

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Council Members

FROM/PHONE: William F. Underwood, II, Director of Budget & Finance/797-1050

SUBJECT: Resolution

AFFECTED DISTRICT: Town Wide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE FIRM OF MAYER HOFFMAN MCCANN, P.C. TO ASSIST THE TOWN IN NEGOTIATIONS WITH CERTAIN VENDORS TO RECOVER OVERPAYMENTS IDENTIFIED IN MAYER HOFFMAN MCCANN'S AUGUST 31, 2006 REPORT

REPORT IN BRIEF: Town Council previously hired Mayer Hoffman McCann to provide forensic audit services for the Town. On August 31, 2006 Mayer Hoffman McCann, PC provided the Town its final report. The report identified amounts overpaid to certain vendors. It is the Town's intent to recoup the overpayments from the vendors identified in the report. To facilitate negotiations with the vendors it is recommended the Town to engage Mayer Hoffman McCann on its behalf. Their knowledge of the transaction should expedite the process. The engagement letter for this project is attached as an exhibit to the accompanying resolution.

PREVIOUS ACTIONS: Town Council previously hired Mayer Hoffman McCann to provide forensic audit services (R-2006-114) and subsequently authorized a second phase of their audit (R-2006-152). Town Council previously tabled at the October 18, 2006 meeting.

CONCURRENCES: The attached engagement letter was provided to the Town's Attorney for review.

FISCAL IMPACT:

Has request been budgeted? Yes

If yes, expected cost: \$10,000

Account Name: 001-0102-512-0502 Special Projects

RECOMMENDATION(S): Motion to approve the resolution

Attachment(s): Resolution and Engagement Letter

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE FIRM OF MAYER HOFFMAN MCCANN, P.C. TO ASSIST THE TOWN IN NEGOTIATIONS WITH CERTAIN VENDORS TO RECOVER OVERPAYMENTS IDENTIFIED IN MAYER HOFFMAN MCCANN'S AUGUST 31, 2006 REPORT.

WHEREAS, on March 19, 2006, Town Council hired Mayer Hoffman McCann, PC to provide forensic audit services for the Town; and

WHEREAS, on May 17, 2006, the Town Council authorized an expanded scope of work from Mayer Hoffman McCann, P.C.; and

WHEREAS, a report has been issued by Mayer Hoffman McCann, P.C. which identified amounts overpaid to certain vendors; and

WHEREAS, in order to recoup the overpayments the Town would benefit from the continued involvement of Mayer Hoffman McCann PC; and

WHEREAS, after review, Town Council wishes to accept the agreement with Mayer Hoffman McCann, P.C.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie hereby approves entering into an agreement with Mayer Hoffman McCann, P.C to negotiate the recovery of funds identified in their August 31, 2006 report and authorizes the Mayor to execute an agreement for such services which is attached hereto and identified as Exhibit "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006

EXHIBIT "A"

The logo for Mayer Hoffman McCann P.C. (MHM) consists of the letters "MHM" in a white, serif font, centered within a solid black square.

Mayer Hoffman McCann P.C.

An Independent CPA Firm

399 Northwest Boca Raton Boulevard
Boca Raton, Florida 33432
(561) 392-7929 ph
(561) 391-3018 fx
www.mhm-pc.com

October 5, 2006

Mr. Tom Truex
Mayor, Town of Davie
6591 Orange Drive
Davie, FL 33314

Re: Consulting Services

Dear Mr. Truex:

This letter confirms our understanding of the scope and terms of the Town of Davie's engagement of Mayer Hoffman McCann P.C. (MHM) to assist in the negotiations for recovery of amounts identified in our report dated August 31, 2006.

The workpapers and files for this engagement are the property of Mayer Hoffman McCann P.C. and constitute confidential information. However, ownership of workpapers representing original Town records shall rest with you.

As a result of our prior or future services to you, we might be requested to provide information or documents to you or a third party in a legal, administrative, or arbitration or similar proceeding in which we are not a party. If this occurs, our efforts in complying with such requests will be deemed billable to you as a separate engagement. We shall be entitled to compensation for our time and reasonable reimbursement for our expenses (including legal fees) in complying with the request. For all requests we will observe the confidentiality requirements of our profession and will notify you promptly of the request.

In performing our engagement we will lease professional and administrative staff, both of which are employed by CBIZ Accounting, Tax & Advisory of Boca Raton, LLC and CBIZ Harborview, LLC. These individuals will be under the direct control and supervision of Mayer Hoffman McCann P.C., which is solely responsible for the professional performance of our engagement. Additionally, the professional staff is subject to the standards governing the accounting profession, including the requirement to maintain the confidentiality of client information and Mayer Hoffman McCann P.C. and CBIZ Accounting, Tax & Advisory of Boca Raton, LLC and CBIZ Harborview, LLC have contractual agreements requiring confidential treatment of all client information.

We estimate that our fees for these services will not exceed \$10,000. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. Before any additional time is incurred over and above the estimated cost of services of \$10,000, we will discuss the facts and circumstances with the Town prior to MHM undertaking any additional services.

DISCLAIMER

This engagement cannot be relied upon to discover all documents or provide all analyses which may have importance in this matter. You agree that the Town of Davie will not hold us responsible for any liabilities, damages, awards, losses, costs and expenses arising out of any claims, demands, suits or causes of action which may result from the nondiscovery of any matters which may otherwise have an influence on this matter. This engagement does not include the compilation, review or audit of financial statements. We cannot, and do not, warrant or predict any outcomes of litigation, results of investigations or other future developments relating to the matters contemplated herein.

MISCELLANEOUS

Appendix A to this Engagement Letter contains terms and conditions relating to MHM's policies regarding Dispute Resolution, Term, Limitation on Damages, and Governing Law and Severability. Your acceptance of this letter shall expressly include your acceptance of all terms and conditions in this Letter of Understanding and the Terms and Conditions presented in Appendix A.

ENTIRE AGREEMENT

This Letter, including the Terms and Conditions, embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, oral or written, relative to said subject matter, entered into between the parties hereto. This Letter can only be amended or modified through a writing executed by both parties.

Additional services will be subject to separate arrangements.

ACCEPTANCE

We appreciate the opportunity to assist the Town of Davie on this matter. If this letter correctly states our engagement, please execute this letter in the space provided for below and send this signed letter to our office, retaining a copy for your records. By executing this Letter, the undersigned represents and warrants his or her authority to do so.

If we can be of any further assistance, please do not hesitate to contact Michael Fahndrich at (561) 392-7929.

Very truly yours,

MAYER HOFFMAN McCANN P.C.



Michael G. Fahndrich, C.P.A., Shareholder

Confirmation of Terms of Engagement

The above Engagement Letter, including Appendix A, attached, accurately set forth the terms of Mayer Hoffman McCann P.C.'s engagement with respect to the above-referenced matter:

Accepted by: _____

Date: _____

Appendix A

TERMS AND CONDITIONS

These Terms and Conditions and the Engagement Letter, and any subsequent amendments or addenda thereto, (collectively, the "Agreement") constitute the entire agreement between the Town of Davie ("Client") and Mayer Hoffman McCann, P.C. ("MHM") regarding the services described in the Engagement Letter. Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Engagement Letter.

A. *Services.* MHM will provide the Services described in the Engagement Letter, and will use reasonable efforts to perform the Services in accordance with the timeframe set out. MHM has every expectation that this engagement will be conducted by the MHM personnel designated for this engagement. If for any reason any of those individuals are not able to complete this engagement, personnel with similar qualifications and experience will do so. Where any changes are necessary, MHM will give Client reasonable notice of the changes.

B. *Changes to Services.* Either party may request changes to the Services as set out in the Engagement Letter. Changes must be requested in writing with sufficient detail to enable the other party to assess the impact of the requested change on the cost, timing or any other aspect of the Services. Both parties agree to consider and, if appropriate, agree any changes. Any changes must be in writing and signed by both parties. Until a change is agreed in writing, the latest agreed terms will apply.

C. *Acceptance.* The passage of ten working days without notice of non-acceptance by Client, or use by Client of the project deliverables or outputs (each a "Deliverable"), will constitute acceptance by Client of the Deliverable. If a Deliverable is not accepted, the Client's notice must specify in reasonable detail the reasons that the Deliverable fails to meet the requirements described in this Agreement in all material respects. Upon receipt of such notice and confirmation by MHM of the Deliverable's non-conformance with the requirements of this Agreement, MHM will use commercially reasonable efforts to correct the Deliverable and upon such correction will re-submit the Deliverable to Client for review. Acceptance by Client will not be unreasonably withheld.

D. *Confidentiality.* MHM agrees that all financial, statistical, marketing and personnel data relating to the Client's business, and other information identified as confidential by the Client, are confidential information of the Client ("Client Confidential Information"). The Client agrees that MHM's proprietary software, tools and other methodologies and any other information identified as confidential by MHM, are confidential information of MHM ("MHM Confidential Information"). Client Confidential Information and MHM Confidential Information are collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party which is disclosed to it only for the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, other than to MHM subcontractors hired in connection with this engagement, if any, and to each other's employees on a need-to-know basis in connection with this engagement. Each party agrees to take measures to protect the confidentiality of the other party's Confidential Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own Confidential Information, but at a minimum, each party shall take reasonable steps to advise their employees (and, in the case of MHM, its subcontractors) of the confidential nature of the Confidential Information and of the prohibitions on copying or revealing such Confidential Information contained herein. MHM and the Client each agree to require that the other party's Confidential Information be kept in a reasonably secure location.

Notwithstanding anything to the contrary contained in this Agreement, neither party shall be obligated to treat as confidential, or otherwise be subject to the restrictions on use, disclosure or treatment contained in this Agreement for, any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person, firm or entity (including governmental agencies or bureaus) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any nonparty. Neither party will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own confidential information. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party to the extent that this is required by valid legal or regulatory process, provided that (and without breaching any legal or regulatory requirement) the party to which the

request is made provides the Disclosing Party with prompt written notice and allows the Disclosing Party to seek a restraining order or other appropriate relief.

Despite the above provisions, both parties recognize that the Town is a Governmental entity and therefore the provisions pertaining to confidentiality are still subject to the requirements of Chapter 119 of the Florida Statutes and when required the Town shall be permitted to disclose such information if required pursuant to such Statute if such information is not otherwise exempt from such disclosure under the public records provisions of Chapter 119, Florida Statute.

E. *Limitation of Distribution of Analysis, Conclusions and Report.* Our analysis, conclusions and report, which are to be used only in their entirety, are for your use, solely to assist you in the above-referenced matter. They are not to be used for any other purpose, or by any other party for any purpose, without our express written consent. Any summary of, or reference to, our report, any oral presentation with respect thereto, or other references to MHM in connection with the matter, will be, in each instance, subject to MHM's prior review and written approval, except as may be required by a governmental agency or court. Our report will not be included in, summarized or referred to in any manner in any materials distributed to the public without MHM's expressed prior written consent.

F. *Limited Warranties.* MHM warrants that the Services will be performed and supervised by qualified personnel. Notwithstanding anything to the contrary contained in this agreement, ALL SERVICES PROVIDED HEREUNDER BY MHM ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, MHM HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF EVERY KIND, WHETHER EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF ADVISED OF SUCH PURPOSE). In the event that the Client identifies any MHM employee that the client believes is not qualified to perform the Services, Client may request that such employee be replaced on the engagement. Replacement of such employee(s) is the sole remedy available to Client for breach of this warranty.

G. *Limitation of Liability and Indemnification.* In no event shall MHM be liable to Client or any third party for any loss, damage, cost or expense attributable to any act, omission or misrepresentations by Client, its directors, employees or agents. In no event shall MHM be liable to Client, whether a claim be in tort, contract or otherwise for (a) any amount in excess of the total professional fees paid by Client to MHM under the Engagement Letter or any addendum to which the claim relates or (b) any consequential, indirect, lost profit or similar damages relating to or arising from the Services provided under this Agreement, except to the extent finally determined to have resulted solely from the negligence, wilful misconduct or fraudulent acts of MHM relating to such services. MHM shall have no liability to Client arising from or relating to any third party hardware, software or materials ("Third Party Materials"), including, but not limited to, the selection thereof or failure of such Third Party Materials to perform in accordance with specifications or any defects therein.

Client agrees to indemnify and hold harmless MHM and its personnel from any and all third party claims, liabilities, costs, and expenses, including reasonable attorneys' fees, relating to the Services under this Agreement, except to the extent judicially determined to have resulted solely from the negligence or wilful misconduct of MHM.

MHM agrees to indemnify and hold harmless Client from third party claims, liabilities, costs, and expenses, including reasonable attorneys' fees, judicially determined to solely result from or solely arise out of MHM's negligence or wilful misconduct.

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Further, nothing contained in this Agreement shall be construed as consent by Client to be sued by third parties in any manner arising out of the Agreement. Client is a state agency as defined in Chapter 762.28, Florida Statutes.

H. *General.*

1. ***Non-Solicitation of Employees.*** For the duration of the Assignment, and for 12 months after its termination or completion, Client shall not, without MHM's prior written consent, solicit for employment, employ or procure a third party to employ any MHM employee who has taken part in the performance of the Services.

2. ***Force Majeure.*** Neither party shall be liable to the other for any delay or failure to perform any of the Services or obligations set forth in this Agreement due to causes beyond its reasonable control.

3. ***No Jury Trial.*** In the unlikely event that differences arise between the parties related to or arising from this Agreement that are not resolved by mutual agreement, to facilitate a judicial resolution and save time and expense of both parties, Client and MHM agree not to demand a trial by jury in any action, proceeding or counterclaim.

4. ***Partial Invalidity.*** If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

5. ***Headings.*** The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

6. ***Independent Contractor.*** MHM, in furnishing services to the Client, is strictly an independent contractor. MHM does not undertake to perform any regulatory or contractual obligation of the Client or to assume any responsibility for the Client's business or operations.

7. ***Waiver.*** No waiver, delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

8. ***Governing Law.*** Any controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the 17th Judicial Circuit of Broward County, Florida. The venue site is and shall be governed by the laws of the State of Florida.