

## **RESOLUTION NO. 2022-01**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE AUTHORIZED OFFICIALS TO EXECUTE AN ENGAGEMENT LETTER WITH MARCUM, LLP TO PROVIDE FINANCIAL AUDIT SERVICES PIGGYBACKING THE TERMS OF ITS AGREEMENT WITH THE CITY OF DELRAY BEACH, FLORIDA; A COPY OF THE ENGAGEMENT LETTER IS ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of Commissioners of the City of Delray Beach Community Redevelopment Agency deems it to be in the best interests of the Delray Beach Community Redevelopment Agency ("CRA") to approve and authorize the authorized officials to execute an Engagement Letter with MARCUM, LLP to provide Financial Audit Services piggybacking the terms of its Agreement with the City of Delray Beach, Florida;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY AS FOLLOWS:**

Section 1. The foregoing "WHEREAS" clause is hereby ratified and confirmed as being true and correct and is hereby incorporated herein.

Section 2. The Board of Commissioners of the Delray Beach Community Redevelopment Agency hereby approves and authorizes the authorized officials to execute an Engagement Letter with MARCUM, LLP to provide Financial Audit Services piggybacking the terms of its Agreement with the City of Delray Beach, Florida. A copy of the Engagement Letter is attached hereto as Exhibit "A".

Section 3. All resolutions inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

Section 4. If any section, sentence, clause, or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 5. This resolution shall become effective upon its passage and adoption by the City of Delray Beach Community Redevelopment Agency Board of Commissioners.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF  
DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY ON THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2022.**

DELRAY BEACH COMMUNITY  
REDEVELOPMENT AGENCY

BY: \_\_\_\_\_  
SHIRLEY JOHNSON, CHAIR

ATTEST:

\_\_\_\_\_  
RENÉE A. JADUSINGH, ESQ., EXECUTIVE DIRECTOR

APPROVED TO FORM:

\_\_\_\_\_  
LEGAL ADVISOR  
DELRAY BEACH CRA

## **AGREEMENT**

**THIS IS AN AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between:

**THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public agency organized and existing under the laws of the State of Florida, with a business address of 20 N. Swinton Avenue, Delray Beach, Florida 33444, hereinafter referred to as "CRA"

and

**MARCUM, LLP**, a limited liability partnership, whose address is 525 Okeechobee Boulevard, Suite 750, West Palm Beach, Florida 33401, hereinafter referred to as "CONTRACTOR". CRA and CONTRACTOR may hereinafter collectively be referred to as the "PARTIES".

### **W I T N E S S E T H:**

**WHEREAS**, the CRA desires to utilize the services of an experienced professional auditing firm ("Services"); and

**WHEREAS**, the CONTRACTOR has agreed to honor the terms and conditions of the City of Delray Beach, Florida RFP No. 2019-043 and the CONTRACTOR's response thereto, including all related documentation; and

**WHEREAS**, the CONTRACTOR agrees to allow the CRA to piggyback its agreement between the CONTRACTOR and the City of Delray Beach executed on January 11, 2022 ("City Agreement"), and agrees to provide the Services to the CRA for a term of four (4) years, as further described herein; and

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, it is agreed by and between the CRA and CONTRACTOR as follows:

1. Services; Responsibilities, and Time for Performance. CONTRACTOR agrees to provide the Services, as more particularly described in the "Scope of Services," which is attached to this Agreement as **Exhibit "A"**, and incorporated herein by reference, and in accordance with the City of Delray Beach RFP No. 2019-043 and the CONTRACTOR's response, except as modified herein.

1.1 CONTRACTOR shall furnish all services, labor, and materials necessary and as may be required in the performance of this Agreement. The CONTRACTOR shall perform all of its obligations pursuant to this Agreement in a professional and timely manner.

2. Compensation and Method of Payment. CONTRACTOR has agreed to provide the

Scope of Services in accordance with **Exhibit "A"** attached hereto and incorporated herein. The CRA shall pay CONTRACTOR within thirty (30) days of receipt of an invoice documenting the services provided by CONTRACTOR pursuant to this Agreement, and the completion to the sole and absolute discretion of the CRA.

- 2.1 Subject to the prior written approval of the CRA, the CRA shall be responsible for any additional hourly charges. The CONTRACTOR shall submit all proposed charges to the CRA's Executive Director for approval prior to CONTRACTOR authorizing the work that would result in such charges.
- 2.2 Except as provided in Section 2.1, the CRA shall not be responsible for any additional costs, fees, or expenses unless the CRA executes a written amendment to this Agreement that provides for any consideration to be paid by the CRA.
3. Term and Termination. This Agreement shall take effect upon execution by both Parties and shall be effective for a period of four (4) years ("Term"). During this Term, the CONTRACTOR shall provide the Scope of Services for the fiscal year ending on September 30, 2021, through the fiscal year ending on September 30, 2024.
  - 3.1 This Agreement may be renewed upon the mutual written agreement by the Parties. There shall be two (2) options to renew for additional two (2) year terms, for an additional (4) years if both options to renew are exercised. If the first two (2) year option to renew is exercised, the CONTRACTOR shall provide the Scope of Services for the fiscal year ending on September 30, 2025, through the fiscal year ending on September 30, 2026. If the second two (2) year option to renew is exercised, the CONTRACTOR shall provide the Scope of Services for the fiscal year ending on September 30, 2027, through the fiscal year ending on September 30, 2028.
  - 3.2 This Agreement may be terminated by either party for cause, or by the CRA for convenience, upon thirty (30) days written notice by the CRA to CONTRACTOR. Upon termination by CRA, CONTRACTOR shall cease all work performed hereunder and CRA shall pay to CONTRACTOR any earned and unpaid portion of the compensation due CONTRACTOR.
4. Indemnification. The CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the CRA, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the error, omission, negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees, servants, agents, and subcontractors. Without limiting the foregoing, any and all such claims, suits, etc., relating to defects in the Services provided, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in this indemnity.
5. Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR

is an independent contractor under this Agreement and not the CRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that it is a separate and independent enterprise from the CRA, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CRA and the CRA will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

6. Assignments; Amendments. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CRA.
7. Attorney's Fees. In the event it becomes necessary for either party herein to seek legal means to enforce the terms of the Agreement, the prevailing party shall be entitled to its reasonable attorney fees and court costs and paralegal fees at both the trial and appellate levels, to the extent permitted by law.
8. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida.
9. Venue. Venue for litigation concerning this Agreement shall be in Palm Beach County, Florida.
10. Severability. If any portions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.
11. Notices. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified mail, addressed to the party for whom it is intended at the place last specified or by facsimile transfer with confirmation thereof. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective place for giving of notice, to-wit:

For CRA:                      Renée A. Jadusingh, Esq., Executive Director  
Delray Beach Community Redevelopment Agency  
20 N. Swinton Avenue  
Delray Beach, FL 33444  
Telephone No. (561) 276-8640

Facsimile No. (561) 276-8558

With a copy to: Kim N. Phan, Esq., Legal Advisor  
Email: [kimp@mydelraybeach.com](mailto:kimp@mydelraybeach.com)

For Contractor: Marcum LLP  
525 Okeechobee Boulevard, Suite 750  
West Palm Beach, Florida 33401 Attn.: Moises D. Ariza, Partner  
Email: [moises.ariza@marcumllp.com](mailto:moises.ariza@marcumllp.com)

12. Public Records. CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, CONTRACTOR shall:

12.1 Keep and maintain public records required by the CRA to perform the service.

12.2 Upon request from the CRA's custodian of public records, provide the CRA with a copy of the 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 this chapter or as otherwise provided by law.

12.3 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 this Agreement term and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CRA.

12.4 Upon completion of this Agreement, transfer, at no cost, to the public agency all public records in possession of the CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the CRA upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the CRA's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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

**KIM N. PHAN, ESQ.**  
**561-276-8640**  
**[KIMP@MYDELRAYBEACH.COM](mailto:kimp@mydelraybeach.com)**  
**20 NORTH SWINTON AVENUE**

## **DELRAY BEACH, FLORIDA 33444**

The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement.

13. Certification and Scrutinized Company Requirements. The CRA shall have the option to terminate this Agreement if CONTRACTOR:
  - 13.1 Is found to have submitted a false certification as provided under section 287.135 (5) Florida Statutes;
  - 13.2 Has been placed on the Scrutinized Companies that Boycott Israel List;
  - 13.3 Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
  - 13.4 Has been engaged in business operations in Cuba or Syria.
14. Patriot Act Requirements. Each party shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administered by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, with respect to this Agreement. Each party represents and warrants to the other party that it is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement.
15. Default. In the event the CONTRACTOR fails to comply with the provisions of this Agreement, the CRA may declare the CONTRACTOR in default and notify it in writing, giving a reasonable time to cure the default, but in no event shall this time period exceed five (5) calendar days unless otherwise agreed to by the parties. In such event, the CONTRACTOR shall only be compensated for any services completed as of the date written notice of default is served. Furthermore, the amount of compensation to the CONTRACTOR in the event of default, shall be determined by deducting any additional costs, charges and/or damages incurred by the CRA due to the CONTRACTOR'S default.
16. Acceptance of Agreement. Execution of this Agreement by both parties signifies agreement with all the terms and conditions.
17. To the extent there is any conflict between the terms and conditions of this Agreement and any Exhibit to the Agreement, the terms of this Agreement shall control.
18. Entire Agreement. The CRA and the CONTRACTOR agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded

or otherwise altered, except by written instrument executed by the parties hereto. The CRA's Executive Director may further approve and amend this Agreement by executing a written agreement signed by both parties.

**IN WITNESS WHEREOF**, the CRA, and CONTRACTOR have hereunto set its hand the day and year above written.

**THE DELRAY BEACH COMMUNITY  
REDEVELOPMENT AGENCY:**

\_\_\_\_\_  
Shirley E. Johnson, Chair

ATTEST:

\_\_\_\_\_  
Renée A. Jadusingh, Esq.  
CRA Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
CRA LEGAL COUNSEL

**CONTRACTOR:**  
MARCUM, LLP, a limited liability partnership

By: \_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA                    )  
  )ss:  
COUNTY OF PALM BEACH        )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ by \_\_\_\_\_, on behalf of MARCUM, LLP, a limited liability partnership. He\_ is personally known to me or\_ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Commission Number

## **EXHIBIT “A”**

### **SCOPE OF SERVICES/ENGAGEMENT LETTER**