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RESOLUTION NO. 08-52

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AUDITING SERVICES; AUTHORIZING AND APPROVING THE CONTRACT WITH RACHLIN LLC AS VILLAGE EXTERNAL AUDITORS FOR THE FISCAL YEARS 2008, 2009 AND 2010; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay's contract for auditing services has expired with the completion of the 2007 audit; and,

WHEREAS, an RFP was issued for auditing services in May 2008; and,

WHEREAS, the Audit Selection Committee ranked the proposals submitted and selected Rachlin LLC as the primary auditor; and,

WHEREAS, a contract has been successfully negotiated between the Village of Palmetto Bay and Rachlin LLC; and,

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

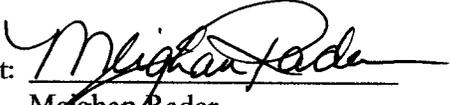
Section 1. The Village Council approves a three year contract with Rachlin LLC starting with the 2008 fiscal year audit.

Section 2. The Village Council has an option for two one-year extension.

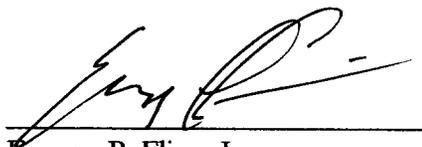
Section 3. This resolution shall take effect immediately upon approval

PASSED and ADOPTED this 7th day of July, 2008.

Attest:

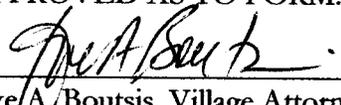


Meghan Rader
Village Clerk



Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:



Eve A. Boutsis, Village Attorney
Nagin, Gallop & Figueredo

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2 FINAL VOTE AT ADOPTION:
3
4 Council Member Ed Feller YES
5
6 Council Member Paul Neidhart YES
7
8 Council Member Shelley Stanczyk YES
9
10 Vice Mayor Linda Robinson YES
11
12 Mayor Eugene P. Flinn, Jr. YES
13

June 11, 2008

JUN 23 2008

Honorable Mayor, Village Council and
Village Manager
Village of Palmetto Bay
8950 S.W. 152 Street
Palmetto Bay, Florida 33157

VILLAGE MANAGER'S OFFICE
RON E. WILLIAMS

As part of our continuing engagement with the Village of Palmetto Bay, Florida (the Village), Rachlin LLP (Rachlin) is pleased to confirm our understanding of the services Rachlin is to provide to the Village for the years ending September 30, 2008, 2009 and 2010. Rachlin will audit the financial statements of the governmental activities, the business-type activities (if any), each major fund, and the aggregate remaining fund information, which collectively comprise the entity's basic financial statements, of the Village of Palmetto Bay as of and for the years ending September 30, 2008, 2009 and 2010. The Village has the option to extend this contract for two additional years. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany Village of Palmetto Bay's basic financial statements. As part of our engagement, we will apply certain limited procedures to Village of Palmetto Bay's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Budgetary Comparison Schedules

Supplementary information other than RSI also accompanies Village of Palmetto Bay's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

- 1) Schedule of Expenditures of Federal Awards and State Financial Assistance
- 2) Combining Fund Financial Statements

The following additional information accompanying the basic financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will disclaim an opinion:

- 1) Introductory Section
- 2) Statistical Section

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on—



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- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, the Florida Single Audit Act and Chapter 10.550, Rules of the Auditor General of the State of Florida.

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity specific legislative or regulatory bodies, federal and state awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with generally accepted auditing standards established by the Auditing Standards Board (United States); the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, the Florida Single Audit Act and Chapter 10.550, Rules of the Auditor General of the State of Florida and will include tests of accounting records, a determination of major program(s) in accordance with OMB Circular A-133, and the Florida Single Audit Act, and other procedures we consider necessary to enable us to express such opinions and to render the required reports. If our opinions on the financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will assist you with the preparation of a draft of your financial statements, schedule of expenditures of federal awards and state financial assistance, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedule of expenditures of federal awards and state financial assistance, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements, schedule of expenditures of federal awards and state financial assistance, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them

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Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the Village of Palmetto Bay and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for federal award program and state financial assistance project compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us, including identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us 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.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, the Florida Single Audit Act and Chapter 10.550 of the Rules of the Auditor General of the State of Florida, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous audits or other engagements or studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions.

With regard to using the auditor's report, you understand that you must obtain our prior written consent to reproduce or use our report in bond offering official statements or other documents.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

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Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are 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, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider 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. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, the Florida Single Audit Act and Chapter 10.550, Rules of the Auditor General of the State of Florida, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting

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material noncompliance with compliance requirements applicable to each major federal and state award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133, the Florida Single Audit Act and Chapter 10.550, Rules of the Auditor General of the State of Florida.

Rachlin's fees for services will be (excluding Federal or Single Audit Act Requirements – see below) \$31,000 for the fiscal year ended September 30, 2008; \$32,750 for 2009 and \$34,600 for 2010. Our hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to the audit. 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 additional time is required because of unexpected circumstances or for changes in the requirements of the Governmental Accounting Standards Board or our professional auditing standards or changes in the funds structure of the Village, Rachlin will discuss these circumstances with you and arrive at a new fee estimate before Rachlin incur the additional costs. If the Village extends the contract for two additional years (2010 and 2011) the fees will be \$37,000 for 2010 and \$38,500 for 2011.

In addition, if the Village of Palmetto Bay is required to undergo an audit in accordance with the Federal Single Audit Act and OMB Circular A-133, *Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards*, the additional fee will be \$6,000 for the fiscal year ended September 30, 2008, \$7,000 for 2009 and \$7,500 for 2010. This fee is dependent on the number of federal programs that have to be tested as a major program in accordance with the requirements of the Federal Single Audit Act and OMB Circular A-133.

If, during any year of this contract, the Village of Palmetto Bay is subject to the Florida Single Audit Act and Chapter 10.550 Rules of the Auditor General, the additional fee will be \$6,000 for the fiscal year ended September 30, 2008, \$7,000 for 2009 and \$7,500 for 2010. This fee is dependent on the number of state programs that have to be tested as a major program in accordance with the requirements of the Florida Single Audit Act and the Rules of the Auditor General, Chapter 10.550.

Indemnification

Rachlin 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 Rachlin's failure to satisfy its obligations under generally accepted auditing standards through negligence or error or omission of Rachlin or its employees, if any; and Rachlin 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 to the extent caused by the negligence, error or omission of the Village's officers or employees or by any third party.

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Insurance

During the term of this agreement, Rachlin will carry professional liability insurance coverage in the amount of \$5,000,000, with deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which Rachlin shall become legally obligated to pay as damages for claims arising out of the services performed by Rachlin or any person employed by Rachlin 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.

Rachlin 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 Rachlin 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 Rachlin 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 Rachlin 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 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 five years after the date of the auditors' report is issued or for any additional period requested by the regulatory or grantor agency. If Rachlin is aware that any regulatory agency, or auditee is contesting an audit finding, Rachlin will contact the party(ies) contesting the audit finding for guidance prior to destroying the workpapers.

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Ownership of Documents

All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by Rachlin under this engagement agreement shall be deemed the property of Rachlin, in accordance with Florida Statutes Section 473.318.

Termination for the Convenience of the Village

The Village may terminate this engagement agreement at any time by giving 30 days written notice to Rachlin. If the engagement agreement is terminated by the Village as provided herein, Rachlin 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 Rachlin with ten (10) days prior written notice in the event that it elects to exercise its right to withhold under this section.

Termination Due to Nonpayment

Rachlin's invoices for services will be rendered as work progresses and are payable within 30 days. In accordance with Rachlin'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 Rachlin elects to terminate our services for nonpayment, our engagement will be deemed to have been completed even if Rachlin 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, Rachlin will discuss the additional time necessary to complete the audit. If significant additional time is necessary, Rachlin will discuss it with the Village and arrive at a new fee estimate before Rachlin incurs the additional costs.

In the event that Rachlin 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, Rachlin's maximum liability to the Village in the event Rachlin is held liable because of such resignation shall be limited to the fees actually paid to Rachlin 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 Rachlin's engagement annually, for up to two years.

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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 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 Rachlin 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 Rachlin 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.

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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, Ron E. Williams
8950 SW 152nd Street
Palmetto Bay, FL 33157
(305) 259-1234

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

Non-Discrimination

Rachlin 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

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

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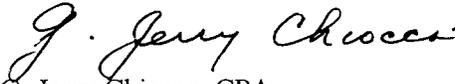
Assignability of Engagement

Rachlin further affirms that Rachlin 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.

Government Auditing Standards require that Rachlin provides you with a copy of our most recent quality control review report. Our most recent (dated 2007) peer review report has been previously furnished to you.

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

ACCEPTED:

This letter correctly sets forth the understanding of the Village of Palmetto Bay, Florida.

ATTEST:

Meghan J. Pier, Village Clerk

VILLAGE OF PALMETTO BAY
By: 

Ron E. Williams, Village Manager

This _____ day of _____, _____

APPROVED AS TO LEGAL SUFFICIENCY:

Eve A. Boutsis, Village Attorney

F:\08\11565\Single Audit Engagement Ltr