

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Manager Steven J. Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, October 4, 2006

7:00 PM

South Dade Regional Library
10750 SW 211 Street, 2nd Floor
Cutler Bay, Florida 33189

- I. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE**
- II. **INVOCATION**
- III. **PROCLAMATIONS, AWARDS, PRESENTATIONS**
 - A. Presentation of Proclamations to Logo Contest Winners
- IV. **APPROVAL OF MINUTES**
 - A. September 19, 2006 (Regular Council Meeting)
 - B. September 19, 2006 (Second Budget Hearing)
- V. **ADDITIONS, DELETIONS, AND DEFERRALS**
- VI. **TOWN MANAGER'S REPORT**
- VII. **TOWN ATTORNEY'S REPORT**
- VIII. **BOARD AND COMMITTEE REPORTS**
- IX. **CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER)**



- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONSULTING AGREEMENT WITH ALL HANDS CONSULTANTS FOR SERVICES OF ESTABLISHING A NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS); PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE. TAB 2

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; WAIVING COMPETITIVE BIDDING PURSUANT TO SECTION 3.10 OF THE TOWN CHARTER TO THE EXTENT APPLICABLE, AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A SOFTWARE LICENSE AGREEMENT WITH TEMPLE CONSULTING GROUP LTD. IN SUBSTANTIALLY THE FORM OF THE ATTACHED AGREEMENT; PROVIDING AN EFFECTIVE DATE. TAB 3

- X. **QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY)**

- XI. **QUASI-JUDICIAL HEARINGS**

- XII. **PUBLIC HEARINGS**
 - A. **RESOLUTIONS**
 - 1. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CITIZEN ADVISORY COMMITTEE FOR THE PURPOSE OF PROVIDING RECOMMENDATIONS TO THE TOWN COUNCIL ON WAYS TO PROVIDE TRANSPORTATION TO THE ELDERLY, APPOINTING A COUNCIL LIAISON; PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS; PROVIDING FOR AUTOMATIC DISSOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE. (NOT A PUBLIC HEARING) TAB 4

 - B. **ORDINANCES**
 - 1. **FIRST READING**
 - a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR THE CLARIFICATION OF THE SCOPE TAB 5

OF THE MORATORIUM, AS SHOWN ON EXHIBIT "A," WHICH WAS ENACTED BY ORDINANCE 06-10, ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES AFFECTING OLD CUTLER ROAD FROM S.W. 184 STREET SOUTH TO THE TOWN LIMITS; PROVIDING FOR A 90 DAY EXTENSION TO THE 120 DAY MORATORIUM; AND PROVIDING FOR AN EFFECTIVE DATE.

2. SECOND READING

XIII. PUBLIC COMMENTS

XIV. MAYOR AND COUNCIL MEMBER COMMENTS

XV. OTHER BUSINESS

A. Future Council Meeting Schedule and Dates

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 1

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Tuesday, September 19, 2006
7:00 PM

South Dade Regional Library
10750 SW 211 Street, 2nd Floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:10 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Manager Steven J. Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

Mayor Vrooman led the pledge of allegiance.

II. INVOCATION: Mayor Vrooman asked all to join him in a moment of silence.

III. PROCLAMATIONS, AWARDS, PRESENTATIONS:

A. The Town Clerk swore-in Edward P. MacDougall to the Office of the Vice-Mayor.

IV. APPROVAL OF MINUTES:

A. Councilmember Meerbott made a motion approving the minutes of the meeting of September 19, 2006. The motion was seconded by Councilmember Bell and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The Mayor recessed the regular Council meeting and called to order the Second Budget Hearing at 7:20 P.M. The regular Council meeting resumed at 8:05 P.M.

V. ADDITIONS, DELETIONS, AND DEFFERALS:

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL, AMENDING CHAPTER 24 OF THE MIAMI-DADE COUNTY CODE AS MADE APPLICABLE TO THE TOWN BY SECTION 8-3 OF THE TOWN CHARTER, ENTITLED "ENIVIRONMENTAL PROTECTION" ARTICLE VI, "IN

GENERAL,” DIVISION 1, “GENERAL PROVISIONS”, SECTION 24-49 “PERMITS FOR TREE REMOVAL AND RELOCATION, IMPROPERLY ISSUED PERMITS, VIOLATION OF PERMIT CONDITIONS, EXEMPTIONS FROM TREE REMOVAL PERMITS; MORTGAGE EXEMPTION FROM LIABILITY”, BY PROVIDING FOR ADDITIONAL PROTECTIONS FOR TREES WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Manager recommended deferral of the ordinance to a later date.

Councilmember Bell made a motion approving the Manager’s recommendation on deferring the resolution for an indefinite period. The motion was seconded by Councilmember Meerbott and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. TOWN MANAGER’S REPORT:

The Town Manager advised that additional permits that were previously on hold have been processed. He also informed Council that the plans for the Police Department and the Building Department have been completed and forwarded for building permits. The manager thanked staff member Yani Ramos for her assistance with purchasing essential office items. The manager also advised that our Town Police Department would like to implement a proclamation program for arresting police officers to be honored and recognized for their endless efforts. The Police Chief advised Council of the status of a recent case and also emphasized that community assistance is most appreciated.

VII. TOWN ATTORNEY’S REPORT: None at this time.

VIII. BOARD AND COMMITTEE REPORTS:

The Mayor discussed his successful completion of the CERT Training. He thanked all those who participated and also thanked the organizers.

Councilmember Bell introduced the logo committee and its members to Council, Chairperson Denise Cebrero, Vice Chairperson Tom Condon, Secretary Beth Parets and Committee Member Terry Long. Committee Chairperson Cebrero addressed Council and presented their findings.

After extensive discussion, Councilmember Meerbott made a motion to approve Logo Selection 8B with modifications as the Grand Prize recipient. The motion was seconded by Councilmember Bell and failed by a 2-3 voice vote. The vote was as follows: Councilmember Bell and Councilmember Meerbott voting Yes; Councilmember Sochin, Vice Mayor MacDougall and Mayor Vrooman voting No.

Vice Mayor MacDougall made a motion to approve Logo Selection 130N with modifications as the Grand Prize recipient. The motion was seconded by Councilmember Sochin and approved by a 3-2 voice vote. The vote was as follows: Councilmember Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Bell and Councilmember Meerbott voting No.

Councilmember Bell made a motion approving Logo Selection 8B for Second Place. The motion was seconded by Vice Mayor MacDougall and approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Meerbott voting No.

Councilmember Sochin made a motion recommending Logo Selection 106 as the winner for the twelve (12) and under category. The motion was seconded by Councilmember Bell and approved by unanimous voice vote: The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

Vice Mayor MacDougall made a motion recommending Logo Selection 25A as the winner for the thirteen (13) to seventeen (17) category. The motion was seconded by Councilmember Sochin and approved by a 4-1 voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Meerbott voting No.

IX. CONSENT AGENDA: None at this time.

X. QUASI-JUDICIAL CONSENT AGENDA PUBLIC HEARING: None at this time.

XI. QUASI-JUDICIAL HEARINGS: None at this time.

XII. PUBLIC HEARINGS:

A. RESOLUTIONS

1. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE PARKS AND RECREATION ADVISORY COMMITTEE; PROVIDING FOR AN APPOINTMENT PROCEDURE FOR MEMBERS OF THE PARKS AND RECREATION ADVISORY COMMITTEE; PROVIDING FOR DISSOLUTION OF THE COMMITTEE; PROVIDING FOR AN EFFECTIVE DATE. (NOT A PUBLIC HEARING)

Councilmember Meerbott made a motion approving the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 06-97 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

B. ORDINANCES:

1. **FIRST READING:** None at this time.
2. **SECOND READING:** The clerk read the following ordinance, on second reading, by title:
 - a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING

REGULATIONS RELATED TO TEMPORARY STORAGE UNITS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR REQUIREMENTS FOR PLACEMENT OF TEMPORARY STORAGE UNITS; PROVIDING FOR PLACEMENT OF TEMPORARY STORAGE UNITS IN OTHER ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

The mayor opened the public hearing. Joy Cooper, 9365 Nassau Drive, addressed the Council.

Councilmember Bell made a motion to adopt the ordinance on second reading. The motion was seconded by Vice Mayor MacDougall and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING REGULATIONS RELATED TO ROADSIDE SALES BY AMENDING SECTIONS 33-243, 33-251.1, 33-253.5 AND 33-256.4 EACH ENTITLED "PROHIBITED USES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

The mayor opened the public hearing. Beth Parets, 19301 Holiday Road, addressed the Council.

Councilmember Bell made a motion to adopt the ordinance on second reading. The motion was seconded by Councilmember Sochin and approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XIII. PUBLIC COMMENTS:

The following individuals spoke: Beth Parets, 19301 Holiday Road.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS:

Councilmember Sochin discussed his attendance on various events beginning with the Pinecrest Business Association who presented Grant Miller with the Community Service Award. He attended the 9/11 fundraiser for a recent fallen firefighter's family at R.J. Gators. He was invited to visit the Bay Point School and suggested that a representative of the school address Council at a future meeting. Member Sochin suggested that Council should consider a rule, much like the "4 Day Rule" utilized by the County Commission.

Vice Mayor MacDougall discussed the receipt of emails from constituents who collectively email all members of Council on issues. He suggested that each district respond to their emails as it applies to their area. Those members not representing a district should forward necessary emails to the

corresponding district representative or to the Town Manager if within his authority. He also spoke on an upcoming resolution that will provide a committee to organize the tram system for the elderly.

Councilmember Bell thanked all the members of the Logo Committee for their participation and dedication. She also thanked members of Council for approving the Parks Committee resolution. Member Bell also discussed her attendance to the Cutler Ridge Soccer opening at Cutler Ridge Park which included a tree dedication in honor of Mayor John Cosgrove. She also stated that Members Meerbott, Sochin, and the Town Manager were in attendance at the ceremony.

Councilmember Meerbott discussed his meeting with Annie Condon, to acquire public lands for the Town. He informed Council that it would be beneficial to have her present the different services available from her organization. Member Meerbott suggested that a newsletter should circulate within the Town with vital information on the Town and inform residents of their district Council representative.

XV. OTHER BUSINESS: None at this time.

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT:

The next council meeting will be held on October 4, 2006, at the South Dade Regional Library.

The meeting was officially adjourned at 10:15 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 4th day of October, 2006*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY
SECOND BUDGET HEARING
MINUTES**

Tuesday, September 19, 2006
Immediately Following the Council Meeting
South Dade Regional Library
10750 SW 211 Street, 2nd Floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:20 P.M. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Manager Steven J. Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

II. INVOCATION: None at this time.

III. APPROVAL OF MINUTES:

A. Councilmember Bell made a motion approving the minutes of the meeting of September 6, 2006. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

IV. BUDGET HEARING (IMMEDIATELY FOLLOWING COUNCIL MEETING):

A. A RESOLUTION OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE FINAL MILLAGE RATE OF THE TOWN OF CUTLER BAY FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007 PURSANT TO FLORIDA STATUTE 200.065 (TRIM BILL); PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Sochin made a motion approving the resolution. The motion was seconded by Vice Mayor MacDougall and adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- B. AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING AN OPERATING AND CAPITAL OUTLAY BUDGET WITH TOTAL EXPENDITURES IN THE AMOUNT OF \$16,315,400 AND \$2,767,936 FROM SPECIAL REVENUES FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007 PURSUANT TO FLORIDA STATUTE 200.065 (TRIM BILL); PROVIDING FOR AN EFFECTIVE DATE.**

The Town Manager addressed Council and discussed several modifications within the budget.

The mayor opened the public hearing. Beth Parets, 10031 Holiday Road, and Jaime Reyes, 9750 Southwest 215 Lane addressed Council.

Councilmember Sochin made a motion approving the ordinance. The motion was seconded by Vice Mayor MacDougall and adopted by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XIII. PUBLIC COMMENTS: None at this time.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS: None at this time.

XV. OTHER BUSINESS: None at this time.

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT: None at this time.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 4th day of October, 2006*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 2



MEMORANDUM

To: Honorable Mayor, & Town Council
From: Steven J. Alexander, Town Manager
Date: September 29, 2006
Re: NIMS/ALL HANDS CONSULTING

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH ALL HANDS CONSULTING, FOR NIMS TRAINING AND PROGRAM DEVELOPMENT ; PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

During the initial start-up of the Town, staff has identified the need for an expert consultant to assist the Town in complying with new federal requirements for certain Town officials to comply with the National Incident Management System training.

In accordance with Section 3.10 of the Town Charter, the Town Manager hereby recommends to the Town Council that it is impracticable to competitively bid this issue because of the immediate need to procure said service. The Manager has determined that it is advisable to acquire this service, at a reasonable cost to be determined by the Manager, **not to exceed \$15,000**, from a local consultant who is familiar with the Town and who has performed similar services for the City of Miami. Staff has determined that it would be neither practicable nor advantageous for the Town to solicit for services through a formal Request for Proposal due to the typical three month minimum time required for such formal process.

It is neither practical nor advantageous for the Town to use formal competitive bidding procedures for the above referenced service, which is needed immediately and that, subject to the provisions of the Town Charter cited above, that formal competitive bidding be waived for the following services and upon a 4/5 vote of the Town Council.

Funds for these activities are available within the Town Budget.

RECOMMENDATION

My recommendation is that formal competitive bidding be waived, and that the Town Manager be authorized to procure these services and the Town Council approve the proposed resolution.

RESOLUTION NO. 06-

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A CONSULTING AGREEMENT WITH ALL HANDS CONSULTING FOR SERVICES OF ESTABLISHING A NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS); PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") requires the services of a NIMS consultant to assist the Town in establishing standard incident management processes, protocols and procedures so that all responders can work together more effectively; and

WHEREAS, the Town Council finds that it is both necessary and appropriate to retain the services of All Hands Consulting (the "Consultant"); and

WHEREAS, in accordance with the provisions of Town Charter section 3.10, the Town Manager has stated in writing and the Town Council has determined that it is impracticable to solicit competitive bids or proposals for such services.

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

Section 1. **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. The Town Manager is authorized to execute an agreement, substantially in the form of the agreement attached as Exhibit "A" on behalf of the Town, with the Consultant and the competitive bidding requirements of Section 3.10 of the Town Charter are hereby waived to the extent they would require a competitive process for the selection of a firm for National Incident Management System consulting services.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____
Councilmember Peggy R. Bell _____

September 13, 2006

Mr. Steven Alexander, Town Manager

Town of Cutler Bay

Re: Proposal – NIMS Compliance and Emergency Management Planning Services

Dear Mr. Alexander,

I am pleased to provide you with a proposal for National Incident Management System (NIMS) compliance and emergency management services. As you are aware, substantial compliance with NIMS is required in order to receive future federal funds for emergency preparedness.

We understand that the Town will utilize an existing contract that was adopted by City of Miami Resolution No. R-5-0630 on November 3, 2005. The contract was the result of a competitive Request for Proposal (RFP) process to provide domestic security and emergency management planning, training and management consulting services. Attached is a copy of the City Resolution and the All Hands Consulting RFP documents for your review along with Attachment A that outlines hourly rates for varying levels of consultant services.

A key component of the contract scope is to provide NIMS compliance in the areas of emergency planning such as comprehensive emergency management plans (CEMP) and continuity of operations plans (COOP), incident command system (ICS) training and conducting and evaluating response exercises (drills). All Hands Consulting currently provides and coordinates much of the ongoing NIMS incident command system training including train-the-trainer classes in Miami-Dade, Broward, Palm Beach and Monroe counties.

Specific areas of expertise and assistance that All Hands can provide to the Town are:

- Completing the NIMS compliance assessment,
- Completion of NIMSCAST, an extensive online assessment of the Town's readiness for emergency prevention, response and recovery,



10025 MAPLE AVENUE, COLUMBIA, MD 21046

410.730.5677

- Providing a specialized incident command system (ICS) training class for elected officials (ICS-402),
- ICS training for the Town Manager and key Town personnel,
- CEMP and COOP plan development.

All Hands Consulting maintains an office in Coconut Grove with two full time staff persons. In addition, there are over 20 AHC personnel working in South Florida on training, plans development, emergency management and project and grants management.

We recognize that the Town of Cutler Bay is just beginning to hire personnel and provide services. We propose to offer our services on a time and materials basis in an amount not to exceed \$15,000 based on work orders from the Town Manager. This arrangement should provide the most flexibility to the Town.

We thank you for the opportunity to provide this proposal.

Sincerely,

Steve Davis

President

All Hands Consulting

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI AND DAVISLOGIC INC., DBA ALL HANDS CONSULTING

This Agreement is entered into this 6th day of November, 2005 (but effective as of November 3, 2005) by and between the City of Miami, a municipal corporation of the State of Florida ("City") and DavisLogic, Inc., d/b/a All Hands Consulting, a Maryland corporation, ("Provider").

RECITALS:

A. The City has issued a Request for Proposal ("RFQ") for the provision of Domestic Security and Emergency Management Planning, Training, and Management Consulting Services ("Services") and Provider's proposal ("Proposal"), in response thereto, has been selected as the most qualified proposal for the provision of the Services. The RFQ and the Proposal are sometimes referred to herein, collectively, as the Solicitation Documents, and are by this reference incorporated into and made a part of this Agreement.

B. The Commission of the City of Miami, by Resolution No. R-05-0630, adopted on November 3, 2005, approved the selection of Provider and authorized the City Manager to execute a contract, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, Provider and the City agree as follows:

TERMS:

1. **RECITALS:** The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

2. **TERM:** The term of this Agreement shall be two (2) years commencing on the effective date hereof.

3. **OPTION TO EXTEND:** The City Manager shall have the option(s) to extend the term hereof for a period of two (2) additional one-year periods, subject to availability and appropriation of funds. City Commission approval shall not be required as long as the total extended term does not exceed two (2) years, or a period equal to the original term of this Agreement, whichever is longer.

4. **SCOPE OF SERVICE:**

A. Provider agrees to provide the Services as specifically described, and under the special terms and conditions set forth in Attachment "A" hereto, which by this reference is incorporated into and made a part of this Agreement. Should the City determine additional services are required in addition to those reflected in Attachment "A," an amendment to this Agreement must be executed by all parties employing the same formalities as were used in the Agreement.

B. Provider represents and warrants to the City that: (i) it possesses all qualifications, licenses and expertise required under the Solicitation Documents for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the City, including payment of permit fees, occupational licenses, etc., nor in the performance of any obligations to the City, (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 Attachment "A".

5. COMPENSATION:

A. The amount of compensation payable by the City to Provider shall be based on the rates and schedules described in Attachment "A" hereto, which by this reference is incorporated into this Agreement; provided, however, that in no event shall the annual amount of compensation exceed \$3,000,000 [per year], for a total contract amount guaranteed not to exceed \$12,000,000 on a cumulative basis; and should the City determine to implement any other additional services consistent with the overall scope of work, with further increases to the Agreement as stipulated in the Section 2.4, Deliverables, of the RFQ No. 04-05-042R it will require a separate amendment. The Total Compensation is inclusive of any allowable reimbursable expenses, which are subject to the limitations provided by 112.061, Florida Statutes. The Total Compensation shall be the guaranteed maximum liability of the City under the Agreement, subject to satisfactory and complete performance by the Provider. The City shall have no liability to pay or reimburse any amount, fee, cost, reimbursable expense, or charge greater than the Total Compensation set forth herein. The Total Compensation is a guaranteed maximum amount stated in this subsection is all inclusive of every expenditure, fee, cost, reimbursable expense or other charge by the Provider, and any agent, representative or consultant of the Provider.

B. Except as provided by this section, amendments which propose to increase the total compensation stated in Section 5(A) of the Agreement, as amended, shall be subject to the approval of the Miami City Commission. Due to the vital municipal interest involved in furthering the programs provided by this Agreement the Miami Commission delegates to the City Manager the ability to execute amendments, without the necessity of further City Commission approvals, based on the approve additional Urban Areas Security Initiative ("UASI") grant funds

by the Federal Government. All amendments will require customary City departmental approvals.

B. Unless otherwise specifically provided in Attachment "A", payment shall be made within forty five (45) days after receipt of Provider's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed. If Provider is entitled to reimbursement of travel expenses (i.e. Attachment "A" includes travel expenses as a specific item of compensation), then all bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. All reimbursement are included within are a portion of the guaranteed maximum amounts set forth in Section 5 A.

6. **OWNERSHIP OF DOCUMENTS:** Provider understands and agrees that any information, document, report or any other material whatsoever which is given by the City to Provider or which is otherwise obtained or prepared by Provider pursuant to or under the terms of this Agreement is and shall at all times remain the property of the City. Provider agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by the City in its sole discretion..

7. **AUDIT AND INSPECTION RIGHTS:**

A. The City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by the City to Provider under this Agreement, audit , or cause to be audited, those books and records of Provider which are related to Provider's performance under this Agreement. Provider 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.

B. The City may, at reasonable times during the term hereof, inspect Provider's facilities and perform such tests, as the City deems reasonably necessary, to determine whether the goods or services required to be provided by Provider under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Provider shall make available to the City all reasonable facilities and assistance to facilitate the performance of tests or inspections by City representatives. All tests and inspections shall be subject to, and made in accordance with, the provisions of Section 18-55.2 of the Code of the City of Miami, Florida, as same may be amended or supplemented, from time to time.

8. AWARD OF AGREEMENT: Provider represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9. PUBLIC RECORDS: Provider understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the City.

10. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: Provider understands that agreements between private entities and local governments are subject to certain

laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. City and Provider agree to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

11. **INDEMNIFICATION:** Provider shall indemnify, defend and hold harmless the City and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Provider or its employees, agents or subcontractors (collectively referred to as "Provider"), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them or (ii) the failure of the Provider to comply with any of the paragraphs herein or the failure of the Provider to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement. Provider expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Provider, or any of its subcontractors, as provided above, for which the Provider's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws.

12. **DEFAULT:** If Provider fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Provider shall be in default. Upon the occurrence of a default hereunder the City, in addition to all remedies available to it by law, may immediately, upon written notice to Provider, terminate this Agreement whereupon all payments, advances, or other compensation paid by the City to Provider while Provider was in default shall be immediately returned to the City. Provider understands and agrees that termination of this Agreement under this section shall not release Provider from any obligation accruing prior to the effective date of termination. Should Provider be unable or unwilling to commence to perform the Services within the time provided or contemplated herein, then, in addition to the foregoing, Provider shall be liable to the City for all expenses incurred by the City in preparation and negotiation of this Agreement, as well as all costs and expenses incurred by the City in the procurement of the Services, including consequential and incidental damages.

13. **RESOLUTION OF CONTRACT DISPUTES:** Provider understands and agrees that all disputes between Provider and the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted to the City Manager for his/her resolution, prior to Provider being entitled to seek judicial relief in connection therewith. In the event that the amount of compensation hereunder exceeds \$25,000, the City Manager's decision shall be approved or disapproved by the City Commission. Provider shall not be entitled to seek judicial relief unless: (i) it has first received City Manager's written decision, approved by the City Commission if the amount of compensation hereunder exceeds \$25,000, or (ii) a period of sixty (60) days has expired, after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation (90 days if City Manager's decision is subject to

City Commission approval); or (iii) City has waived compliance with the procedure set forth in this section by written instruments, signed by the City Manager.

14. CITY'S TERMINATION RIGHTS:

A. The City shall have the right to terminate this Agreement, in its sole discretion, at any time, by giving written notice to Provider at least five (5) business days prior to the effective date of such termination. In such event, the City shall pay to Provider compensation for services rendered and expenses incurred prior to the effective date of termination. In no event shall the City be liable to Provider for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

B. The City shall have the right to terminate this Agreement, without notice to Provider, upon the occurrence of an event of default hereunder. In such event, the City shall not be obligated to pay any amounts to Provider and Provider shall reimburse to the City all amounts received while Provider was in default under this Agreement.

15. INSURANCE: Provider shall, at all times during the term hereof, maintain such insurance coverage as may be required by the City Risk Management Administrator. All such insurance, including renewals, shall be subject to the approval of the City Risk Management Administrator for adequacy of protection and evidence of such coverage shall be furnished to the City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of the services under this contract without thirty (30) calendar days prior written notice to the City Risk Management Administrator. Completed Certificates of Insurance shall be filed with the City prior to the performance of services hereunder, provided, however, that Provider shall at any time upon request file duplicate copies of the policies of such insurance with the City.

If, in the judgment of the City Risk Management Administrator, prevailing conditions warrant the provision by Provider of additional liability insurance coverage or coverage which is different in kind, the City reserves the right to require the provision by Provider of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should the Provider fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following the City's written notice, this Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

16. **NONDISCRIMINATION:** Provider represents and warrants to the City that Provider does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Provider's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Provider further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

17. **MINORITY AND WOMEN BUSINESS AFFAIRS AND PROCUREMENT PROGRAM:** The City has established a Minority and Women Business Affairs and Procurement Program (the "M/WBE Program") designed to increase the volume of City procurement and contracts with Blacks, Hispanic and Women-owned business. The M/WBE Program is found in Ordinance No. 10062, a copy of which has been delivered to, and receipt of which is hereby acknowledged by, Provider. Provider understands and agrees that the City shall have the right to terminate and cancel this Agreement, without notice or penalty to the City, and to eliminate Provider from consideration and participation in future City contracts, if Provider, in

the preparation and/or submission of the Proposal, submitted false or misleading information as to its status as Black, Hispanic and/or Women owned business and/or the quality and/or type of minority or women owned business participation.

18. **ASSIGNMENT:** This Agreement shall not be assigned by Provider, in whole or in part, without the prior written consent of the City's, which may be withheld or conditioned, in the City's sole discretion.

19. **NOTICES:** All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO PROVIDER:

**Steven C. Davis
DavisLogic Inc., dba
All Hands Consulting
10025 Maple Avenue
Columbia, Md. 21046**

TO THE CITY:

**Chief Joseph R. Fernandez
Department of Fire-Rescue
City of Miami
1151 N.W. 7th Street, 3rd Floor
Miami, Florida 33136**

20. **MISCELLANEOUS PROVISIONS:**

A. This Agreement shall be construed and enforced according to the laws of the State of Florida.

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Miami, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

E. This Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

21. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

22. **INDEPENDENT CONTRACTOR:** Provider has been procured and is being engaged to provide services to the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Provider shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees. Provider further understands that Florida Workers' Compensation benefits available to employees of the City are not available to Provider, and agrees to provide workers' compensation insurance for any employee or agent of Provider rendering services to the City under this Agreement.

23. **CONTINGENCY CLAUSE:** Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

24. **REAFIRMATION OF REPRESENTATIONS:** Provider hereby reaffirms all of the representations contained in the Solicitation Documents.

25. **ENTIRE AGREEMENT:** This instrument and its attachments constitute the sole and only agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

26. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

27. **USE BY OTHER LOCAL GOVERNMENTS:** Other local governments in Florida, including, without limitation, Cities, Counties, School and Special Districts may purchase directly, subject to their respective compliance with applicable laws, the Services being provided in this contract, when the Provider and the awarding local government agree to enter into a separate, independent contract to that effect. The City of Miami makes no representations or warranties to any third party local government as to the suitability, availability or efficacy of such services.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

"City"

CITY OF MIAMI, a municipal corporation

ATTEST:

for: Sylvia Schneider
Priscilla A. Thompson, City Clerk

By: Lee Arriola
Lee Arriola, City Manager

"Provider"

DavisLogic Inc., dba All Hands Consulting,
a Maryland corporation

ATTEST:

Wendy L. Davis
Print Name: Wendy L. Davis
Title: Corporate Secretary

By: Steven C. Davis
Print Name: Steven C. Davis
Title: President

APPROVED AS TO FORM AND
CORRECTNESS:

Jorge L. Fernandez KRM
JORGE L. FERNANDEZ KRM
City Attorney

APPROVED AS TO INSURANCE
REQUIREMENTS:

Dania Carrillo
DANIA CARRILLO
Administrator
Risk Management Division



City of Miami

City Hall
3500 Pan American Drive
Miami, FL 33133
www.ci.miami.fl.us

Master Report

Resolution R-05-0630

File ID #: 05-01080

Enactment Date: 11/3/05

Version: 1

Controlling Office of the City
Body: Clerk

Status: Passed

Title: A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), ACCEPTING THE CITY MANAGER APPROVING THE FINDINGS AND RECOMMENDATIONS OF THE EVALUATION COMMITTEE, PURSUANT TO REQUEST FOR QUALIFICATIONS ("RFQ") NO. 04-05-042R, THAT THE TOP-RANKED FIRMS TO PROVIDE DOMESTIC SECURITY AND EMERGENCY MANAGEMENT PLANNING, TRAINING AND MANAGEMENT CONSULTING SERVICES ARE, IN RANK ORDER: (1) DAVISLOGIC, INC., DBA ALL HANDS CONSULTING ("DAVISLOGIC"); (2) URS CORPORATION SOUTHERN; AND (3) COMMUNITY RESEARCH ASSOCIATES, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, WITH DAVISLOGIC, THE TOP-RANKED FIRM, TO PROVIDE THE ABOVE AFOREMENTIONED SERVICES FOR THE DEPARTMENT OF FIRE-RESCUE AND OTHER CITY OF MIAMI DEPARTMENTS, PARTICIPATING COUNTIES AND MUNICIPALITIES INVOLVED IN THE URBAN AREAS SECURITY INITIATIVE ("UASI") GRANT PROJECT, FOR A TERM OF TWO YEARS, WITH THE OPTION TO RENEW FOR TWO ADDITIONAL ONE-YEAR PERIODS, AT AN ANNUAL AMOUNT NOT TO EXCEED \$3,000,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$12,000,000; ALLOWING FOR FURTHER INCREASES TO THE CONTRACT AS AUTHORIZED IN RFQ NO. 04-05-042R, BASED UPON THE NEED FOR ADDITIONAL REQUIRED SERVICES AND THE APPROVAL OF ADDITIONAL UASI GRANT FUNDS BY THE FEDERAL GOVERNMENT; DELEGATING TO THE CITY MANAGER THE EXECUTION OF AMENDMENTS PROVIDING FOR FURTHER INCREASES TO THE AGREEMENT TO COVER ADDITIONAL SCOPE OF WORK, CONSISTENT WITH THE UASI GRANT PROJECT; ALLOCATING FUNDS FROM THE UASI GRANT PROJECT ACCOUNT, SUBJECT TO BUDGETARY APPROVAL; FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH THE SECOND-RANKED FIRM, SHOULD NEGOTIATIONS FAIL WITH THE TOP-RANKED FIRM, OR UNTIL A CONTRACT HAS BEEN SUCCESSFULLY NEGOTIATED; DIRECTING THAT THE NEGOTIATED AGREEMENT BE PRESENTED TO THE CITY COMMISSION FOR CONSIDERATION.

Reference:

Introduced: 9/23/05

Name: Execute an Agmt. w/ Davis Logic, Inc. - Domestic Security & Emergency Management

Requester: Department of
Fire-Rescue

Cost:

Final Action: 11/3/05

Notes:

Sections:

Indexes:

Attachments: 05-01080 Legislation.pdf, 05-01080 Exhibit 1.pdf, 05-01080 Exhibit 2.pdf, 05-01080 Summary Form.pdf, 05-01080 Memo.pdf, 05-01080 RFQ Summary Sheet.pdf, 05-01080 All Hands UASI Project Proposal.pdf

Action History

Ver.	Acting Body	Date	Action	Sent To	Due Date	Returned	Result
1	Office of the City Attorney	10/11/05	Reviewed and Approved				
1	City Commission	10/27/05	CONTINUED				
1	City Commission	11/3/05	ADOPTED				1
<p>A motion was made by Johnny L. Winton, seconded by Angel González, that this matter be ADOPTED. The motion carried by the following vote: Aye: 5 - Angel González, Johnny L. Winton, Joe Sanchez, Tomas Regalado and Jeffery L. Allen</p>							
1	Office of the Mayor	11/10/05	Signed by the Mayor	Office of the City Clerk			
1	Office of the City Clerk	11/10/05	Signed and Attested by City Clerk				



City of Miami

Legislation

Resolution R-05-0630

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.ci.miami.fl.us

File Number: 05-01080

Final Action Date: 11/03/05

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), ACCEPTING THE CITY MANAGER APPROVING THE FINDINGS AND RECOMMENDATIONS OF THE EVALUATION COMMITTEE, PURSUANT TO REQUEST FOR QUALIFICATIONS ("RFQ") NO. 04-05-042R, THAT THE TOP-RANKED FIRMS TO PROVIDE DOMESTIC SECURITY AND EMERGENCY MANAGEMENT PLANNING, TRAINING AND MANAGEMENT CONSULTING SERVICES ARE, IN RANK ORDER: (1) DAVISLOGIC, INC., DBA ALL HANDS CONSULTING ("DAVISLOGIC"); (2) URS CORPORATION SOUTHERN; AND (3) COMMUNITY RESEARCH ASSOCIATES, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, WITH DAVISLOGIC, THE TOP-RANKED FIRM, TO PROVIDE THE ABOVE AFOREMENTIONED SERVICES FOR THE DEPARTMENT OF FIRE-RESCUE AND OTHER CITY OF MIAMI DEPARTMENTS, PARTICIPATING COUNTIES AND MUNICIPALITIES INVOLVED IN THE URBAN AREAS SECURITY INITIATIVE ("UASI") GRANT PROJECT, FOR A TERM OF TWO YEARS, WITH THE OPTION TO RENEW FOR TWO ADDITIONAL ONE-YEAR PERIODS, AT AN ANNUAL AMOUNT NOT TO EXCEED \$3,000,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$12,000,000; ALLOWING FOR FURTHER INCREASES TO THE CONTRACT AS AUTHORIZED IN RFQ NO. 04-05-042R, BASED UPON THE NEED FOR ADDITIONAL REQUIRED SERVICES AND THE APPROVAL OF ADDITIONAL UASI GRANT FUNDS BY THE FEDERAL GOVERNMENT; DELEGATING TO THE CITY MANAGER THE EXECUTION OF AMENDMENTS PROVIDING FOR FURTHER INCREASES TO THE AGREEMENT TO COVER ADDITIONAL SCOPE OF WORK, CONSISTENT WITH THE UASI GRANT PROJECT; ALLOCATING FUNDS FROM THE UASI GRANT PROJECT ACCOUNT, SUBJECT TO BUDGETARY APPROVAL; FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH THE SECOND-RANKED FIRM, SHOULD NEGOTIATIONS FAIL WITH THE TOP-RANKED FIRM, OR UNTIL A CONTRACT HAS BEEN SUCCESSFULLY NEGOTIATED; DIRECTING THAT THE NEGOTIATED AGREEMENT BE PRESENTED TO THE CITY COMMISSION FOR CONSIDERATION.

WHEREAS, as the lead agency for the Miami Urban Areas Security Initiative ("UASI") Grant Project, the City of Miami ("City") requires the continued services of an experienced firm to provide Domestic Security and Emergency Management Planning, Training, and Management Consulting Services; and

WHEREAS, it is the City's intent to continue to strengthen Miami and its surrounding jurisdictions' ability to respond to and recover from manmade threats such as those from Weapons of Mass Destruction and other terrorist threats or acts; and

WHEREAS, in compliance with the UASI Grant Program, Request for Qualifications ("RFQ") No. 04

-05-042R, was issued to secure a qualified and experienced firm to provide the above aforementioned services; and

WHEREAS, three proposals were received, evaluated and ranked by an Evaluation Committee appointed by the City Manager; and

WHEREAS, following thoughtful evaluation, discussion and deliberation, the Evaluation Committee ranked DavisLogic, Inc., dba All Hands Consulting ("DavisLogic"), as the top-ranked firm, followed by URS Corporation Southern and Community Research Associates, Inc., respectively; and

WHEREAS, the Evaluation Committee recommended that the City Manager negotiate and execute a Professional Services Agreement ("Agreement") with DavisLogic and should contract negotiations fail with DavisLogic, the City should negotiate a contract with URS Corporation Southern and/or the third-ranked firm, Community Research Associates, Inc., in rank order as necessary; and

WHEREAS, the Departments of Fire-Rescue and Purchasing has negotiated an Agreement with DavisLogic, setting forth the terms and conditions for the work to be provided by said firm; and

WHEREAS, the Agreement has an initial term of two years, with the option to extend for two additional one-year periods, at an annual amount not to exceed \$3,000,000, for a total contract amount not to exceed \$12,000,000, and allowing for further increases to the contract as stipulated within RFQ No. 04-05-042R, based upon the need for additional required services and approval of additional UASI Grant Funds by the Federal Government; and

WHEREAS, funding for DavisLogic Inc.'s services is available from UASI Grant Project funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The City Manager's approval of the findings and recommendations of the Evaluation Committee, pursuant to RFQ No. 04-05-042R, that the top-ranked firms to provide domestic security and emergency management planning, training and management consulting services are, in rank order: (1) DavisLogic, Inc.; (2) URS Corporation Southern; and (3) Community Research Associates, Inc., is accepted.

Section 3. The City Manager is authorized{1} to execute an Agreement, in substantially the attached form, with DavisLogic, the top-ranked firm, to provide the above aforementioned services for the Department of Fire-Rescue and other City departments, participating counties and municipalities involved in the UASI Grant Project, for a term of two years, with the option to renew for two additional one-year periods, at an annual amount not to exceed \$3,000,000, for a total contract amount not to exceed \$12,000,000, with funds allocated from the UASI Grant Project Account, subject to budgetary approval.

Section 4. Further increases to the contract are allowed as authorized in RFQ No. 04-05-042R, based upon the need for additional required services and the approval of additional UASI Grant funds by the Federal Government.

Section 5. The City Manager is delegated to execute amendments providing for further increases to the Agreement to cover additional scope of work, consistent with the UASI Grant Project.

Section 6. The City Manager is authorized{1} to negotiate an Agreement with the second-ranked firm, should negotiations fail with the top-ranked firm, or until a contract has been successfully negotiated.

Section 7. The City Manager is directed to present the negotiated Agreement to the City Commission for consideration.

Section 8. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.{2}

APPROVED AS TO FORM AND CORRECTNESS: 


JORGE L. FERNANDEZ
CITY ATTORNEY 

Footnotes:

{1} The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions.

{2} If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

TAB 3



Office of the Town Manager

Steven J. Alexander
Town Manger

MEMORANDUM

To: Honorable Mayor & Town Council

From: Steven J. Alexander, Town Manager

Date: **September 29, 2006**

Re: **AGREEMENT FOR THE PURCHASE OF SOFTWARE LICENSES AND SERVICE RELATED TO THE INSTALLATION AND TESTING OF AN INTEGRATED FINANCIAL MANAGEMENT SYSTEM" WITH TEMPLE CONSULTING GROUP LTD.**

We are in need of software and services related to the software for an integrated financial management system which will link the Building Department, Code Compliance, Occupational Licenses and all other financial transactions.

Pursuant to section 3.10 of the Town Charter, I have specifically determined that it is not advantageous for the Town to competitively bid a contract for such services at this time as the contract is with a sole source provider.

Our Interim Finance Director and our information technology consultants, in conjunction with CSA, the building department contractor, have researched the industry by seeking letters of interest from at least five potential providers to determine whether there is a competitive market for the software that would meet the specific needs of the Town and received no responses indicating that such a market exists and thereby determined that the commodity is available only from a single source. The Town's purchasing ordinance provides that such purchases are exempt from the requirements of competitive bidding.

The Town Attorney's office has reviewed the terms of the attached agreement with Temple Consulting Group Ltd. and has determined that they are legally sufficient.



RECOMMENDATION:

The Town Manager should be authorized to execute an agreement in substantially the form attached hereto entitled, "Agreement for the Purchase of Software Licenses and Service Related to the Installation and Testing of an Integrated Financial Management System" with Temple Consulting Group Ltd. or its related entity and the competitive bidding requirements of section 3.10 of the Town Charter should be waived to the extent applicable to the instant agreement. This contract is not in final form and substantial changes may be necessary prior to the Town Manager signing the Agreement. However, the costs related to any final agreement shall not exceed \$100,000.00 without additional Council approval.

Please see the attached competitive bid summary.



SUMMARY OF RESPONSES TO REQUEST FOR QUOTATIONS

COMPREHENSIVE FINANCIAL MANAGEMENT SYSTEM SOFTWARE

September 2006

HARRIS COMPUTER SYSTEMS "MUNICIPAL SOFTWARE" 1850 W. Winchester Road Suite # 209 Libertyville, IL 60088 Telephone #: 847-362-2803	Response: No packing, not all modules
SUNGUARD DATA SYSTEMS "SUNGUARD PENTAMATION" 3 W. Broad Street Suite # 1 Bethlehem, PA 18018 Telephone #: 610-691-3616	No Response
SUNGUARD DATA SYSTEMS SUNGUARD HTE "FINANCE PLUS COMMUNITY PLUS" 1000 Business Center Drive Lake Mary, Florida 32746 Telephone #: 800-727-8088	Response: No, can't implement in time
KINTERA, INC. "FUNDWARE" 6430 S. Fiddlers Green Circle Suite # 500 Greenwood Village, CO 80111 Telephone #: 800-551-4458	No Response
TEMPLE CONSULTING GROUP "MUNICIPAL ACCOUNTING INFORMATION SYSTEM" 9518 Erickson Drive Burnaby, BC V3J 1m9 Telephone #: 604-444-9188	Responded and Meet Requirements

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; WAIVING COMPETITIVE BIDDING PURSUANT TO SECTION 3.10 OF THE TOWN CHARTER TO THE EXTENT APPLICABLE, AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A SOFTWARE LICENSE AGREEMENT WITH TEMPLE CONSULTING GROUP LTD. IN SUBSTANTIALLY THE FORM OF THE ATTACHED AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") is in need of software and services related to the software for an integrated financial management system.

WHEREAS, the Town, based upon the written recommendation of the Town Manager pursuant to section 3.10 of the Town Charter, hereby specifically determines that it is not advantageous for the Town to competitively bid a contract for such services at this time as the contract is with a sole source provider; and

WHEREAS, the Town Manager has researched the industry by seeking letters of interest from at least five potential providers to determine whether there is a competitive market for the software that would meet the specific needs of the Town and received no responses indicating that such a market exists and thereby determined that the commodity is available only from a single source, and

WHEREAS, the Town's purchasing ordinance provides that such purchases are exempt from the requirements of competitive bidding, and

WHEREAS, the Town Attorney's office has reviewed the terms of the attached agreement with Temple Consulting Group Ltd. and has determined that they are legally sufficient.

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

Section 1. Recitals The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Authorization The Town Manager is authorized to execute an agreement in substantially the form attached hereto entitled, "Agreement for the Purchase of Software Licenses and Service Related to the Installation and Testing of an Integrated Financial Management System" with Temple Consulting Group Ltd. or its related entity and the competitive bidding requirements of section 3.10 of the Town Charter are hereby

waived to the extent applicable to the instant agreement. The Town Council acknowledges that this contract is not in final form and substantial changes may be necessary prior to the Town Manager signing the Agreement. However, the costs related to any final agreement shall not exceed \$100,000.00 without additional Council approval.

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

PASSED and ADOPTED this ____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

**AGREEMENT FOR THE PURCHASE OF SOFTWARE LICENSES
AND SERVICE RELATED TO THE INSTALLATION AND
TESTING OF AN INTEGRATED FINANCIAL MANAGEMENT
INFORMATION SYSTEM.**

This Agreement is entered into this 5th day of October 2006 by and between Temple Consulting Group Ltd (Temple), having its principal business location at:

101B – 8575 Government Street
Burnaby BC, V3N 4V1

And the Town of Cutler Bay (Licensee), having its principal business location at

Town of Cutler Bay
10720 Caribbean Blvd.
Cutler Bay, FL 33138

Definition of terminology used in this Agreement

Acceptance: Licensee shall make acceptance of the installed application and operating software no sooner than thirty (30) days after the date from which the software and all software modifications operate without a critical or fatal error. Acceptance shall be conditioned upon the determination by the Town of Cutler Bay that Temple has fulfilled its warranty obligations with respect to the application software and all required modifications to that software, as well as integration with the operating system software.

Fatal error: a condition of software caused by the conflicts described above that result in the loss of data, the destruction of data or in-operation of the system or software.

Critical and Fatal Errors: A critical error is a condition of software that conflicts with itself, any hardware, firmware, operating system, network or other software system and /or application. Or any condition of the software that is not reasonably intended.

Contract Officers:

For Temple Consulting Group Ltd. the Contract Officer shall be the President: Vinicio Esquivel
For the Town of Cutler Bay(Licensee) the Contract Officer shall be The Town Manager.

Exigent Works: Those applications developed by Licensee which communicate with the MAIS/PROGRESS software applications. Exigent works do not utilize the source code contained in the MAIS programming.

Network Configuration: Licensee intends to install and use the MAIS program on a Windows 2003 Server with TCP/IP protocols.

Operating System: The operating system for the Municipal Accounting Information Systems (MAIS) to be installed at Licensee's location is Windows 2003 Server. Licensee shall utilize the most recent release of this operating system at the time the network server is made available to Temple for the purpose of being configured.

Licensed Software

- 1.1 It is hereby agreed that Temple grants to Licensee a perpetual, personal, non-transferable and non-exclusive license to use the documentation and object code system described in Exhibit A attached to this Agreement and hereinafter described as the Municipal Accounting and Information System or MAIS.
- 1.2 Temple agrees to provide support services related to the successful implementation of the MAIS software product as described in Exhibit A.
- 1.3 Temple agrees to provide to Licensee, a MAIS software product that is configured to comply with United States and Florida legal and financial reporting requirements and standards. This provision requires that all terminology contained in MAIS will reflect in spelling and usage, that which is commonly found in United States financial transactions.
- 1.4 Temple agrees to modify the MAIS software product prior to delivery in accordance with the Proposal attached as Exhibit D. The nature of the modifications to be made to the MAIS product is shown at Exhibit B.

Proprietary Information/Nondisclosure

- 2.1 The Licensee agrees that during and after the term of this Agreement it shall not knowingly copy or otherwise provide or make available for use or copying the MAIS system or any portion thereof to any person other than employees or contractors of the licensee. Other than the necessity of adding additional computer sites within the Licensee's offices, no copies of MAIS or its associated forms or documentation shall be made without the express written permission of Temple.
- 2.2 The Licensee shall take all reasonable steps to protect Temple from unauthorized use by the Licensee's employees and any other persons permitted by the Licensee to have access to MAIS and or the printed material associated therewith.
- 2.3 In the event of Licensee's breach of this Article as determined by Temple, Temple shall have the right to enjoin Licensee from further breach and obtain such relief as may be determined through arbitration as described in paragraph 7.1.
- 2.4 All information contained in reports and data provided by the Licensee to Temple shall be held in confidence by Temple and used only to provide services to Licensee. Temple shall not disclose said information without the Contract Officer's written consent.
- 2.5 Documentation developed by Temple for the Licensee, including all reports, documents, specifications, manuals, instructions, and data shall be the property of the Licensee and may be used, revised and distributed by the Licensee in any manner that does not conflict with any other provision of this Agreement.

Equipment

- 3.1 Temple agrees to provide Licensee with a specification for the network server and workstation computers that is compatible with MAIS and its operation system. The specification set forth in the proposal represents the minimum standards for the network server and workstations that will allow Licensee to operate MAIS in the network environment described under the definition of terms above.
- 3.2 Licensee agrees to purchase either from Temple or another acceptable vendor of computer hardware products, equipment that meets the minimum standard set forth in the specification provided by Temple.
- 3.3 Licensee agrees to purchase the network server and have it delivered to Temple, or arrange for a mutually acceptable alternative, for the installation of both the operating system and the application software. Temple agrees to test the network server and when it is deemed to be properly working, bring it on-line on the Licensee's local area network.
- 3.4 Licensee agrees, at its own expense, to provide Temple access to Licensee's computer system, at a rate of no less than 18 MBPS, during normal business hours via internet, preferably using PCAnywhere, Remote Desktop or Terminal Server. This article shall be effective prior to the initial software installation and shall remain operable for the duration of Temple's obligation to Licensee for Software Technical Assistance Services.

Services

- 4.1 Services to be provided by Temple including all services described herein and those services more particularly described in Temple's Proposal dated September 21, 2006. The Proposal is attached as Exhibit D and is hereby incorporated into this document.
- 4.2 Temple agrees to provide services with regard to equipment configuration, software installation and implementation, application software training, data conversion and management and technical services. Said services may be performed at Licensee's location or via remote telecommunications access upon mutual Agreement between Temple and the Licensee. Temple shall perform its work in a responsible, professional, and competent manner, reflecting its level of experience and expertise through professional knowledge, judgement and skill.
- 4.3 Temple agrees to provide on-site installation planning and implementation review assistance for this project. Licensee agrees to provide staff assistance for the implementation process to the extent possible. Temple agrees to provide on-site installation planning and implementation review assistance as may be needed to successfully complete the installation.
- 4.4 Temple agrees to provide training as shown in the proposal. At the discretion of Licensee, training may be provided either through on-site or remote telecommunications means. Training shall be scheduled in accordance with Licensee's time line for installation, which shall be established in accordance with the provisions of section 13.1 of this Agreement.
- 4.5 Temple agrees to provide data conversion services as shown in the proposal. This conversion will allow Licensee to have access through MAIS to histories of transactions posted prior to the installation of MAIS for the Town of Cutler Bay systems. Licensee may, at its option and for the fees set forth in the proposal, purchase from Temple additional data conversion assistance.
- 4.6 Licensee agrees to identify and assign at least one individual to become a key operator. This individual(s) will act as the liaison with Temple for any training and software related

questions The key operator will make available appropriate personnel who will attend Temple Training on a regular basis for training purposes. The key operator will provide a suitable training environment with at least one on-line terminal for every person to be trained and will give Temple twenty-four (24) hours notice in advance of rescheduling any on-site or remote training.

4.7 Licensee agrees to utilize the training provided within this Agreement within one (1) year.

Complete Agreement

5.1 The Agreement between Licensee and Temple consists of the following documents and all attachments thereto, which are hereby incorporated by reference. If there is any conflict between the documents, the following order or precedence shall govern:

5.1.1. Temple's proposal dated September 21, 2006 referred to herein as the Proposal .

5.1.2. The contents herein, as may be modified, including all exhibits.

5.2 Complete Agreement: This Agreement, including all Exhibits, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings or Agreements, whether written or oral, regarding the subject matter hereof.

Disputes/Arbitration

If a dispute should arise regarding the performance of this Agreement, the following progressive procedures shall be used:

6.1 Initial Resolution Effort;

a. The complaining party shall reduce its position to writing along with a recommended method for resolving the dispute and forward a copy of the dispute document to the other party.

b. Within ten (10) working days of receipt of the dispute document, the other party shall reply to the dispute document with a written response that sets forth the other party's position and a recommended method of resolving the dispute.

c. The Contract Officer shall represent the Licensee in this process.

6.2 Arbitration

Claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, may be decided by arbitration if both parties to this Agreement consent in accordance with the rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by Temple, Licensee, and any other person sought to be joined.

(Any consent to arbitration involving an additional person or persons shall not constitute consent of any dispute not described therein or with any person not named or described therein.) This Agreement to arbitrate and any Agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration is to be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand is to be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event is the demand for arbitration to be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Termination of Agreement

- 7.1 In the event of Temple's failure to prosecute, deliver, or perform the described services, the Licensee may terminate this Agreement by notifying Temple by certified mail of said termination. Thereupon, Temple shall cease work and within five (5) working days: (1) assemble all documents owned by the Licensee and in Temple's possession and deliver said documents to the Licensee and (2) place all work in progress in a safe and protected condition. The Director of Finance of the Licensee shall make a determination of the percentage of work that Temple has performed which is usable and of worth to the Licensee. Based upon that finding, the Licensee shall determine any final payment due to Temple.
- 7.2 Temple or Licensee may terminate this agreement for any reason upon thirty days notice. The Director of Finance of the Licensee shall make a determination of the percentage of work that Temple has performed which is usable and of worth to the Licensee. Based upon that finding, the Licensee shall determine any final payment due to Temple.

General

- 8.1 Site Location: The software shall be licensed to locations owned by the Licensee. The primary location is 10720 Caribbean Blvd., Suite 105 Cutler Bay, FL 33138
- 8.2 Assignment: Neither party to this Agreement shall assign or transfer any interest in this Agreement without the prior written consent of the other party.
- 8.3 Headings: All headings used throughout this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- 8.4 Legality and Severability: If any provision of this Agreement shall be held to be invalid, illegal or unenforceable under the laws of the United States of America, the State of Florida or Canada, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. The licensee's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such a provision. The provisions shall remain in full force and effect.
- 8.5 Modification: This Agreement may not be modified except by an instrument in writing and signed by a duly authorized representative of each party.
- 8.6 Excusable Delays: In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the

control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrections; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation; to the extent that they are not caused by the party's wilful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

8.7 Independent Contractor: Temple agrees that it shall act and be an independent contractor and not an agent or employee of the Licensee. Temple shall not represent or otherwise hold itself or any of its representatives, officers, partners, employees, or agents to be an agent or employee of the licensee. Temple is an independent contractor and not an employee of the licensee, and, therefore, Temple shall not be entitled to any employee or other benefits which may be provided by the licensee to its employees, including, without limitations, retirement benefits or medical, health, life, or disability insurance.

Subject to Paragraphs 8.1 and 8.2 of this Agreement, the parties expressly agree that this is an "at will" contract and that this Agreement creates no right, expectancy or any other interest in continuing the Agreement with Temple. This Agreement may be terminated or cancelled consistent with the provisions contained in Paragraph 7.1 hereof, at any time, by the Licensee for any reason or for no reason at all, and may be maintained under this Agreement for any such failure to continue any Licensee-Temple relationship established by this Agreement. Upon receipt of any such notice of termination, Temple shall take all steps necessary to stop work under this Agreement within the required notice period. Temple shall be entitled to payment for all services performed, all allowed out-of-pocket expenses incurred to the date of termination and shall be compensated at the established rate set forth herein for all work required to be finalized and report, and/or organize and deliver any materials required to be delivered to the Licensee upon termination of this Agreement.

8.8 Conflict of Interest and Reporting: Temple does not hold, and will not acquire, any investment or interest in real property or any source of income that would give rise to a conflict of interest under the Political Reform Act.

Temple represents it is not a designated employee within the meaning of the Political Reform Act because:

- i. it will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation or counsel, independent of the control and direction of the licensee of any Town's Official, other than normal agreement monitoring; and
- ii. it possesses no authority with respect to any Licensee decision beyond rendition of information, advice, recommendation or counsel

8.9 Each party's performance hereunder shall comply with all applicable laws of the United States, the State of Florida, and the Town of Cutler Bay. This Agreement shall be enforced and interpreted under the laws of the State of Florida. The Licensee and Temple agree that it is their intention and covenant that this Agreement and its interpretation, performance under it, and all suits or special proceedings that may ensue from its breach or alleged breach shall be construed in accordance with and under the laws of the State of Florida, and that in any action or proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Florida shall apply and shall govern to the exclusion

of the law of any other forum or jurisdiction in which any action or special proceeding may be instituted. The parties fully agree that should any action be commenced arising out of this Agreement, such as action shall only be filed in an appropriate Court situated in Miami Dade County.

- 8.10 Familiarity with Work: By executing this Agreement, Temple warrants that (1) it has investigated the work to be performed, (2) it has investigated the site of the work and is aware of all conditions there and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Temple discover any conditions materially differing from those existing at the time of its investigation or as represented by the Licensee it shall immediately inform Licensee and shall not proceed, except at Temple's risk, until written instructions are received from Licensee.
- 8.11 Waivers: Any waivers by either party of a breach of any provision to this Agreement shall not operate as, or be construed to be, a waiver of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term in this Agreement.
- 8.12 Liquidated Damages: As per Arbitration
- 8.13 Notices: All notices shall be mailed via first class to the below listed addresses. These addresses shall be used for delivery of service or process.

Temple Consulting Group Ltd
101B – 8575 Government Street
Burnaby BC, V3N 4V1

And Town of Cutler Bay

- 8.14 Interpretation: The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel and has the requisite experience and sophistication to understand and interpret and agree to the particular language of the provisions hereof. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who drafted that portion of the Agreement. This Agreement shall otherwise be interpreted and construed in accordance with the laws of the State of Florida.

Payment Schedule

- 9.1 Licensee agrees to pay to Temple the price for the licenses and services covered under this Agreement and more fully described in the attached exhibits. The schedule for payment shall be as shown below and recognizes that Licensee intends to implement the use of MAIS in sequential progression delaying the use of certain modules until after the General Ledger and related modules have been successfully made to operate for the Licensee. Refer to Exhibit C for module pricing and the intended implementation order for the modules being purchased.
- 9.2 Payment schedule

- 9.2.1. Upon acceptance of this agreement by Licensee, the Licensee will release to Temple a payment equal to 50% of the licensing fees for those modules being readied for live usage by Licensee at the time, plus 100% of all Progress products.
- 9.2.2. After the modules being installed in each phase have been installed and set up, Licensee will release to Temple a payment equal to 40% of the licensing fees for those modules. In the event Critical or Fatal Errors occur, this scheduled payment shall be made after correction of the errors.
- 9.2.3. Licensee will release a payment for the remaining 10% of the licensing fees for the modules being installed, after Licensee makes acceptance of the modules and any modifications made to the modules, since Licensee began using them in daily operations.
- 9.2.4. Licensee will pay Temple for the costs of providing training and implementation assistance as billed by Temple in accordance with the rates set forth in Exhibit "C". Such billings will be supported by documentation identifying the date, time and duration of the services, the name of the Temple employee performing the service as well as the hourly rate charged. Each billing shall identify the remaining number of hours provided in the Agreement and not billed as of the date of each invoice.
- 9.2.5. Licensee will pay Temple for the costs of converting data from its old system bases on the actual time required at the rate as defined in Exhibit "C". Payment of the first 80% of the amount due will flow with the conditional approval of the module. The remaining 20% will be paid upon final acceptance.
- 9.2.6. Licensee agrees to pay Temple for the cost of modifications made to the program and identified in Exhibits B and C. Payments shall be made in the amount of 50% of the agreed price to make the modification upon completion and 30% after the Licensee has implemented the modifications and used them for a period of sixty (60) days without Critical or Fatal Errors occurring. In the event Critical or Fatal Errors occur, this scheduled payment shall be made after sixty (60) days after correction of the errors. After Licensee accepts the modifications as part of the MAIS programming, Licensee will release the remaining 20% of the modification cost to Temple.
- 9.2.7. Invoices: Temple shall bill for License payments as specified in section 9.2.1, 9.2.2, 9.2.3 and 9.2.7. For all other services Temple shall, at the end of each calendar month in which services are performed or expenses incurred, submit to the Contract Officer verified and itemized invoices stating such services were performed and such expenses were necessarily incurred. Such invoices shall be at a rate of \$125 per hour on training and customization of programs and shall be organized and clearly identified by task and name. In support of payment for such invoices, Temple shall furnish a progress report, receipts and other evidence of reimbursement expenses and any other information necessary to verify that Temple's billing is in accordance with this Agreement. Such invoices, if correct, will be paid within thirty (30) days after receipt of the service and invoice. Invoice payments will not be made if the invoice is received more than six (6) months after the billing period.
- 9.2.8. All taxes, if any, pertaining to this Agreement are the responsibility of the Licensee, except Temple will pay for any Taxes owed to Canada, its provinces, or other government agencies incurred as a result of this agreement.

Warranty

- 10.1 Temple warrants that all licensed software is either owned by Temple or licensed by Temple, with the right to sub-license.
- 10.2 Temple warrants that the software will be free from defects in material and workmanship and shall perform in substantial compliance with the proposal and this document.
- 10.3 The warranty period shall begin at the time the software installation commences and shall remain in effect as long as the Licensee participates in the MAIS and PROGRESS on-going support program. The on-going support program (ECMP) includes but is not limited to: Service and support of all licensed software plus updates, fixes, and enhancements to be delivered periodically or as needed. Toll-free telephone support shall be provided to the Licensee from 7 AM to 4:30 PM Pacific Time Zone. Temple agrees to respond to logged calls within two (2) business hours of receipt. Should Licensee choose to discontinue ECMP it shall be allowed to continue using licensed software. In which case, the purchase of future updates, fixes, and enhancements would need to be negotiated with Temple.
- 10.4 These warranties will only be valid when the software is used by Licensee in an appropriate and reasonable manner consistent with normal usage and management of such software. The remedies of Licensee for breach of these warranties is: The Licensee and Temple recognize and acknowledge that Temple is retained under this Agreement to render personal services of a special, unique, unusual and extraordinary character requiring at times ingenuity and effort by Temple. Temple agrees that, except for excusable delays, Temple's failure to perform, in whole or in part, any promise, covenant, or Agreement set forth herein constitutes a breach of Agreement. Licensee shall be entitled to a refund of payments as a court may deem reasonable for any breach. Such breach might not in certain circumstances reasonably or adequately be compensated solely by way of a damages action in a court of law, and that the Licensee shall be entitled to injunctive relief, which may include, but not be limited to an injunction against carrying on an activity or rendering any services that would breach this Agreement. Notwithstanding the foregoing, however, no remedy conferred by any of the specific provisions of this Agreement, including this paragraph, is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and in addition to any other remedy given under this Agreement which now or hereafter may exist at law or in equity or by statute or otherwise.
- 10.5 These warranties do not extend to any software to which repairs or modifications have been performed by persons not authorized by Temple, unless such repairs were performed with the prior written consent of Temple.
- 10.6 Temple warrants that all services provided pursuant to this Agreement will be performed in a workmanlike manner in accordance with reasonable commercial standards. This warranty shall extend for thirty (30) days following completion of the particular service and Temple shall correct all services not so performed if brought to Temple's attention in writing within the warranty period.
- 10.7 Temple warrants that the MAIS software will be fully operational with all futures releases of Microsoft Windows 2003 Server and Windows XP Professional for client version within 180 days of release of the subsequent upgrade of the PROGRESS database.

System Recovery

11.1 Temple agrees to provide to Licensee, at the time the configured server is made ready for the Licensee, the Client and Server installation and connectivity instructions used to initially configure the server.

System Implementation Time Line

13.1 Temple and Licensee agree that time is of the essence and an implementation time line will be established within seven (7) days from the date of this Agreement. Said time line shall have a target date for live use of the MAIS software and operating software no later than October 31, 2006.

Exigent Works

13.2 The database code shall not prevent Licensee from developing exigent works for use by Licensee. All exigent works developed by Licensee shall be the exclusive property of Licensee.

Public Demonstration

14.1 Licensee agrees to make its site available for the purpose of allowing prospective purchasers of the MAIS system to view the system in use once a successful implementation has been completed and acceptance has been made. Under this provision, Licensee agrees to schedule at its convenience, demonstration days during which staff of the Licensee will be available to meet with staff members from visiting agencies to discuss the use of the software and its attributes.

DATED: _____

TEMPLE CONSULTING GROUP LTD.

(LICENSEE)

Exhibit A

Municipal Account and Information System (MAIS) consists of the following modules which are being provided to Licensee under the terms of this Agreement. The modules shall be implemented in the order that they are listed below.

- General Ledger
- Multi year budgeting
- Bank Reconciliation (Included in GL)
- Accounts Payable
- Accounts Receivable
- Code Enforcement
- Property Taxation
- Business Licenses
- Point of Sale (Cash Receipting)
- Building Permits

Exhibit B

Description of Modifications to be made to MAIS Software prior to delivery

Exhibit C

MAIS module pricing information

Modules Required	Training Hours	License and Implementation	Annual Support Costs
General Ledger	10	9,500	1,520
Multi year budgeting	3	6,500	1,040
Bank Reconciliation (Included in GL)	1	-	
Accounts Payable	4	7,500	1,200
Accounts Receivable	4	6,500	1,040
Code Enforcement	7	6,500	1,040
Property Taxation	15	8,500	1,360
Business Licenses	4	6,000	960
Point of Sale (Cash Receipting)	3	8,000	1,280
Building Permits	16	8,500	1,360
SUBTOTAL (software cost)	67	67,500	10,800
Additional Costs			
Progress Workgroup (10 concurrent users)		3,500	630
Progress Client Network		1,900	342
Onsite training		7,000	
Travel Expenses (estimated)		1,975	
SUBTOTAL (additional costs)		14,375	972
TOTAL COSTS		81,875	11,772

TAB 4

RESOLUTION NO. 06-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CITIZEN ADVISORY COMMITTEE FOR THE PURPOSE OF PROVIDING RECOMMENDATIONS TO THE TOWN COUNCIL ON WAYS TO PROVIDE TRANSPORTATION TO THE ELDERLY, APPOINTING A COUNCIL LIAISON; PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS; PROVIDING FOR AUTOMATIC DISSOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there is a shortage of transportation for the elderly population in the Town of Cutler Bay (the "Town"); and

WHEREAS, the Town desires to have a committee of citizens with relevant knowledge and experience advise the Council as to possible solutions to the transportation problem; and

WHEREAS, Vice Mayor Edward P. MacDougall has volunteered to serve as the Council liaison to the Committee since a majority of elderly persons affected reside in his District.

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

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Special Transportation Committee Created.** The Town Council hereby creates a citizen committee, to be known as the Special Transportation Committee to study, advise and make recommendations to the Town Council regarding possible solutions to the shortage of transportation for the Town's elderly population. Vice Mayor Edward P. MacDougall is hereby appointed Council liaison to the Committee and shall report to the Council as to the Committee's activities on a regular basis. The Council liaison shall not be considered a member of the Committee, shall have the right to speak before the committee but shall have no voting rights.

Section 3. Composition of the Committee. The Committee shall consist of eleven (11) citizens of the Town. Each Committee Member should, if at all possible, have unique qualifications or knowledge related to transportation services and/or elderly needs. Five of the Committee members shall be chosen by the Council with each Council member selecting one Committee member from a list of persons who volunteer by advising the Town Manager of their interest in serving on said Committee. Six Committee members shall be appointed by Council by majority vote. Each of the five retirement homes must be represented on the committee by at least one resident. The members shall serve until the Committee's work is deemed complete and the Committee automatically dissolves pursuant to Section 4 below.

Section 4. Dissolution. The Committee shall be automatically dissolved at such time as the Council accepts its recommendations and advises the Committee that its services are no longer required.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE

SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Ed MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

TAB 5



MEMORANDUM

To: Steven Alexander, Town Manager

From: Joseph M. Corradino, AICP, Interim Town Planning Consultant

Date: October 4, 2006

**Re: A 90 Day Extension To The Old Cutler Road Building Moratorium
Which Was Adopted By Ordinance 06-10 on July 5, 2006**

REQUEST:

On July 5, 2006, the Town Council adopted Ordinance 06-10, which enacted a 120 day moratorium on development orders and development permits for properties abutting Old Cutler Road from S.W. 184th Street to the southern Town Limits. This moratorium was enacted in order to preserve the Town's vision for this area.

During the past 3 months, Town staff has been working closely with County staff in creating design standards and land development regulations for this area, which will be primarily based on the Old Cutler Road Charrette.

Town staff believes that a 90 day extension to this moratorium is necessary for the completion and adoption of the proposed standards and regulations.

RECOMMENDATION:

Approval

CONDITIONS:

None

ORDINANCE NO. 06- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR THE CLARIFICATION OF THE SCOPE OF THE MORATORIUM, AS SHOWN ON EXHIBIT "A," WHICH WAS ENACTED BY ORDINANCE 06-10, ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES AFFECTING OLD CUTLER ROAD FROM S.W. 184 STREET SOUTH TO THE TOWN LIMITS; PROVIDING FOR A 90 DAY EXTENSION TO THE 120 DAY MORATORIUM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 5, 2006, the Town Council adopted Ordinance 06-10, which enacted a moratorium for properties abutting Old Cutler Road from S.W. 184th Street south to the Town limits; and

WHEREAS, the Town is currently in its infancy, and is continually improving its technological ability to produce Geographic Information System (GIS) maps; and

WHEREAS, since the adoption of Ordinance 06-10, the Town has been able to advance its GIS technology, which allowed staff to further clarify the scope of the moratorium, as shown on Exhibit "A"("Moratorium Area"); and

WHEREAS, as such, it is the intent of the Town Council to clarify the scope of the moratorium; and

WHEREAS, during this moratorium, Town staff has been creating the land development regulations that are necessary to preserve the residents' vision for the Moratorium Area; and

WHEREAS, the Town Council wishes to extend the moratorium enacted by Ordinance 06-10 for 90 days in order to allow the Town to complete and adopt the proposed land development regulations for the Moratorium Area; and

WHEREAS, Ordinance 06-10 provides that "the building moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council," and the Town Council hereby finds that such an extension is necessary; and

WHEREAS, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town's Local Planning Agency; and

WHEREAS, after due notice and hearing, the Town Council finds that this extension to the moratorium is reasonable, and is consistent with the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan, and the Town's Code.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Clarification of the Scope of the Moratorium. Based on the findings set forth above, which are incorporated herein as the legislative intent of this Ordinance, the scope of the moratorium adopted by Ordinance 06-10 is hereby clarified as shown on Exhibit "A."

Section 2. Amendment to Section 7 of the Moratorium Ordinance; Moratorium Extended. Based on the findings set forth above, which are incorporated herein as the legislative intent of this Ordinance, Ordinance 06-10 is hereby amended to read as follows:

Section 7. Term. The building moratorium imposed by this Ordinance is temporary and shall be effective for a period of 210 ~~120~~ days from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the building moratorium shall automatically dissolve upon the adoption of new land development regulations for the moratorium area. The building moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

All other provisions of Ordinance 06-10 shall remain in effect as set forth therein for the extended term.

Section 3. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

- Mayor Paul S. Vrooman _____
- Vice Mayor Edward P. MacDougall _____
- Councilmember Peggy R. Bell _____
- Councilmember Timothy J. Meerbott _____
- Councilmember Ernest N. Sochin _____

Hearing Number: N/A

Applicant Name: Town of Cutler Bay

Location: Old Cutler Road from SW 184th Street South to the Town Limits

Size of property: N/A

Request: Clarifying the scope of the Moratorium Ordinance 06-10, to provide for a 90 day extension to the 120 day moratorium

Hearing Location: South Dade Regional Library, 2nd Floor, 10750 SW 211 Street

Hearing Date: October 4, 2006

Hearing Time: 7:00 p.m.

Plans are on file with the Town and may be examined at Town Hall. These plans may be modified at the public hearing.