RESOLUTION NO. 2015-81

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; APPROVING THE AGREEMENT FOR PROFESSIONAL AUDITING SERVICES WITH ALBERNI, CABALLERO & FIERMAN, LLP; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay adopted Resolution No. 2015-68; and,

WHEREAS, the Village Manager was authorized to enter into contract negotiations with the Council's selected responsive bidder, Alberni, Caballero & Fierman, LLP for professional auditing services for fiscal years ending September 30, 2015, through 2018, with an option for two-one year extensions; and,

WHEREAS, the Village Manager conducted said negotiations; and,

WHEREAS, the result of the negotiations are provided in the attached Professional Auditing Services Agreement.

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 Professional Auditing Services Agreement with Alberni, Caballero & Fierman, LLP.

Section 2. This Resolution shall become effective immediately.

PASSED AND ADOPTED this 5th day of October, 2015.

Attest:

Meighan J. Alexander
Village Clerk

Eugene Flinn
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:

Dexter W. Lehtinen
Office of the Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Karyn Cunningham	YES
Council Member Tim Schaffer	YES
Council Member Larissa Siegel Lara	YES
Vice-Mayor John DuBois	YES
Mayor Eugene Flinn	YES

VILLAGE OF PALMETTO BAY

PROFESSIONAL AUDITING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2015, by and between the Village of Palmetto Bay, a Florida municipal corporation (hereinafter referred to as "Village"), and Alberni, Caballero & Fierman, LLP authorized to do business in the State of Florida, (hereinafter referred to as "Firm" and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the Village advertised a Request for Qualifications/Proposal ("RFQ/P") on May 18th 2015, and

WHEREAS, Firm submitted a Proposal dated June 18th 2015 in response to the Village's request, and

WHEREAS, at a meeting held on September 8th 2015, the Village Council awarded the Firm and agreed to enter into an Agreement with Firm to perform the services described in the RFQ/P and Firm's Proposal submitted in response to the RFQ/P ("Services"),

NOW THEREFORE, in consideration of the promises and the mutual covenants herein named, the parties hereto agree as follows:

Article 1 Incorporation by Reference.

The following documents are hereby incorporated by reference and made part of this Agreement.

(i) Specifications and Proposal Documents prepared by the Village for Professional Auditing Services for RFQ/P No. 1415-06-001 (Exhibit 1).

(ii) Proposal for the Village of Palmetto Bay prepared by Firm dated June 18, 2015. (Exhibit 2).

ES_____
AF_____

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instructions, the following priority is established:

A. This Agreement

B. Exhibit 1

C. Exhibit 2

Article 2 Scope of Work

A. Firm agrees to provide the Services (hereinafter inclusively referred to as the "Services") as specifically described, and under the terms and conditions set forth in Exhibit 1 and Exhibit 2.

B. Firm represents and warrants to the Village that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services: (ii) it is not delinquent in the payment of any sums due the Village: (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each: and (iv) the Services will be performed in the manner described in Exhibit 1.

Article 3 Qualifications

Firm and the individual executing this Agreement on behalf of the Firm warrant to the Village that the Firm is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Firm possesses all of the required licenses and certificates of competency required by the State of Florida, Miami Dade County, and the Village to perform the work herein described. Firm acknowledges that due to the nature of this contract, that Firm must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Firm shall be solely responsible for the payment of any fines or penalties incurred as a result of its actions.

Article 4 Payment and/or Fees

For all Auditing Services provided by Auditor as described in Sections 2.0 of RFQ/P No. 1415-06-001, Auditor shall be compensated per Attachment A.

ES_____
AF_____

In consideration of the size of the fees to be generated and the probable length of the audit engagement for each fiscal year, progress billing will be permitted on the basis of percentage of completion basis. To determine progress, the Firm will prepare, as part of the Audit Plan an estimate of total hours required to complete the engagement. Progress will be determined by comparing the hours incurred to date to the estimated total hours for the engagement. A listing of hours incurred and a description of the work corresponding to such hours shall accompany the invoice in support of this calculation. Progress billings may be rendered no more frequently than monthly during the course of the engagement. The final payment will be paid upon resolution of any open issues or delivery of any remaining items. The Village shall pay the Auditor for all approved invoices, no later than 30 calendar days from the date of approval by the Village Manager of the invoice.

For all Additional Services as described in Sections 2.2.3 of the RFQ/P No. 1415-06-001, the Village shall pay Auditor a fee mutually agreed to by the Village Manager and Auditor.
Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted in DUPLICATE to the Village of Palmetto Bay, Finance Department, 9705 E. Hibiscus Street, Palmetto Bay, FL 33157.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Firm shall secure in writing from the Village approval of all records to be used for the purpose of temporarily or permanently recording the operations of the Firm under this Agreement.

B. For the purposes of the administration of this Agreement, the following shall apply: The Village Manager or his designee is hereby designated as the Contract Administrator for this Agreement. Reports and information as the Village may reasonably require regarding the administration of this Contract should be addressed to the Village Manager.

ES_____
AF_____

Article 6 Termination

A. **Termination/Cancellation of Contract Without Cause**
Either Party may terminate this Contract without cause upon thirty (30) days prior written notice to the other party. Termination or cancellation of the contract will not relieve the Firm of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract, or after termination in the Village's discretion if needed for a post contract audit of money due on Firm's performance). Termination or cancellation of the contract will not relieve the Firm of any obligations or liabilities resulting from any acts committed by the Firm prior to the termination of the contract.

B. **Termination Because of Default**
Without waiving the right to terminate without cause on thirty (30) days' notice, a party may issue a written notice to the other claiming that the other party is in breach of contract and giving the other party ten (10) calendar days to cure the default. If the alleged breach of contract is not cured, then the party serving the notice may terminate the Contract and be excused from further performance following termination. However, termination of the Contract will not relieve the Firm of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract.)

Article 7 Hold Harmless and Indemnification of the Village

The Village shall not be liable for any damages or claims of any type including but not limited to lost profits, special damages, consequential damages or business interruption on account of the Village's decision to terminate this Contract. Additionally, the Firm agrees that in the event this Contract is terminated for the Village's breach, the damages that Firm may have against the Village shall be limited to actual damages for a period of thirty (30) days given the fact that this Contract may be terminated by the Village without cause on thirty (30) days' notice.

The provisions of this section shall survive termination of this Agreement.

ES_____
AF_____

Article 8 Term

This Agreement shall become effective upon execution by both parties and shall continue from fiscal year 2015 through fiscal year end 2018 unless earlier terminated as provided in Article 6 (the "Term").

There should be a term limit of three years, with two one year renewals, upon prior approval of the Village Manager. In the event the Village Manager decides to exercise the one year (12 months) extension option provided for in this section, the Village shall provide thirty (30) days written notice to the firm prior to the expiration of the original agreement, providing the successful firm will agree to maintain the same terms and conditions of the current agreement. This option will only be exercised by the Village when such continuation is clearly in the best interest of the Village. Should the Village exercise its option to continue this this agreement, it shall be only for the Services (as defined within) agreed to in this Agreement.

Article 9 Audit and Inspection Rights

The Village may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by the Firm under this Agreement, audit, or cause to be audited, those books and records of Firm which are related to Firm's performance under this Agreement. Firm agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. The Village may, at reasonable times during the term hereof, inspect Firm's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Firm under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Firm shall make available to the Village all reasonable facilities and assistance to facilitate the performance of inspections by the Village's representatives. All inspections shall be subject to, and made in accordance with, the provisions of the Village Code as same may be amended or supplemented, from time to time.

ES_____
AF_____

Article 10 Federal and State Tax

The Village is exempt from payment of Florida State Sales and Use Taxes. The Village will sign an exemption certificate submitted by the Firm. The Firm shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Firm authorized to use the Village's Tax Exemption Number in securing such materials.

The Firm shall be responsible for payment of its own and its share of its employee taxes and Social Security benefits.

Article 11 Indemnification

Firm shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Firm or its employees, agents, servants, partners, principals or sub-Firms. Firm shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Firm expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Firm shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided. 1% of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

ES_____
AF_____

Article 12 Insurance

Auditor shall maintain at its sole cost and expense all times, in addition to any other insurance the Village may reasonably require, professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with minimum policy limits for each coverage in the amount of One Million Dollars ($1,000,000.00) per occurrence, single limit for property damage and bodily injury, including death. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without thirty (30) days written notice to the Village prior to the effective date of cancellation, modification, or reduction in coverage. Auditor shall obtain all insurance coverage as specified herein.

A. The liability insurance shall protect the Auditor and Village, from claims set forth below that may arise out of or result from the Auditor's operations under the Agreement and for which the Auditor may be legally liable, whether such operations be by the Auditor or by anybody performing work for the Auditor under the Agreement or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Services to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Auditor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Auditor's employees;
4. claims for damages insured by usual personal injury liability coverage that are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Auditor, or (2) by another person;
5. claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
7. claims involving contractual liability insurance applicable to the Auditor's obligation.

B. The insurance required for the Professional Auditing Services shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Services until date of final payment and termination of any coverage required

ES_____
AF_____

to be maintained after final payment. Auditor will carry professional liability insurance coverage in the amount of $2,000,000.00, with deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which Auditor shall become legally obligated to pay as damages for claims arising out of the services performed by Auditor any person employed by Auditor in connection with this engagement agreement. The insurance shall be maintained for three years after completion of services under this engagement agreement.

C. Certificates of Insurance acceptable to the Village shall be filed with the Village prior to commencement of the Services. Village shall be named as an additional insured on all required insurance coverage. These Certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Village, except that the cancellation notice period for non-payment of premiums for Worker's Compensation policies shall be ten (10) days. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. The Auditor shall furnish information concerning reduction of coverage with reasonable promptness in accordance with the Auditor's information and belief. During the term of this 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.

D.	**Coverage Required:**	**Minimum Limits:**
1.	Worker's Compensation	Statutory Limits – State of Florida
2.	Employers' Liability	$500,000 accident/disease $500,000 policy limit, disease
3.	General Liability, Contractual Liability, Special Form Property Damage Personal Injury Liability, Explosion, Collapse, Underground • Premises/Operations • Independent contractor • Products • Completed Operations	$2,000,000 general aggregate, $1,000,000 each occurrence
4.	Automobile liability	$1,000,000 BI & PD, each accident
5.	Owned, hired, non-owned	$1,000,000 BI & PD, each accident
6.	Professional Liability	$2,000,000

ES_____
AF_____

Article 13 Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

Article 14 Severability

If any term or provision of this Agreement shall to any extent be held invalid, or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

Article 15 Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

Article 16 Waiver

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construes as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct. No waiver by the Village of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Firm of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Firm requiring the Village's consent or approval shall not be deemed to render unnecessary the obtaining of the Village's consent to or approval of any subsequent consent or approval of Firm, whether or not similar to the act so consented to or approved.

Article 17 Notices/Authorized Representatives

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

ES_____
AF_____

Village:	Audit Firm:
Edward Silva, Village Manager Village of Palmetto Bay 9705 E. Hibiscus Street Palmetto Bay, FL 33157	Andrew S. Fierman Alberni Caballero & Fierman, LLP 4649 Ponce de Leon, Ste 404 Coral Gables, Florida 33146

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Article 18 Independent Auditor

Auditor is and shall remain an independent contractor and is not an employee or agent of the Village. Services provided by Auditor shall be by employees of Auditor working under the supervision and direction of Auditor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Village. Auditor agrees that it is a separate and independent enterprise from the Village.

Auditor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Auditor. This Agreement shall not be construed as creating any joint employment relationship between Auditor and the Village, and the Village will not be liable for any obligation incurred by Auditor, including but not limited to unpaid minimum wages and/or overtime payments.

Article 19 Assignment

The Firm shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, including any or all of its right, title or interest therein, or his or its power to execute such Contract to any person, company or corporation without prior written consent of the Village. The Firm shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Firm from the Village under this Contract 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 Firm to the Village. None of the work or services under this Contract shall be subcontracted unless the Firm obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this Contract and the Firm shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

Article 20 Prohibition Against Contingent Fees

ES_____
AF_____

Firm warrants that it has no employees or retained any Firm or person, other than a bona fide employee working solely for Firm, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), Firm, corporation, individual or Firm, other than a bond fide employee working solely for Firm, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 21 Attorneys Fees

Should any dispute arise hereunder, the Village shall be entitled to recover against the Firm all costs, expenses and attorney's fees incurred by the Village in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions. Neither party shall be entitled to prejudgment interest.

Article 22 Conflict of Interest

Firm agrees to adhere to and be governed by the Village's Conflict of Interest Ordinance 2-121, et seq, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 23 Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

Article 24 Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

Article 25 Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 26 Joint Preparation

ES_____
AF_____

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties that the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 27 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 28 Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

Article 29 Jurisdiction And Venue

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

Article 30 Sovereign Immunity And Attorney's Fees.

The Village does not waive sovereign immunity under 768.28, Florida Statutes, for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

Article 31 Permits, Licenses and Filing Fees

The Firm shall procure all permits and licenses, pay all charges and fees, and file all notices as they pertain to the completion of the Firm's work.

Article 32 Safety Provisions

The Firm shall conform to the rules and regulations pertaining to safety established by OSHA and the Florida Division of Industrial Safety.

Article 33 Public and Employee Safety

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AF_____

Whenever the Auditor's operations create a condition hazardous to the public or Village employees, it shall, at its expense and without cost to the Village, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

Article 34 Preservation of Village Property

The Auditor shall provide and install suitable safeguards, approved by the Village, to protect Village property from injury or damage. If Village property is injured or damaged resulting from the Auditor's operations, it shall be replaced or restored at the Auditor's expense. The facilities shall be replaced or restored to a condition as good as when the Auditor began work.

Article 35 Immigration Act of 1986

The Auditor warrants on behalf of itself and all sub-Auditors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Article 36 Auditor Non-Discrimination

In the award of subcontracts or in performance of this work, the Auditor agrees that it will not engage in, nor permit such sub-Auditors as it may employ, to engage in discrimination in employment of persons on any basis prohibited by State or Federal law.

Article 37 Accuracy of Specifications

The specifications for this project are believed by the Village to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Auditors are cautioned to undertake an independent analysis of any test results in the specifications, as Village does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Auditor and all sub-Auditors named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the project site or accurate test data in the Village's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of Auditor to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect

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to be construed against the Firm. An ambiguity or defect shall be considered patent if it is of such a nature that the Firm, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the Firm or sub-Firms to notify Village in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the Village shall not be liable for costs incurred by the successful Firm to achieve the project's objective or standard beyond the amounts provided therefore in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the specifications, or any other matter whatsoever, Firm shall immediately notify the Village in writing, and the Firm and all sub-Firms shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by Village. Failure to provide the hereinbefore described written notice within one (1) working day of Firm's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

Article 38 Warranty Of Authority

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

Article 39 Miscellaneous Provision

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.

Article 40 Liquidated Damages

Unless otherwise excused by the village in writing, in the event that the Firm fails to meet to the contract time for completion of services as determined by the Village, the Firm shall pay to the village the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus

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approved time extensions, until completion of the project: $100.00 per day. The Firm may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the Firm shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this agreement. When the village reasonably believes that completion will be inexcusably delayed, the village shall be entitled, but not required, to withhold from any amounts otherwise due the Firm an amount then believed by the village to be adequate to recover liquidated damages applicable to the delays. If and when the Firm overcomes the delay in achieving completion, or any part thereof, for which the village has withheld payment, the village shall promptly release to the Firm those funds withheld, but no longer applicable, as liquidated damages.

All limitations of time set forth in this agreement are of the essence.

Article 41 Staffing/Removal

Audit Firm partners and managers are required to be consistent during the term of this agreement. If these personnel leave the firm, are promoted, or are assigned to another office, the Village will retain the right to approve or reject replacements assigned to the Village agreement.

The firm and their partners and managers assigned under this agreement maintains a permanent office in Palm Beach and/or Broward and/or Miami-Dade County, Florida; the Village's audit partner and manager shall be assigned at the permanent office in Palm Beach and/or Broward and/or Miami-Dade County, Florida

If at any time during the term of this Agreement the Village Manager becomes dissatisfied with the performance of any of Auditor's staff assigned to provide services under this Agreement, the Village Manager may request that the particular employee be removed from servicing this account. Representatives of Auditor and the Village Manager shall meet to discuss appropriate remedial action to alleviate the performance deficiencies experienced by the Village. If the proposed resolution is unsatisfactory to the Village Manager, Auditor shall reassign said personnel out of the Village within 3 calendar days of notification by the Village Manager.

Auditor agrees to act in good faith and to use its best efforts to resolve any problems experienced by the Village.

ES_____
AF_____

Auditor shall be responsible for maintaining current background checks on all employees and agents assigned to work in the Village. Background checks for each individual must be performed prior to providing any services to the Village. Written verification of any background checks must be provided to the Village if requested by the Village Manager.

Article 42 Waiver of Jury Trial

In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to a trial by jury.

Article 43 Warranties of Auditor

Auditor warrants and represents that at all times during the Term or any renewal term of this Agreement that it shall maintain in good standing with the State of Florida, that all required licenses and certificates of Auditor and its employees and agents required to perform services hereunder under federal, state and local laws necessary to perform the Scope of Services specified in this Agreement shall remain current and active.

Auditor warrants and represents that its employees have received sexual harassment training and that Auditor maintains appropriate sexual harassment and anti-discrimination policies.

Auditor warrants and represents that its employees will abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes and the applicable provisions of the Conflict of Interest and Code of Ethics ordinances sets forth in the Village Code and Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.

Auditor shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. Auditor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

Auditor represents that all persons delivering the Auditing Services as required by this Agreement have the requisite knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Agreement and agrees

to provide and perform such Auditing Services to Village's satisfaction for the agreed compensation.

Auditor shall maintain a Drug-Free workplace as that term is defined in the Florida Statutes.

Auditor shall comply with all applicable federal, state, county and Village laws, rules and regulations in the performance of Auditing Services.

The audit firm's professional personnel have received adequate continuing professional education with the proceeding two (2) years in accordance with the requirements of the Florida State Board of Accountancy and Government Auditing Standards.

Continued on next page.

ES_____
AF_____

IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

OWNER

Village of Palmetto Bay

ADDRESS
9705 E. Hibiscus Street
Palmetto Bay, FL 33157

BY _____

_____
Print Name

Village Manager
Title

ATTEST

_____
Meighan J. Alexander
Village Clerk

APPROVED AS TO FORM BY

_____
Dexter W. Lehtinen
Village Attorney

AUDITOR FIRM

_____

ADDRESS
_____
_____

BY _____

_____
Print Name

_____
Title

_____
Witness

_____
Print Name

ES_____
AF_____