

RESOLUTION No. 2005-132-309

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, SELECTING RACHLIN COHEN & HOLTZ ACCOUNTANTS, TO PERFORM EXTERNAL AUDITING SERVICES FOR THE CITY FOR FISCAL YEARS ENDING SEPTEMBER 30, 2005, 2006 AND 2007 CONFIRMING THE ESTABLISHMENT OF THE CITY'S AUDIT COMMITTEE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE WITH RACHLIN COHEN & HOLTZ ACCOUNTANTS, TO PROVIDE THE EXTERNAL AUDITING SERVICES; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 218.39, Florida Statutes, the City is required to have an annual financial audit of its accounts and records completed within twelve (12) months after the end of its Fiscal Year by an independent certified public accountant retained by it and paid from its public funds, and

WHEREAS, City staff consisting of the City Manager, Assistant City Manager for Public Services, Finance Director and Accountant met as the City's Audit Committee pursuant to Section 218.39(1)(2), Florida Statutes, and prepared specifications for the City to retain a qualified certified public accountant to perform the annual audit for Fiscal Years ending September 30, 2005, 2006 and 2007, and

WHEREAS, a Request For Proposal ("RFP") was advertised on August 23, 2005 and broadcast notice was sent to five hundred twenty-one (521) firms and there were nine (9) proposal packages requested, and

WHEREAS, the proposals were opened on September 8, 2005, and proposals were received, and

WHEREAS, the City's Audit Committee evaluated the proposals, and has ranked and recommended, in order of preference, the following firms who are deemed to be the most highly qualified to perform the required services:

# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Aaron Campbell  
Councilman Melvin L. Bratton  
Councilman Oscar Braynon II  
Councilwoman Audrey King  
Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson

## MEMORANDUM

To: Mayor and City Council

From: Dr. Danny O. Crew  
City Manager

Date: September 28, 2005

Re: Proposed Resolution authorizing the City Manager to negotiate and execute an agreement for external auditing services

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The City is required to conduct an annual financial audit in accordance with State Statute 218.39. The City's current contract expires upon completion of the annual audit for fiscal year 2004.

The City Council confirmed the audit committee on September 14, 2005, which had prepared specifications to retain a qualified certified public accountant to perform the annual audit for fiscal years ending September 30, 2005, 2006 and 2007 in accordance with State Statute 218.39 and advertised the Request for Proposal on August 23, 2005. A broadcast notice was sent to 521 firms. Nine proposal packages were requested. The proposals were opened on September 14, 2005. Three proposals were received.

An Audit Committee consisting of the City Manager, Assistant City Manager for Public Services and the Finance Director evaluated the proposals. The Audit Committee ranked the firms deemed to be the most highly qualified to perform the required services after considering the factors established by the Audit Committee. The factors included: Past Experience, Quality of Personnel Assigned, Ability to plan the engagement, Office location, Audit approach, Adequacy of sampling procedures, and proposed fees. The three firms are ranked below, in order of preference are:

**L-1) REGULAR  
AGENDA  
Auditing Services**

1. Rachlin Cohen & Holtz Accountants, Miami, Florida
2. Watson Rice, LLP, Miami, Florida
3. Caballero & Castellanos, P.L., Miami, Florida

Pursuant to Section 218.391(4), Florida Statutes, since compensation was a factor established in the rankings, the City Council **must select the highest-ranked qualified firm or must document in the public records the reason for not selecting the highest-ranked qualified firm.**

Pursuant to Section 218.391(4)(d), upon selection of a firm, the City Council can permit a designee to conduct negotiations on its behalf. This resolution is recommending that the City Council authorize the City Manager to negotiate on its behalf. The resolution is further recommending that if the City Manager's negotiations with the selected firm are unsuccessful that the City Manager be authorized to negotiate with the second-ranked firm, and if unsuccessful, with the third-ranked firm.

**Recommendation:** That the City Council approve the attached resolution selecting Rachlin Cohen & Holtz Accountants to perform the requested audit services and authorizing the City Manager to negotiate and execute an agreement with the selected firm.

**CITY OF MIAMI GARDENS  
CONTRACT FOR PROFESSIONAL AUDITOR SERVICES**

THIS AGREEMENT is made and entered into this 28th day of September, 2005, by and between the City of Miami Gardens, a Florida municipal corporation (hereinafter referred to as "City"), and Rachlin Cohen & Holtz LLP, an Independent Certified Public Accounting Firm, authorized to do business in the State of Florida, (hereinafter referred to as "Auditor") and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, the City advertised a Request for Proposals ("RFP") on August 23, 2005 and

WHEREAS, Auditor submitted a Proposal dated September 14, 2005 in response to the City's request; and

WHEREAS, at a meeting held on September 28, 2005, the City Council selected the Auditor and agreed to contract with Auditor to perform the services described in the RFP AND Auditor's Proposal submitted in response to the RFP ("Services").

NOW THEREFORE, in consideration of the premises 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 City for External Audit Services RFP#04-05-024(Exhibit 1).
- (ii) Proposal for the City of Miami Gardens prepared by Auditor dated September 14, 2005. (Exhibit 2).

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 instruction, the following priority is established:

- A. This Agreement
- B. Exhibit 1
- C. Exhibit 2

Article 2      Scope of Work

This Agreement is made solely for the Services to be performed by the Auditor as described in the Documents. Auditor shall perform the work under the general direction of the City and shall furnish all labor, materials, supplies, equipment, supervision and services necessary for and incident to the

performance of the work, except as otherwise noted in specifications. By signing the Agreement, Auditor represents that it thoroughly reviewed the Documents incorporated into this Agreement by reference and that it accepts the Work and the conditions under which the Work is to be performed.

### Article 3      Qualifications

Auditor and the individual executing this Agreement on behalf of the Auditor warrant to the City Auditor is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Auditor possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to perform the work herein described.

### Article 4      Compensation

For all Services provided by Auditor, the City shall pay Auditor \$21,500.00 for all-inclusive maximum price for 2005 audit with a 5% increase for each year through 2007 fiscal year. Auditor shall be compensated \$6,500.00 each for Federal and State Single Audit. All invoices for fees and compensation shall be submitted in sufficient detail to demonstrate compliance with the terms of this Agreement, and shall include a detailed explanation of all fees and charges.

The City's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the City Council. Auditor shall make no charges to the City for supplies, labor, taxes, licenses, permits, overhead or any other expenses or costs unless any such expense or cost is incurred by Auditor with prior written approval of the City. If the City disputes any charges on the invoices, it may make payment of the contested amounts and withhold payment on the contested amounts until they are resolved by agreement with Auditor. There are no reimbursable expenses associated with this Agreement.

### Article 5      Completion Time

The work described herein shall be complete for presentation to the City Council the 2<sup>nd</sup> Wednesday in March following each fiscal year.

### Article 6      Records/Right to Inspect and Audit

All records, reports, documents, papers and financial information (Records) that result from Auditor providing services to the City under this Agreement shall be the property of the City. Upon termination of this agreement, any and all such Records shall be delivered to the City by Auditor within 15 days. Auditor shall maintain records, books, documents, papers and financial information pertaining to work performed under this Agreement for a minimum of three years after completion date of the audit. The City Manager or his designee

shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of Auditor involving transactions related to this Agreement. The City may cancel this Agreement for refusal by Auditor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

#### Article 7      Indemnification

Auditor shall defend, indemnify, and hold the City harmless from and against any and all demands, claims, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with Auditor's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between Auditor and third parties made pursuant to this Agreement. Auditor shall reimburse the City for all of its expenses including reasonable attorney fees and costs incurred in and about defense of any such claim or investigation.

#### Article 8      Insurance

Auditor shall maintain at its sole cost and expense at all times, in addition to any other insurance the City may reasonably require professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with a minimum policy limits for each coverage on one million dollars (\$1,000,000) per occurrence, single limit property damage and bodily injury on each of the above policies, unless prohibited by law, and Auditor shall provide the City with a certificate of same. Auditor shall carry a minimum of \$1,000,000 coverage for errors and omissions. Each policy shall state that it is not subject to cancellation, modification, or reduction in coverage without 30 days written notice to the City prior to the effective date of cancellation, modification, or reduction in coverage.

Auditor shall maintain each of the above insurance policies throughout the term of this Agreement and any extensions of this Agreement.

#### Article 9      Term

This Agreement shall become effective upon execution by both parties and shall continue in force through the completion, acceptance and presentation to City Council of 2007 fiscal year audit, unless sooner terminated as provided herein.

The City shall have the option to renew this Agreement for a period of two years upon the same terms and conditions contained herein upon 90 days written notice to Auditor. Thereafter, any renewal shall be in writing and executed by both parties.

#### Article 10    Termination

The City may, for its convenience and without cause, terminate this Agreement by giving Auditor written notice at least thirty (30) days prior to the effective date of the termination. Upon written notice of the termination, Auditor shall provide only those services and incur only those expenses specifically approved or directed in writing by the City Manager.

Auditor may terminate this Agreement by giving the City at least one hundred and eighty (180) days prior to the effective date of termination.

In the event of termination or expiration of this Agreement, Auditor and City shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Auditor to the City or to any other person or entity the City may designate, and to maintain during such period of transition that same services provide to the City pursuant to the terms of this Agreement.

Auditor will take all reasonable and necessary actions to transfer all records, etc. and data of the City in its possession in an orderly fashion to either the City or its designee in a hard copy and computer format.

#### Article 11    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 12    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 effected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

#### Article 13    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 14    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 construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

No waiver by the City of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Auditor of the same, or any other provision or the enforcement thereof. The City's consent to or approval of any act by Auditor requiring the City's consent or approval shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent consent or approval of Auditor, whether or not similar to the act so consented to or approved.

Article 15    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:

City:  
Danny Crew, City Manager  
City of Miami Gardens  
1515 NW 167<sup>th</sup> Street #200  
Miami Gardens, FL 33169

Auditor:  
G.Jerry Chiocca, Partner  
Rachlin Cohen & Holtz, LLP  
1 SE 3<sup>rd</sup> Avenue 10<sup>th</sup> floor  
Miami, FL 33131

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 16    Independent Contractor

Rachlin Cohen & Holtz LLP is and shall remain an independent contractor and is not an employee or agent of the City. Services provided by Auditor shall be by employees 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 City.

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. The rights granted to Auditor hereunder are nonexclusive, and the City reserves the right to enter into agreements with other persons or firms to perform services including those hereunder.

Article 17    Assignment

Subject to the provisions above, this Agreement shall not be assignable by Auditor.

Article 18    Prohibition Against Contingent Fees

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

Article 19    Attorneys Fees

Should any dispute arise hereunder, the City shall be entitled to recover against the Auditor all costs, expenses and attorney's fees incurred by the City 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.

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

Article 20    Non-Discrimination

Auditor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, the Americans with the Disabilities Act of 1990, the Age Discrimination Act of 1975. Auditor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status or status with regard to public assistance. Auditor will take affirmative action to insure that all employment practices are free from such discrimination.

Article 21    Conflict of Interest

Auditor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.11, as amended, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 22    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 23    Construction

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

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

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 than 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.

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

WITNESSES:

JUDITH CHONG  
Print Name:

JChong

ATTEST:

Ronetta Taylor  
Ronetta Taylor, CMC  
City Clerk

RACHLIN COHEN & HOLTZ LLP

By: G. Jerry Chioera  
Print Name

G. JERRY CHIOERA

CITY OF MIAMI GARDENS

By: Danry Crew  
Danry Crew  
City Manager

Date: October 28, 2005

APPROVED AS TO LEGAL SUFFICIENCY AND FORM:

Sonja Dickens  
Sonja Dickens, City Attorney