

RESOLUTION NO. 03-85

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AUDIT SERVICES ENGAGEMENT AGREEMENT WITH RACHLIN, COHEN & HOLTZ, LLP; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay adopted Resolution 03-66 wherein the Village Manager was authorized to enter into negotiations with the formally selected responsive bidder, Rachlin, Cohen & Holtz, LLP, to provide auditing services for the fiscal years ending September 30, 2003, 2004 and 2005; and

WHEREAS, the Village Manager conducted said negotiations and the results of which were immortalized in the attached Audit Services Engagement Agreement; and

WHEREAS, the Village Attorney's office has reviewed the terms of the agreement and has determined that they are legally sufficient.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The Village Manager is authorized to execute the attached Audit Services Engagement Agreement with Rachlin, Cohen & Holtz, LLP.

Section 2. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 7th day of October, 2003.

Attest:



Meighan Pier
Village Clerk



Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:



Earl G. Gallop,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>Yes</u>
Council Member Paul Neidhart	<u>Yes</u>
Council Member John Breder	<u>Yes</u>
Vice-Mayor Linda Robinson	<u>Yes</u>
Mayor Eugene P. Flinn, Jr.	<u>Yes</u>

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October 2, 2003

Mr. Charles Scurr, Village Manager
Village of Palmetto Bay
8950 S.W. 152 Street
Palmetto Bay, Florida 33157

Re: Audit services engagement agreement

Dear Mr. Scurr:

Rachlin Cohen & Holtz LLP ("RCH") is pleased to confirm its understanding of the services RCH is to provide to the Village of Palmetto Bay (the "village") for the fiscal years ending September 30, 2003, 2004 and 2005. RCH will audit the financial statements of the Village of Palmetto Bay, Florida, as of and for the fiscal years ending described above. RCH understands that the financial statements for the fiscal year ended September 30, 2003 will be presented in accordance with the financial reporting model described in GASB Statement No. 34. Also, the document RCH submits to you will include the following additional information, if applicable, that will be subjected to the auditing procedures applied in our audit of the basic financial statements:

1. Schedule of expenditures of federal awards and state financial assistance (as applicable.)
2. Managements Discussion & Analysis (with implementation of GASB 34).
3. Combining and individual fund statements and schedules.
4. Required Supplementary Information.

The document will also include a statistical section of additional information that will not be subject to the auditing procedures applied in our audit of the financial statements, and for which the RCH auditor's report will disclaim an opinion.

Audit Objectives

The objective of the RCH audit is the expression of an opinion as to whether your financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the financial statements taken as a whole. The objective also includes reporting on:

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contract or grant agreements, noncompliance with which could have a material effect on the financial

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statements in accordance with Government Auditing Standards.

The report on internal controls and compliance will each include a statement that the report is intended for the information and use of the village council, management, and specific legislative or regulatory bodies.

The RCH audit will be conducted in accordance with auditing standards generally accepted in the United States, the standards for financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States; in accordance with the Rules of the Auditor General of the State of Florida and Florida law; and will include tests of accounting records, and other procedures RCH considers necessary to enable RCH to express an opinion and to render the required reports. If the RCH opinion on the financial statements is other than unqualified, RCH will fully discuss the reasons with the village in advance. If, for any reason, RCH is unable to complete the audit or is unable to form or has not formed an opinion, RCH may decline to express an opinion or to issue a report as a result of this engagement.

Village Responsibilities

Village management is responsible for establishing and maintaining internal control and for compliance with the provisions of contracts, agreements, and grants. In fulfilling this responsibility, estimates and judgments by village management are required to assess the expected benefits and related costs of the controls. The objectives of internal control are to provide village management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with village management's authorizations and recorded properly to permit the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America and that federal awards programs are managed in compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Village management is responsible for making all financial records and related information available to RCH. RCH understands that the village will provide RCH with the information required for the audit. The village is responsible for the accuracy and completeness of that information. RCH will advise the village about appropriate accounting principles and their application and will assist in the preparation of the village's financial statements but the responsibility for the financial statements remains with the village. That responsibility includes the establishment and maintenance of adequate records and effective internal control over financial reporting and compliance, the selection and application of accounting principles, and the safeguarding of assets.

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Village management is responsible for adjusting the financial statements to correct material misstatements and for confirming to RCH in the representation letter that the effects of any uncorrected misstatements RCH aggregates during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, RCH's audit will involve judgment about the number of transactions to be examined and the areas to be tested. RCH will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Because an audit is designed to provide reasonable, but no absolute assurance and because RCH will not perform a detailed examination of all transactions, there is a risk that material misstatements (whether caused by errors or fraud), illegal acts, or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, immaterial illegal acts, or illegal acts that do not have a direct effect on the financial statements. However, RCH will inform the village of any material errors that comes to our attention and any fraud that comes to RCH's attention. RCH will also inform the village of any illegal acts that come to RCH's, or the village's attention, unless clearly inconsequential. RCH will include such matters in the reports required for a financial audit. RCH's responsibility as auditors is limited to the period covered by the audit and does not extend to matters that might arise during any later periods for which RCH is not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. RCH will request written representations from the village attorney as part of the engagement, and the village's counsel may bill the village for responding to this inquiry. At the conclusion of the audit, RCH will require certain written representations from the village about the financial statements and related matters.

Auditing Procedures - Internal Controls

In planning and performing the audit, RCH will consider whether the internal controls are sufficient to plan the audit in order to determine the nature, timing, and

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extent of RCH's auditing procedures for the purpose of expressing RCH's professional opinions on the Village of Palmetto Bay's financial statements.

RCH will obtain an understanding of the design of the village's relevant controls and whether they have been placed in operation, and RCH will assess control risk. Tests of controls may be performed to test the effectiveness of certain controls that RCH considers relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Tests of controls relative to the financial statements are required only if control risk is assessed below the maximum level. RCH's tests, if performed, will be less in scope than would be necessary to render an opinion on the internal control and, accordingly, no opinion will be expressed in our report on internal control pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify reportable conditions. However, RCH will inform the village council and management of any matters involving internal control and its operation that RCH considers to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to RCH's attention relating to significant deficiencies in the design or operation of the internal control that, in RCH's judgment, could adversely affect the village's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. RCH will also inform the village of any nonreportable conditions or other matters involving the internal control, if any.

Audit Procedures – Compliance

RCH's audit will be conducted in accordance with the standards referred to in the section entitled "Audit Objectives." As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, RCH will perform tests of the village's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and RCH will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

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Audit Administration, Fees

RCH understands that village employees will prepare all cash, accounts receivable, or other confirmations RCH requests and the village will locate any invoices selected by RCH for testing.

RCH will provide village staff all the documents in Microsoft Word format, compatible with the village's word processing software. In addition, at the end of the engagement; if requested by the village, RCH will provide the village, an adjusted trial balance from RCH's audit software.

RCH's fee for services is estimated to be \$8,000 for the fiscal year ended September 30, 2003. The fee for the fiscal year ending September 30, 2004 will be \$23,000; the fee for the fiscal year ending September 30, 2005 will be limited to a 5% increase unless there are significant changes in professional standards or significant changes in fund operations that require RCH to extend or expand our audit procedures. RCH will notify the village in advance of applying any significant changes in professional standards if it intends to increase the fee because of those changes.

If applicable, and in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and *Rules of the Auditor General*, Chapter 10.550 and the *Florida Single Audit Act*, Section 215.97, Florida Statutes, if the village is required to have an audit of federal award programs or state financial assistance projects, RCH will discuss the fees for the additional services before providing those services. Generally, those services would range between \$5,000 and \$6,000 for each federal or Florida single audit act testing and reporting.

Indemnification

Rachlin Cohen & Holtz LLP ("RCH") shall be liable and responsible for any and all damages to persons or property (hereinafter referred to as "loss"), and shall indemnify and hold harmless the village, its elected and appointed officials, and its employees, agents and representatives for the loss and any liabilities, claims, demands, actions, judgments, costs and reasonable expenses (including reasonable attorney fees) directly relating to the loss, if the loss was solely caused as a result of RCH's failure to satisfy its obligations under generally accepted auditing standards through negligence or error or omission of RCH or its employees, if any; and RCH shall pay all claims and losses of any nature whatever arising therefrom, and shall defend Village, when applicable, all suits arising therefrom and shall pay all costs and judgments which may issue thereon, except

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to the extent caused by the negligence, error or omission of the village's officers or employees or by any third party.

Insurance

During the term of this agreement, RCH will carry professional liability insurance coverage in the amount of \$5,000,000.00, with deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which RCH shall become legally obligated to pay as damages for claims arising out of the services performed by RCH any person employed by RCH in connection with this engagement agreement. The insurance shall be maintained for three years after completion of services under this engagement agreement. The insurance shall be placed with best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

RCH shall furnish certificates of insurance to the village prior to the commencement of operations and the policy or policies shall name village as additional insured and shall reflect the hold harmless provision contained in this engagement agreement. The certificates shall clearly indicate that RCH has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the village. Compliance with the foregoing requirements shall not relieve RCH of its liability and obligations under this engagement agreement.

Document Production

The village agrees that all records, documentation, and information requested in connection with the audit will be made available, that all material information will be disclosed and that the full cooperation of village personnel will be provided. As required by generally accepted auditing standards, specific inquiries will be made of management about the representations embodied in the financial statements, the effectiveness of the internal controls and the village's compliance with certain laws and regulations, and village management will provide a representation letter about these matters. The responses to inquiries, the written representations, and the results of audit tests comprise the evidential matter the auditors will rely upon in forming an opinion on the financial statements. Because of the importance of management's representations to the effective performance of the audit services, the village will release RCH and their personnel from any claims, liabilities, costs and expenses relating to their services under this agreement attributable to any misrepresentations in the representation letter referred to above. The rights and remedies of the village provided in this paragraph shall not be exclusive and

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are in addition to any other rights and remedies provided by law or under this engagement letter.

Document Retention

The workpapers for this engagement will be retained for a minimum of three years after the date of the auditors' report is issued or for any additional period requested by the regulatory or grantor agency. If RCH is aware that any regulatory agency, or auditee is contesting an audit finding, RCH will contact the party(ies) contesting the audit finding for guidance prior to destroying the workpapers.

Ownership of Documents

All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by RCH under this engagement agreement shall be deemed the property of the village and the village shall have all rights incident to this ownership. RCH acknowledges that all documents prepared under this engagement agreement shall be public records, and shall be subject to public inspection and copying, as provided by Florida Statutes chapter 119. Upon conclusion of this engagement agreement and any extensions, all documents shall be delivered by RCH to the village. RCH shall have the right to retain copies of the documents at RCH's expense.

Termination for the Convenience of the Village

The village may terminate this engagement agreement at any time by giving 30 days written notice to RCH. If the engagement agreement is terminated by the village as provided herein, RCH shall be paid for the time provided and expenses incurred up to and including the termination date.

Right to Withhold

If work identified under this engagement letter is not performed in accordance with the terms hereof, the village has the right to withhold any payment due to us, of any sums as the village may deem ample to protect it against loss, or to ensure payment of claims arising therefrom, and, at its option, the village may apply such sums in such manner as the village may deem proper to secure itself or to satisfy such claims. The village will provide RCH with ten (10) days prior written notice in the event that it elects to exercise its right to withhold under this section.

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Termination Due to Nonpayment

RCH's invoices for services will be rendered as work progresses and are payable within 30 days. In accordance with RCH's firm policies, work may be suspended if the village account becomes 60 days or more overdue and may not be resumed until your account is paid in full. If RCH elects to terminate our services for nonpayment, our engagement will be deemed to have been completed even if RCH has not completed our report. The village will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs (postage, copies, faxes) through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If there are significant changes to the nature of the operations and the fund structure of the village, RCH will discuss the additional time necessary to complete the audit. If significant additional time is necessary, RCH will discuss it with the village and arrive at a new fee estimate before RCH incurs the additional costs.

In the event that RCH determines to resign due to nonpayment but not pursuant to the right to withhold provision, and the village seeks damages allegedly resulting from such resignation, RCH's maximum liability to the village in the event RCH is held liable because of such resignation shall be limited to the fees actually paid to RCH to the date of resignation. This engagement agreement is renewable at the option of the Village of Palmetto Bay. The village designates its village manager with the authority to renew RCH's engagement annually, for up to two years.

Sovereign Immunity and Attorneys' Fees

The village does not waive sovereign immunity for any claim for breach of contract except to amount of the contract; provided, however, that in any action arising out of or to enforce this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs, including, but not limited to paralegal costs, and computer research costs. The village shall not be liable for the prejudgment interest.

Entire Contract

This engagement agreement, when signed by all of the parties, constitutes the full and complete understanding and contract of the parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This engagement agreement and any incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts, agreements or understandings, oral or written, between the parties. In the event of any conflict, the terms of this engagement

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agreement will govern over the provisions of any incorporated documents.

Notices

All notices given or required hereunder shall be deemed sufficient if sent United States mail, postage prepaid, to the address of RCH and to the village specified in this engagement agreement, unless either party hereto shall specify to the other party a different address for the giving of such notices.

Jurisdiction and Venue

Florida law shall govern the terms of this engagement letter. Venue shall be in state or federal court within Miami-Dade County, Florida.

Mediation

Any claim or dispute arising out of or related to this engagement agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both village and RCH waive any right to arbitration. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon. Contracts reached in mediation shall be enforceable as settlement contracts in the circuit court for the 11th judicial circuit for the State of Florida.

Contracting Officer Representation

For the purposes of this engagement agreement, the contracting officers are as follows:

To the village: Village of Palmetto Bay
 Attn: Village Manager, Charles D. Scurr
 8950 SW 152nd Street
 Palmetto Bay, FL 33157
 (305) 259-1234

To RCH: Rachlin Cohen & Holtz LLP
 Attn: G. Jerry Chiocca, Director
 One Southeast Third Avenue, Tenth Floor
 Miami, Florida 33131
 (305) 377-4228

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Non-Discrimination

RCH agrees that no person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this engagement agreement on account of race, creed, color, sex, religion, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Severability

Should any section or any part of any section of this engagement agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such determination shall not render void, invalid or unenforceable any other section or part of any section of this engagement agreement.

Contingency Fee and Code of Ethics Warranty

RCH warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and RCH has not, and will not, pay a fee the amount of which is contingent upon the village awarding this engagement agreement to RCH. RCH warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this engagement agreement in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances. A violation of this paragraph will result in the termination of the engagement agreement and forfeiture of funds paid, or to be paid, to RCH.

Assignability of Engagement

RCH further affirms that RCH shall not assign or transfer any interest in this engagement except that claims for monies due or to become due from the village under this engagement may be assigned to a bank, trust company, or other financial institution.

As required by Government Auditing Standards, RCH has attached a copy of our most recent peer review.

RCH appreciates the opportunity to be of service to the Village of Palmetto Bay and believe this letter accurately summarizes the significant terms of our engagement. If

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you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Sincerely,

G. Jerry Chiocca, CPA
Director

AGREED TO AND ACCEPTED:

ATTEST:

The Village of Palmetto Bay

By : _____
Charles D. Scurr,
Village Manager

By : _____
Meighan J. Pier,
Village Clerk

Dated : _____

Dated : _____

Approved as to form:

By: _____
Earl G. Gallop, Village Attorney
The Village of Palmetto Bay