all required labor, supervision, materials, equipment, tools, transportation, services and expertise necessary for the completion of Services, under the terms, conditions and specifications contained in the Contract Documents.

6.2 Marcum represents and warrants to the City that: (i) Marcum possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Marcum is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Marcum is duly authorized to execute same and fully bind Marcum as a party to this Agreement.

6.3 Marcum agrees and understands that: (i) any subcontractors used by Marcum shall be paid by Marcum and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the work related to this Agreement shall be borne solely by Marcum.

6.4 Services conducted onsite shall be performed between the hours of 8:00 am and 5:00 pm on weekdays, except for holidays observed by the City. In the event time is of the essence, the City Manager may, at his sole discretion, authorize an expanded time schedule.

ARTICLE 7 - INDEPENDENT CONTRACTOR

7.1 Marcum has been retained and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Marcum shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Marcum further understands that Florida workers' compensation benefits available to employees of the City, are not available to Marcum. Therefore, Marcum agrees to provide workers' compensation insurance for any employee or agent of Marcum rendering services to the City under this Agreement.

ARTICLE 8 - CONFLICTS OF INTEREST

8.1 Marcum represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

8.2 Marcum covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional construction services on projects assigned to Marcum, except as fully disclosed and approved by the City. Marcum further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 9 - DEFAULT

9.1 If Marcum fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Marcum shall be in default. The City shall have the right to terminate this Agreement, in the event Marcum fails to cure a default within five (5) business days after receiving Notice of Default. Marcum understands and agrees that termination of this Agreement under this section shall not release Marcum from any obligations accruing prior to the effective date of termination.

ARTICLE 10 - CITY'S TERMINATION RIGHTS

10.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Marcum. In such event, the City shall pay Marcum compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Marcum for any additional compensation, or for any consequential or incidental damages.

ARTICLE 11 - NOTICES

11.1 All notices, demands, correspondence and communications between the City and Marcum shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Marcum: Marcum LLP
 Attn: Jana K. Aristizabal, CPA
 One Southeast Third Avenue, 16th Floor
 Miami, FL 33131
 Phone: (305) 995-9600
 Fax: (305) 995-9601
 Webpage: www.marcumllp.com

To City: City of North Miami
 Attn: City Manager
 776 N.E. 125th Street
 North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

11.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

11.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 12 - INDEMNIFICATION

12.1 Marcum shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of Marcum, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

12.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 13 - INSURANCE

13.1 Prior to the execution of this Agreement, Marcum shall submit certificate(s) of insurance evidencing the required insurance coverage and specifically providing that the City is an additional named insured. Marcum shall not commence Services until after Marcum has obtained the minimum insurance required in the provision of Services and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Marcum shall furnish, at least thirty (30) calendar days prior to expiration of the date of insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Marcum shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

13.2 All insurance policies required of Marcum shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 14 - FORCE MAJEURE

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation

pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 15 - PUBLIC RECORDS

15.1 Marcum understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

16.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

16.6 The City reserves the right to audit the records of Marcum covered by this Agreement at any time during the provision of Services and for a period of three (3) years after final payment is made under this Agreement.

16.7 Marcum agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

16.9 The City is exempt from federal excise and state taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.10 Services to be provided by Marcum pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 Marcum agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.13 All other terms, conditions and requirements contained in Marcum's engagement letter and engagement terms which have not been modified by this Agreement, shall remain in full force and effect.

16.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Witness,

By: 

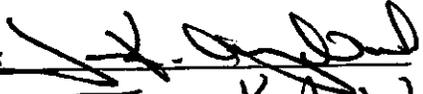
Print Name: Diana Doreste

Title: administrator

Date: 9/11/2014

Marcum LLP, a Florida limited liability partnership:

"Marcum"

By: 

Print Name: Sara K. Aristizabal

Title: Senior Tax Manager

Date: 9/11/14

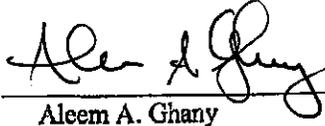
ATTEST:

City of North Miami, a Florida municipal Corporation:

"City"

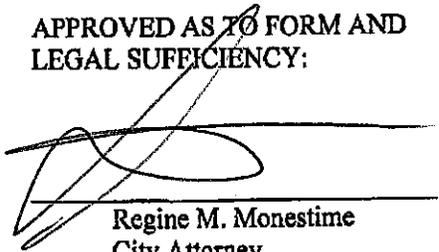
By: 

Michael A. Etienne
City Clerk

By: 

Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Regine M. Monestime
City Attorney

MARCUM

ACCOUNTANTS & ADVISORS

September 8, 2014

City of North Miami
Attn: Aleem A. Ghany PE, City Manager
776 NE 125th Street
North Miami, FL 33161

Re: Payroll Tax Audit

Dear Aleem:

We are pleased to present this engagement letter to provide audit representation services for City of North Miami

The purpose of this letter, including Attachment A (collectively, the "Agreement"), is to document the understanding between Marcum LLP ("Marcum") and City of North Miami ("Client"), related to the services for the Company for the year ended December 31, 2012.

Services

Our services ("Services") are performed in accordance with the American Institute of Certified Public Accountants' ("AICPA") Statements on Standards for Tax Services and Statements on Standards for Consulting Services. The following is a summary of the Services to be performed:

We will represent City of North Miami before the Internal Revenue Service with respect to your upcoming payroll tax audit covering the period December 31, 2012.

Specifically, we will:

- Coordinate the timing and place of meetings with the agent
- Meet with the auditor (as needed) to assist in preparing an audit plan
- Review all information requested by the agent
- Review the agent's proposed adjustments (if applicable) and advise you on the options available
- If necessary, negotiate with the auditor under your direction

Throughout the audit cycle, we will keep you informed as to the status of the audit and advise you on any potential risk areas that we have discovered.

Unless separately engaged, the above Services are the only services for which Marcum has responsibility. It is understood that our responsibility for such Services will encompass only the above services covered under this Agreement and will not extend to other services for which we are not engaged. If you wish to



expand the scope of the Services described in this Agreement, please contact us as soon as possible and we will amend this Engagement Letter. The parties shall agree to the additional Services by mutually agreeing to such services in writing.

Based on our experience, it is common for the scope of income tax audits to expand to earlier or subsequent tax years. We will notify you if and when this occurs during the course of the audit. Unless otherwise agreed to in writing, the scope of this Agreement shall also extend to the additional tax years under audit.

Timing

We have mutually agreed to commence work for the services described in this Agreement upon execution of this Agreement.

You acknowledge that we must have adequate time to conduct our engagement. This includes time to compile and review all of the documents requested prior to giving to the agent. We will require your assistance to provide us with information on a timely basis in order to complete our engagement in an efficient and timely manner. Should we not receive such information and assistance from you with sufficient time to complete the Services, then you acknowledge that we can give no assurances that we will be able to provide timely responses to the agent's requests.

The length of time it takes to conclude the audit depends on many factors. This includes, but is not limited to the following: the number and complexity of issues raised during the audit; the availability and quantity of documents requested; and the method chosen to either resolve or appeal the agent's findings. There are other factors that may extend the duration of the audit that are beyond our control such as the agent's availability to work on this audit; the time to bring in other agents to address other special or technical areas; and the time for the agent's supervisor to review and agree to the agent's findings. Based on our experience, the typical audit cycle lasts anywhere from 5 to 12 months, but may extend well beyond this time frame.

Fees and Payment Terms

Fees

Our fee for these services will be based on the actual time spent at our standard tax examination rates. Our standard tax examination rates (listed below) vary according to the level of the personnel assigned to your account. Based on our experience in this area we estimate the fees for this engagement will be \$5,000. If during the exam we anticipate the fees will exceed this estimate we will discuss them with you before billing. You will also be billed for travel and other out-of-pocket costs as incurred. Our invoices for these fees will be rendered as the work progresses, and are due and payable upon presentation. In the event that you dispute any of the fees or expenses on a specific invoice, you agree to notify us within twenty (20) days of receipt of the invoice of such dispute. If you fail to notify us within the twenty (20) day period, your right to dispute such invoice will be waived. Prior to the commencement of the services described above, any past due balances are required to be paid in full. In accordance with our Firm policies, should any invoice remain unpaid for more than thirty days, we reserve the right to defer providing any additional services until all outstanding invoices are paid in full. Amounts past due 60



days from the invoice date will incur a finance charge of 1% per month. Nothing herein shall be construed as extending the due date of payments required under this agreement, and you agree that we are not responsible for the impact on the Company of any delay that results from such non-payment by you.

<i>Partners</i>	<i>\$350 - \$395 average rate per hour</i>
<i>Senior Managers & Managers</i>	<i>\$225 - \$300 average rate per hour</i>
<i>Supervisors</i>	<i>\$190 - \$220 average rate per hour</i>
<i>Seniors</i>	<i>\$160 - \$175 average rate per hour</i>
<i>Staff</i>	<i>\$150 average rate per hour</i>

Under no circumstance are we liable for any part of the tax, interest and/or penalties that may be due in connection to this matter.

Unless specifically direct to do so by You in writing, we will not execute or sign extensions of statutes of limitations, closing agreements or other IRS forms or agreements arising out of this examination.

Other Matters

As you know, we will be pleased to respond to your request for our tax services in areas beyond the scope of this Agreement. Except where a separate engagement letter is used, the terms of this letter and the attached Engagement Terms (Attachment A) will also apply to any amendments to this Agreement.

Written Advice

Any written tax or professional advice we provide will contain the following legend: "Tax or professional advice contained in or accompanying this document, unless otherwise specifically stated, is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter that is contained in or accompanying this document. In addition, unless otherwise specifically stated, any advice provided shall not be deemed a formal tax opinion upon which the addressee can rely." This legend can be removed from the advice; however, detailed, exhaustive analysis may be required under the IRS's rules which could involve significant time and expense. At your request, we would be happy to discuss this aspect should it become necessary.

Agreement

This letter comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals oral or written and all other communications between the parties. If any provision of this letter is determined to be unenforceable, all other provisions shall remain in force.



City of North Miami
September 8, 2014
Page 4

It is hereby understood and agreed that this engagement is being undertaken solely for the benefit of the Company and that no other person or entity shall be authorized to enforce the terms of this engagement.

If you agree with the terms of our engagement, as described in this letter, please sign the two enclosed letters and return both of them to and we will send you an executed original.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know.

Very truly yours,

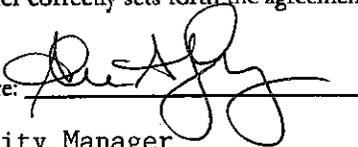
Marcum LLP



Jana K. Aristizabal, CPA

AGREED AND ACCEPTED:

This letter correctly sets forth the agreement by City of North Miami.

Signature: 

Title: City Manager

Date: 9-24-14



Attachment A

MARCUM LLP ENGAGEMENT TERMS

These terms in this Attachment A apply to the Agreement described in any engagement letter referencing them (and supersede any inconsistent terms) but shall also apply to any additional work we were asked to perform within twelve months of any such engagement letter to perform for Client (unless a separate engagement letter is used.) In the event that there is a conflict between the Agreement and this Attachment A, the terms of Attachment A shall control.

1. Cooperation and Participation. Marcum shall endeavor to be alert to any information provided by or on behalf of Client that is incorrect or missing and shall apply its normal diligence in this regard; nevertheless, Marcum shall be entitled to rely on the accuracy, completeness, and reliability of all information provided by, and on all decisions and approvals of, Client (and Client's retained advisors, consultants, or legal counsel). Client's management shall be solely responsible for applying independent business judgment with respect to Marcum's Services and work product (including decisions on implementation or other further course(s) of action) and to be solely and exclusively responsible for such decisions. Further, Client is responsible for designating a qualified management-level individual to be responsible and accountable for overseeing the services provided to you and evaluating the adequacy and results of the Services performed.
2. Use and Reliance. 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. Client's use of our work product from this engagement (except for copies of filed tax returns) shall in any event be limited to the item's stated purpose (if any) and is for Client's purposes only and is not to be relied upon by third parties. The conclusions expressed in our deliverables hereunder are based upon the tax laws as of the date of Service, which are subject to change, and our conclusions are limited solely to the matters for which we were engaged. Marcum will not update its conclusions should the law change unless specifically engaged to do so. No conclusions should be inferred as to any matters not specifically covered herein. Further, the conclusions are based upon the facts presented by Client and may be inapplicable if the actual facts differ from those presented in any respect.
3. Express Authorization to Disclose. As provided in Treasury Regulations, Client and each employee, representative, or other agent of Client may disclose to any and all persons without limitation of any kind the tax treatment and tax structure of any transaction that may fall within the scope of this engagement and all materials of any kind, including opinions or other tax analyses, that may be provided to Client by Marcum relating to any such tax treatment and tax structure.
4. Tax Shelter Implications. Treasury Regulations commonly known as the "Tax Shelter Regulations" require taxpayers to disclose certain types of transactions on a Form 8886 attached to their tax returns and filed with the IRS office of Tax Shelter Analysis. Failure to



MARCUMGROUP
MEMBER

disclose could result in substantial penalties, even if the transaction's tax benefits are appropriate. As your professional tax return preparer, we will make every effort to inform you of your specific disclosure responsibilities. However, the regulations require disclosure of some transactions that we will not necessarily be aware of in the normal course of preparing your return.

Unless you advise us otherwise or specific disclosure information is furnished to us, we will assume that none of the transactions that will be reflected on your return were: (1) entered into subject to an agreement that requires you to keep the transaction confidential, (2) entered into subject to an agreement that the fee you paid would be contingent upon your receiving the transaction's intended tax benefits, (3) identified in Treasury Regulations as loss transactions that must be disclosed, including loss transactions that pass-through to you from S Corporations, partnerships and trusts, if applicable, or (4) the same as or substantially similar to a transaction identified by the IRS as a tax avoidance transaction. The following IRS web address provides an up-to-date list of transactions the IRS has identified as tax avoidance transactions:

<http://www.irs.gov/businesses/corporations/article/0,,id=97384,00.html>

Or, go to the IRS' home page at www.irs.gov and search for "tax shelters." We are, of course, available for a separate fee to assist you to determine if you have entered into one of these transactions.

It is important to note the IRS can identify transactions as tax avoidance transactions subsequent to your entering into them; in this event you could be retroactively required to disclose your participation in the transaction.

The other categories of transactions that have to be disclosed would ordinarily be reflected in the information you provide us to prepare your tax return. However, determining whether you should disclose these transactions may require analysis of information over and above that otherwise necessary to prepare your return and could result in our having to charge additional fees.

5. Taxpayer Privileges: 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 or on behalf of Client (e.g., the IRC §7525 tax advisory privilege, etc.). Although Client is solely responsible for managing the recognition, establishment and maintenance (e.g., possible waiver) of these possible protections (and for involving legal counsel as it deems necessary), Marcum shall cooperate with Client's reasonable written instructions regarding same.
6. Agreed Upon Scope of Work. Marcum shall be obligated only for work or deliverables specified in the Agreement referencing these terms, and only for changes in such scope that are set forth in writing and duly executed by the parties hereto. To the extent all specific details of the engagement are not so documented, the parties shall work diligently and in good faith



to document them at the request of either party. Unless expressly provided for, Marcum's Services do not include giving testimony or appearing or participating in discovery proceedings, in administrative hearings, in court, or in other legal or regulatory inquiries or proceedings.

7. Access to Resources and Information. Unless specified herein as the responsibility of Marcum to provide, Client shall have obtained for Marcum, on a timely basis, any internal and third-party permissions, licenses or approvals that are required for Marcum to perform the Services contemplated hereunder (including use of any necessary software or data). Client shall also provide Marcum, on a timely basis, with such information, approvals and assistance as may be necessary to Marcum's work or as may reasonably be requested, and personnel assigned to any work hereunder shall not be assumed or deemed to have knowledge of information provided to others, whether external to or within Marcum.
8. External Factors: Standards of Performance. Client acknowledges that this engagement will involve analysis, judgment and other performance from time to time in a context where the participation of Client or others is necessary, where answers often are not certain or verifiable in advance and where facts and available information change with time. Accordingly, evaluation of Marcum's performance of its obligations shall be based solely on its substantial conformance with any standards or specifications expressly set forth in this Agreement and all applicable professional standards, any such nonconformance (and applicability) to be clearly and convincingly shown. It is understood that unless Client and Marcum agree otherwise, in writing, Marcum shall have no responsibility to update any of its work after its completion. Marcum reserves the right to in whole or in part decline to perform Services if information comes to our attention indicating that performing any Services could cause Marcum to be in violation of applicable law, regulations or standards or in a conflict of interest, or to suffer damage to its reputation.
10. Affiliates. Recognizing that at times Marcum's work may pertain not only to Client but also to a parent, various of its subsidiaries, other affiliates, advisors and contractors, or to family members or related trusts, partnerships, partners, companies, estates or foundations, Client shall, as may be requested by Marcum from time to time (including subsequent to completion of the Services), obtain written confirmation of their agreement to the terms of this Agreement. This Agreement is binding on each party hereto and on each of its successors, assigns, heirs, legatees and legal representatives. Client agrees that Marcum may authorize or allow its affiliates and contractors to assist in performing this engagement and to share in Marcum's rights hereunder, provided any such party shall commit (as applicable) to be bound by the restrictions set forth in this Agreement and Marcum obtains such express commitments as are necessary.
11. Waiver of Jury Trial. *Marcum and the Client each hereby knowingly, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this engagement letter, and/or the services provided hereunder, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.*



This Firm and the Company 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 engagement letter, or any course of conduct, course of dealing, statement or actions of either party.

This provision is a material inducement for Marcum to accept this engagement in accordance with the provisions of this engagement letter. The terms and provisions of this engagement letter, any course of conduct, course of dealing and/or action of this Firm and/or the Company and our relationship with you shall be governed by the laws of the State of New York to the extent said laws are not inconsistent with the Federal Securities Laws and Rules, Regulations and Standards there under. In any litigation brought by either this Firm or the Company, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred, including through all appeals.

12. Marcum Personnel. Marcum strives to staff engagements with quality, superbly trained professionals. In recognition of the extensive investment we have made to recruit and develop our personnel, we ask that you agree to the following. In the event that any of our employees accepts a position of employment with your company, or any of its related parties at any time while we are performing services for you or within one year thereafter, you agree to pay us a placement fee equal to the employee's annual compensation in effect on the date such employment was contracted. Such fee is payable when the employee accepts such a position.
13. Confidentiality. To the extent that, in connection with this engagement, Marcum comes into possession of any proprietary or confidential information of the Client, Marcum will not disclose such information to any third party without consent, except (a) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards, or in connection with litigation pertaining hereto, or (b) to the extent such information (i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure by Marcum in breach hereof, (ii) is disclosed by Client to a third party without substantially the same restrictions as set forth herein, (iii) becomes available to Marcum on a nonconfidential basis from a source other than Client which Marcum believes is not prohibited from disclosing such information to Marcum by obligation to Client, (iv) is known by Marcum prior to its receipt from Client without any obligation of confidentiality with respect thereto, or (v) is developed by Marcum independently of any disclosures made by Client to Marcum of such information. In addition, Client acknowledges and agrees that any such information that comes to the attention of Marcum in the course of performing this engagement may be considered and used by Marcum in the context of responding to its professional obligations as the independent accountants for Client.

