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RESOLUTION NO. 07-43

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AGREEMENTS; APPROVING A CONTRACT AGREEMENT WITH GORIN COMMUNICATIONS, INC. TO PROVIDE CERTAIN PUBLIC INFORMATION SERVICES TO THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE VILLAGE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village has been under contract with Gorin Communications, Inc. to provide public information services since 2003 pursuant to a competitive RFP process; and,

WHEREAS, Mr. Ed Gorin, President of Gorin Communications, Inc., is a resident of Palmetto Bay, having lived in the area for many years, and during that time Mr. Gorin has been actively involved with the local business community and the local media and this experience has been vital to the Village's media relations; and,

WHEREAS, Mr. Gorin's relationship with the local media has proven advantageous for the Village in disseminating and marketing Village policies, projects and programs; and,

WHEREAS, no other business has the knowledge and degree of familiarity that Mr. Gorin can offer to Palmetto Bay, and therefore, the Village desires to enter into a contract with Gorin Communications, Inc. as a sole source provider.

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

Section 1. The contract for professional services between the Village of Palmetto Bay and Gorin Communications, Inc., is hereby approved in substantial form and content to the attached Exhibit 1.

Section 2. The Village Manager is authorized to sign the contract on behalf of the Village.

Section 3. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 9th day of April, 2007.

Attest:

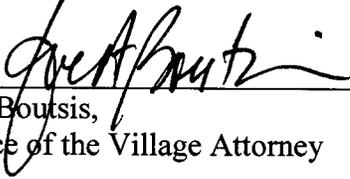

Meighan Rader


Eugene P. Flinn, Jr.

1 Village Clerk

Mayor

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5 APPROVED AS TO FORM:

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7 
8 _____
9 Eve Boutsis,
10 Office of the Village Attorney
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15 FINAL VOTE AT ADOPTION:

16 Council Member Ed Feller YES
17
18 Council Member Paul Neidhart YES
19
20 Council Member Shelley Stanczyk YES
21
22 Vice-Mayor Linda Robinson YES
23
24 Mayor Eugene P. Flinn, Jr. YES
25
26

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE village OF
PALMETTO BAY AND GORIN COMMUNICATIONS, INC.**

This Agreement is made and entered into this ____ day of _____, 2007 between the Village of Palmetto Bay, a Florida municipal corporation, located at 8950 SW 152nd Street, Palmetto Bay, Florida 33157, Gorin Communications, Inc., a Florida corporation located at 8264 SW 177th Terrace, Palmetto Bay, Florida 33157 ("Consultant").

W I T N E S S E T H :

WHEREAS, village desires to engage and retain the services of the Consultant to perform the work described in this Agreement and the Consultant desires to accept the engagement, upon the terms and conditions herein set forth; and,

NOW THEREFORE, in consideration of \$10.00, and the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows.

1. WHEREAS CLAUSES

1.1. The above whereas clauses are incorporated and made a part of this Agreement.

2. SCOPE OF SERVICES

2.1 The scope of services under this Agreement shall be as provided in Exhibit A, incorporated hereto and made a part of this Agreement.

3. COMMENCEMENT DATE AND TERM

3.1 The term shall commence upon the date of this Agreement and continue for a period of one (1) year, unless sooner terminated by either party as provided for in this agreement. The village shall have no liability to the Consultant for future profits or losses in the event of termination.

3.2 Upon mutual agreement of the parties the initial one year term may be extended for one (1) additional year upon the written recommendation of the village manager.

4. PAYMENT

4.1 The village shall pay the Consultant a monthly retainer amount in

the sum of \$2,500.00. In exchange, the Consultant shall provide thirty-five (35) hours of service per month.

4.2 The village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village Manager specifically authorizes the extra or additional work, in a written task order before the commencement of the work. The village shall reimburse the Consultant for reasonable costs and expense incidentals associated with extra or additional work which has been authorized as provided herein and does not exceed \$500 per occurrence. Such costs shall be supplemental to the retainer amount and shall be approved in writing by the Village Manager. The Consultant shall not be entitled to any carrying charges or finance fees.

4.3 The Consultant shall submit monthly invoices for services rendered and reimbursable expenses for extra or additional work which has been authorized as provided in paragraph 4.2.

4.4 Payment by the village shall be made within fifteen (15) days of receipt of the invoice.

5. TRANSFER AND ASSIGNMENT

5.1 None of the work or services under this Agreement shall be subcontracted unless Consultant obtains prior written consent from the village. Approved sub-consultant shall be subject to each provision of this Agreement and Consultant shall be responsible and indemnify the village for all sub-consultants' acts, errors or omissions.

5.2 The Consultant shall not assign, transfer or pledge any interest in this Agreement without the prior written consent of the village; provided, however, that claims for money by the Consultant from the village under this Agreement may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Consultant to the village.

6. MODIFICATIONS – CHANGE ORDERS

6.1 The village may, at any time, by written change order make changes to the scope of work, and to the means and methods of performing the work. The village may order temporary stoppage of the work or delay in performance that does not alter the scope of work. In the event that modifications cause an increase or decrease in the price charged, the village shall make an equitable adjustment to the maximum price and shall modify the Agreement with a written change order.

7. NO DAMAGES FOR DELAY CLAUSE

7.1 No claim for damages or any claim other than for an extension of time shall be made or asserted against the village by reason of any delays. The

Consultant shall not be entitled to an increase in the contract sum or payment of compensation of any kind from the village for direct, indirect, consequential, impact, mobilization, demobilization, or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude recovery or damages by the Consultant for hindrances or delays due solely to fraud, bad faith or active interference on the part of the village or its agents. Otherwise, the Consultant shall be entitled only to extension of the contract time as the sole and exclusive remedy for a resulting delay, in accordance with and to the extent specifically provided above.

8. LIENS

8.1 The Consultant, sub-consultant, suppliers and laborers are prohibited from placing a lien on village's property.

9. INDEPENDENT CONSULTANT

9.1 The Consultant is furnishing its services as an independent Consultant and nothing in this Agreement shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

10. INDEMNIFICATION

10.1 The Consultant shall provide the services based on information and direction provided by village staff. Information collected and prepared by the Consultant shall not be made public until such information is approved by the Village Manager or his designee as to form and content. The Consultant shall therefore not be liable for inaccurate, improper, inadequate or untimely information that has been approved by the Village Manager or other authorized village official for publication or distribution.

10.2 The village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Consultant or its sub-consultant, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Consultant, the village in no way assumes responsibility or liability for the acts, errors or omissions of the Consultant or sub-consultant.

11. EQUAL EMPLOYMENT OPPORTUNITY

11.1 The Consultant agrees to remain in compliance with all local, state, and federal Equal Employment Opportunity (EEO) requirements, including Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

11.2 In the event of a determination that the Consultant is not in compliance with this clause, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Consultant may be declared ineligible for further contracts.

11.3 These terms and conditions must be included in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each sub-consultant or vendor.

12. MEDIATION

12.1 Any claim or dispute arising out of or related to this Agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration.

12.2 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.

12.3 Agreements reached in mediation shall be enforceable as settlement Agreements in the circuit court for the 11th judicial circuit for the State of Florida.

13. JURISDICTION AND VENUE

13.1 For the purposes of this Agreement, Florida law shall govern the terms of this Agreement. Venue shall be in Miami-Dade County, Florida.

14. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

14.1 The village does not waive sovereign immunity for any claim for breach of Agreement or for an award of prejudgment interest; 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.

15. NOTICES

15.1 All notices given or required under this Agreement shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Consultant and to the village specified in this Agreement, unless either party shall specify to the other party a different address for the giving of the notices.

16. CONTRACTING OFFICER REPRESENTATION

16.1 For the purposes of this Agreement, the contracting officers are as follows:

To the Village: Village of Palmetto Bay
Village Manager
8950 SW 152nd Street
Palmetto Bay, FL 33157
Telephone: 305-259-1234

To Consultant: Gorin Communications, Inc.
Edward Gorin, President
8264 SW 177th Terrace
Palmetto Bay, FL 33157
Telephone: 305-256-4262

17. EXAMINATION AND RETENTION OF CONSULTANT'S RECORDS

17.1 The village, or any of their duly authorized representatives, shall, until 3 years after final payment under this Agreement, have access to and the right to examine any of the Consultant's books, ledgers, documents, papers, or other records involving transactions related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

17.2 The Consultant agrees to include in first-tier subcontracts under this Agreement a clause substantially the same as subparagraph 17.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

17.3 The right to access and examination of records in subparagraph 17.1 shall continue until disposition of any mediation, claims, litigation or appeals.

18. OWNERSHIP OF DOCUMENTS

18.1 All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Consultant under this Agreement shall be deemed the property of the village and the village shall have all rights incident to this ownership. The Consultant acknowledges that all documents prepared under this 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 Agreement and any extensions, all documents shall be delivered by the Consultant to the village. The Consultant shall have the right to retain copies of the documents at the Consultant's expense.

19. SEVERABILITY

19.1 Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law, for any

reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this Agreement.

20. ENTIRE AGREEMENT

20.1 The Agreement, when signed by all of the parties, constitutes the full and complete understanding and Agreement of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This Agreement and the incorporated exhibits constitute the entire understanding between the parties and integrates by its terms all previous Agreements or understandings, oral or written, between the parties. In the event of any conflict, the terms of this Agreement will govern over the provisions of any incorporated documents.

20.2 In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

21. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

21.1 Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Consultant has not, and will not, pay a fee the amount of which is contingent upon the village awarding this Agreement to Consultant.

21.2 Consultant warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this 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.

21.3 A violation of this paragraph will result in the termination of the Agreement and forfeiture of funds paid, or to be paid, to the Consultant.

22. WARRANTY OF AUTHORITY

22.1 The signatories to this Agreement warrant that they are duly authorized by action of their respective village commission, board of directors or other authority to execute this Agreement and to bind the parties to the promises, terms, conditions and warranties contained in this Agreement.

23. TERMINATION FOR DEFAULT

23.1 Either party may terminate this contract prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this contract by the other party, which has not been cured within 10 days from the date of receipt of written notice of breach from the party seeking termination.

23.2 Termination shall be effective as of the end of the notice period in the case of any uncured material breach.

23.3 The Consultant may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 30-days prior written notice to the village in the event that the consultant is unable to complete the services identified in paragraph 2.1 due to causes beyond the Consultant's control.

23.4 The village shall have no liability to the consultant for future profits or losses in the event of termination for default.

23.5 The rights and remedies of the village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

23.6 Should the Consultant provide the village with written notice of cancellation of contract, the consultant will be required to refund a pro-rata share of the compensation identified in paragraph 4.

24. TERMINATION FOR CONVENIENCE

24.1 The village may terminate this contract for convenience at any time by giving 30 days notice in writing to the consultant. The consultant will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. The Consultant will be permitted to complete on-going services provided and shall be paid for all satisfactory work completed. The village shall not be liable for future profits or losses.

24.2 In the event that the village improperly terminates the contract for default under paragraph 23, the termination shall be deemed a termination for convenience under this paragraph.

25. TERMINATION FOR LACK OF FUNDS

25.1 Notwithstanding any other provisions of the contract, if the funds anticipated by the village for the for the payment of work under this contract are at any time not forthcoming, through the failure of the village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the village shall have the right to terminate the contract without penalty by giving not less than 30 days written notice of the lack of available funding.

25.2 In the event the village declines to appropriate funds for payment of the contract for future fiscal years, the consultant shall be paid for work performed

under the contract with funds that are appropriated for the current fiscal year. The liability of the village to the consultant shall be limited to the obligation to budget and appropriate funds for work performed during the current fiscal year.

25.3. For any portion of the work that is funded by county, state or federal appropriations or grants, the liability of the village to the consultant shall be limited to payment for services when payment is received by the village from the county, state or federal authority. The village shall submit all required documents requesting payment within a reasonable time. The village shall not be liable to the consultant for work performed in the event that payment is not received by the village from a county, state or federal funding authority. This is a pay-when-paid clause.

26. INSURANCE.

26.1 The village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Consultant or its subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Consultant, the village in no way assumes responsibility or liability for the acts, errors or omissions of the Consultant or his subcontractors.

26.2 The Consultant shall not commence work under this contract until he has obtained all insurance required by the village. The Consultant shall defend, indemnify and hold the village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the Consultant, or the Consultant's subcontractors, suppliers and laborers incident to the performance of the Consultant's services under this contract. The Consultant shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

26.3 The Consultant shall maintain during the term of this contract the following insurance:

A. Comprehensive general liability insurance with broad form endorsement, including automobile liability, employer's liability insurance and coverage for legal liability for loss or damage to village's property entrusted to Contractor arising from dishonesty of Contractor employees, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name village as additional insured and shall reflect the hold harmless provision contained herein.

B. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended.

C. The policies shall contain waiver of subrogation against the village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the village may have. The village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the village.

D. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

E. The Consultant shall furnish certificates of insurance to the village prior to the commencement of operations. The certificates shall clearly indicate that the Consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this section 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.

26.4 Compliance with the foregoing requirements shall not relieve the Consultant of its liability and obligations under this contract. It is agreed and understood, however, that Contractor is not an insurer of property or persons guarded. Contractor shall add village as an additional insured, and shall ensure that the policy limits are in excess of \$1,000,000 per each incident. The specific terms of insurance shall be as identified herein and in attached exhibit 1, if there is a conflict between the terms herein and attached exhibit, 1, exhibit 1 shall control as far as policy limits, all other terms shall be as provided herein.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have executed this Agreement as of the date first above written.

The Village of Palmetto Bay

Consultant

By: _____
Charles D. Scurr,
Village Manager

By: _____

ATTEST:

village CLERK

By: _____
Meighan J. Rader

Approved as to form:

By: _____
Eve Boutsis, Village Attorney
Village of Palmetto Bay

EXHIBIT "A"

Scope of Services

General Description:

During the term of this agreement, the Consultant shall perform public information functions for the Village of Palmetto Bay.

The Consultant shall agree to be available with reasonable notice to meet with Village officials, attend Village Council and community meetings, represent the interests of the Village, and act as a liaison between the Village and the media. The Consultant shall report to the Village Manager or designee.

Duties and Responsibilities:

- ◆ Areas where the Consultant will have Lead Responsibility:

- Press Relations - Cooperate with the local media to ensure the release of public information and Village news, including communicating with reporters and networking with the local newspapers covering the Village of Palmetto Bay
- Press Releases and Information - Write and edit special stories, briefs, press releases, articles and content pertaining to Village events, services, and activities for newspapers, magazines, television, radio and other media sources
- Council Coordination - Assist the Village Council in preparing speeches and articles including the State of the Village address and monthly op ed articles.
- Council Meetings - Attend all Council meetings and workshops
- Shop Palmetto Bay - Use established media relations to promote the "Shop Palmetto Bay" effort, prepare promotional stories and briefs, write applicable press releases, schedule
- ◆ Areas where the Consultant will have Support Responsibility:
 - Village Publications – Support Village staff as requested in the development of Village publications such as the Village newsletter, website and other publications.