

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

Meeting Date: October 20, 2015

Agenda Item 6

REQUESTED CRA BOARD ACTION:

Resolution(s) Consideration Approval Other

SHORT TITLE OR MOTION: A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SEVENTH AMENDMENT TO THE MASTER CONSULTING AND MANAGEMENT AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC.; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

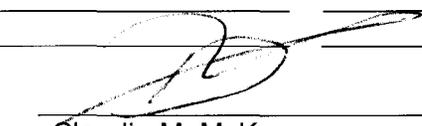
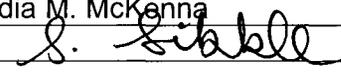
RMA has been under contract for six years and has effectively guided the city through the initial phases of the redevelopment program. The original contract had two three year extension periods with a 2020 expiration date. The next three year extension is scheduled for 2017, however it is recommended to exercise the option now since minor adjustments are needed within the base contract. The amendment also includes updates that reflect staff members, the legal ramifications acting in the capacity of a city staff member, and compensation for additional responsibilities that are above and beyond the contracted scope of services. The next phase of the redevelopment cycle is extremely important to the long term viability of ongoing growth and involves managing the real estate assets as well as development of key parcels within the CRA districts. This amendment will ensure RMA can continue to provide the ultimate level of professional service.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Adriane Esteban Ext. 7841
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: Additional \$29,271; Accounts 150-1910-539.31-40 & 160-1920-539.31-40 (Budget Adjustments attached)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER

- CRA Executive Director
- CRA Attorney
- Finance Director


Claudia M. McKenna


ACTION PREVIOUSLY TAKEN BY CRA BOARD:

Resolution	Consideration	Other:
Results:	Results:	Results:

CRA

POMPANO BEACH

P. O. Drawer 1300
Pompano Beach, FL 33060

Phone: (954) 786-5535
Fax: (954) 786-7836

MEMORANDUM

Date: October 20, 2015

To: Pompano Beach CRA Board

From: Kim Briesemeister, Co-Executive Director

Subject: RMA Contract Seventh Amendment

RMA's original contract had two three year extension periods. The next three year extension is scheduled for 2017, however it is recommended to exercise the option now because minor adjustments are needed within the base contract. In summary the proposed amendments include the following:

- Article 5; Term – A proposed term extension is to provide the appropriate CRA team to address the next phase of redevelopment.
 - Article 6; Method of Payment and Personnel – RMA currently provides 10 professional level staff members to the CRA including two Co-Executive Directors, project managers and coordinators, planning, economic development, construction management, marketing, real estate and urban design. Two administrative positions are also assigned. The original staff emphasis was on preparing the CRA districts for redevelopment, however the next phase will focus on real estate, managing private sector investment and creating the platform for large scale public/private development including the commerce park. Importantly, CRA/RMA staff members have far exceeded the contractual obligations without any adjustment to compensation. As projects and programs progressed, staff members have assumed extensive and additional responsibilities that are above and beyond the contracted scope of services including public/private negotiations (without fees), forming the parking enterprise fund, parking related services, real estate leasing services, property management, city related communications services, and marketing and communications activities. RMA's contract required 14,560 annual hours, however 16,675 man hours were provided. This amendment adjusts the imbalance and allows for the CRA and/or City to request additional services on an hourly basis. The current compensation for year seven is \$906,723, however the Seventh Amendment will increase the compensation by 2.6% to \$930,000.
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- Legal- This amendment addresses those situations whereby the CRA is acting in the capacity of a city staff member as opposed to a consulting capacity. RMA/CRA staff members are intended to blend into the city's operations and work as if they were city employees, with both the same basic benefits (days off) and work expectations (reviews and training). In certain circumstances, city employees would be covered under the city's legal shield during the regular course of business.

The next phase of the redevelopment cycle is extremely important to the long term viability of ongoing growth and involves managing the real estate assets as well as development of key parcels within the CRA districts. This amendment will ensure RMA can continue to provide the ultimate level of professional service.

RESOLUTION NO. _____

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SEVENTH AMENDMENT TO THE MASTER CONSULTING AND MANAGEMENT AGREEMENT BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC.; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The Seventh Amendment to the Master Consulting and Management Agreement between the Pompano Beach Community Redevelopment Agency and Redevelopment Management Associates, LLC., a copy of which amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, CHAIRPERSON

ATTEST:

MARGARET GALLAGHER, SECRETARY

SEVENTH AMENDMENT TO AGREEMENT

THIS SEVENTH AMENDMENT, dated October , 2015, to the Master Consulting and Management Agreement (the “Agreement”) between the **Pompano Beach Community Redevelopment Agency**, a public body corporate and politic, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (“CRA”) and **Redevelopment Management Associates, LLC**, a Florida limited liability company whose address is 2560 SE 7th Drive, Pompano Beach, Florida 33062 (“CONSULTANT”) is entered into by the parties as follows:

WHEREAS, the Agreement was approved by Resolution No. 2009-52; and

WHEREAS, the First Amendment to the Agreement was approved by Resolution No.2009-65; and

WHEREAS, the Second Amendment to the Agreement was approved by Resolution No. 2010-82; and

WHEREAS, the Third Amendment to the Agreement was approved by Resolution No. 2010-94; and

WHEREAS, the Fourth Amendment to the Agreement was approved by Resolution No. 2011-36; and

WHEREAS, the Fifth Amendment to the Agreement was approved by Resolution No. 2011-67; and

WHEREAS, the Sixth Amendment to the Agreement was approved by Resolution No. 2012-63; and

WHEREAS, the texts of the six amendments have been incorporated into the Agreement and referenced by amendment and resolution number; and

WHEREAS, the parties now desire to enter into a seventh amendment to the Agreement and incorporate such amendment into the Agreement.

WITNESSETH:

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments stated in this Seventh Amendment, the parties agree as follows:

1. Each “WHEREAS” clause stated above is true and correct and is incorporated in this Seventh Amendment by reference.

2. “Strikeouts” indicate deleted language and “underlines” indicate new language.
3. Article 5, “Term” of the Agreement is amended to read as follows:

ARTICLE 5
TERM

~~Unless terminated earlier as provided herein, The Effective Date of this Agreement shall commence on the date last executed by the parties hereto and is July 1, 2009. This Agreement shall~~ continue and remain in full force and effect through the intended five (5) year initial term with the CRA’s option to extend the contract term for a ~~period of up to~~ a minimum of ~~two (2)~~ three (3) three (3) year renewals. ~~The First Amendment set the effective date of commencement as July 1, 2009. The CRA hereby exercises its option by executing the first three year extension provided for in the Agreement. The new expiration date is June 30, 2017. The CRA exercised its option to renew this Agreement for the first three year extension and the second three year extension. The new expiration date is June 30, 2020.~~

[Amendment 1, Res. No. 2009-65; Amendment 6, Res. No. 2012-63].

4. Article 6, “Compensation and Method of Payment” of the Agreement is amended to read as follows:

ARTICLE 6
COMPENSATION AND METHOD OF PAYMENT

1. Invoicing and Payment.

The ~~\$844,900.00~~ \$930,000.00 compensation due CONSULTANT is for performance and completion of the Work ~~described in Work Authorization #6 (Exhibit E).~~ This rate of compensation is for CONSULTANT’s ~~fourth~~ seventh year of Work under this Agreement and will be refined and amended annually or as otherwise agreed to by both parties in writing. [Amendment 2, Res. No. 2010-82; Amendment 3, Res. No. 2010-94; Amendment 4, Res. No. 2011-36; Amendment 5, Res. No. 2011-67; Amendment 6, Res. No. 2012-63].

CONSULTANT shall invoice the CRA on a monthly basis commencing with the first day of the month following the first full month of service(s) for Work satisfactorily completed. The invoice submitted by CONSULTANT shall describe the Work performed during the invoice period and be supported by such documentation as the CRA may reasonably require which includes documentation that tracks, distinguishes and/or otherwise substantiates which direct and indirect costs, including professional staffing, are to be credited or debited by and between the CITY and the CRA and, more particularly, the two TIF districts known as the Northwest and East Community Redevelopment Areas. All invoices must be original, signed by a Principal-in-Charge, and provided to the Contract Administrator:

City Manager or his/her designee
100 West Atlantic Boulevard
Pompano Beach, FL 33060

The CRA may temporarily remove any disputed amount, by line item, from the invoice for review. CONSULTANT shall be notified of the disputed charge within ten (10) working days of the date on which the CRA receives a proper invoice as defined in Chapter 218.72.1, Florida Statutes. The CONSULTANT shall provide clarification and a satisfactory explanation of the charge(s) to the CRA prior to payment of said charge(s). Payment for verified and authorized Work completed shall be made to CONSULTANT within fifteen (15) days after the date on which a proper invoice is received by the CRA's Contract Administrator.

In the event, the CRA has a claim against CONSULTANT for Work performed under this Agreement which has not been timely remedied in accordance with the requirements of Article 10 herein, then the CRA may withhold payment that is due CONSULTANT, in whole or in part, to protect itself from loss on account of defective work, claims filed or reasonable evidence indicating probable filing of claims by other parties against CONSULTANT, and/or CONSULTANT's failure to make proper payments to subcontractors or vendors for material or labor. When the reason(s) for withholding payment are removed or resolved in a manner satisfactory to CRA's Contract Administrator, payment may be made. The amount withheld by the CRA shall not be subject to payment of interest by the CRA.

The rate of compensation for CONSULTANT'S ~~fourth~~ seventh year of Work under this Agreement for the period of July ~~2012~~ 2015 through June 30, ~~2013~~ 2016 shall be \$844,900.00 930,000.00, and the rate for CONSULTANT'S ~~fifth~~ eight year of work and each of the three year ~~extension periods thereafter~~ For each subsequent year, including each year

of any renewal period, CONSULTANT shall be compensated at the rates determined in Paragraph 3 below. The CONSULTANT will provide the following personnel under this Agreement including benefits, overhead, and other expenses:

Principal(s) in Charge

Co-Executive Directors: ~~Chris Brown and Kim Briesemeister~~

Staff – RMA (part-time) Administrator/Bookkeeper

Staff – Project Coordinator

Staff – Marketing Director (part time)

Staff – Marketing Manager

Staff – Project Manager

Staff – Clerk

Staff – Construction Project Manager

Staff – Planning and Economic Development Manager

In addition, the CONSULTANT will manage and supervise the following employees of the City/CRA:

CRA Department Head Secretary

CRA Engineer

Interns

~~In addition~~ The CONSULTANT will also manage and supervise the CRA's professional services contractors, CCNA consultants, construction contracts and all activities approved by the CRA. Such management and supervision responsibilities will be conducted pursuant to a work authorization and for a fee approved by the CRA. [Amendment 5, Res. No. 2011-67; Amendment 6, Res. No. 2012-63].

2. Reimbursables. Reimbursable expenses will be invoiced monthly as incurred and billed at cost. Typical reasonable "out of pocket" expenses include travel, lodging and meals when traveling on the CRA's behalf; identifiable communication expenses; reproduction costs; marketing materials produced on behalf of the CRA; and expenses incurred that the CRA has requested as part of the scope of services under a Work Authorization. CONSULTANT and its sub consultants will be reimbursed at cost for reproducible media of Project related materials as requested by the CRA.

The CRA may provide CONSULTANT with administrative support for additional ~~W~~work authorizations, including administrative and clerical functions and any other activities it deems necessary. CONSULTANT shall first verify the CRA's ability to provide needed administrative support before requesting authorization for reimbursement for an administrative expense.

3. Annual Increases. CONSULTANT'S rate of compensation for Work performed under this Agreement shall be annually adjusted after the ~~fourth year, fifth year and after seventh year~~ and each year of ~~the three-year extension of work~~ each renewal period and submitted for approval to the Contract Administrator in the amount equal to the annual rate of the (US) Per Capita (Personal) Income as reported by the Florida Department of Revenue on Form DR 420 with a minimum of not less than two percent (2.0%) and a maximum of five percent (5.0%). [Amendment 6, Res. No. 2012-63].

4. City Hall Office Space. CRA acknowledges that RMA employees providing CRA services pursuant to this Agreement presently occupy office space at City Hall. If the City requests that the RMA employees vacate City Hall in order to provide office space for City employees and does not provide substitute office space for the RMA employees, resulting in RMA having to provide such office space, the CRA will increase the annual compensation approved by the Contract Administrator by an amount equal to the rent paid by RMA for the substitute office space. The rental amount shall be based on the comparable square footage currently occupied by RMA employees at City Hall (approximately 2,400 SF) and the comparable rental rates within the area of the substitute office space.

5. Article 16, "Indemnification of CRA," is amended to read as follows:

ARTICLE 16 INDEMNIFICATION ~~OF CRA~~

1. Indemnification of CRA. CONSULTANT shall at all times indemnify, hold harmless and defend, the CRA, its Board, employees and agents from and against any and all claims, demands, suit, damages, fees, fines, penalties, defense costs or liabilities arising as a direct result of CONSULTANT's officers, employees, agents, volunteers or sub consultants negligence or misconduct under this Agreement.

For Professional Liability claims, CONSULTANT agrees this indemnification and hold harmless section of the Agreement shall survive the termination or expiration of this Agreement for a period of four (4) years, unless sooner terminated by the applicable statute of limitations. For General Liability claims, CONSULTANT agrees this indemnification and hold harmless section of the Agreement shall survive the termination or expiration of this Agreement for a period of two (2) years, unless sooner terminated by the applicable statute of limitations.

CONSULTANT acknowledges and agrees that CRA would not enter into this Agreement without this indemnification of the CRA by CONSULTANT, and that the CRA's entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the CRA's rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

2. Indemnification of CONSULTANT. CONSULTANT and its employees shall be entitled to the indemnification and legal representation for city officials provided in Sec. 34.001 of the City of Pompano Beach Code of ordinances.

6. All other terms and conditions of the Agreement, as amended, shall remain in full force and effect unless earlier terminated pursuant to the provisions of the Agreement.

7. No other amendment to the terms of the Agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity with the Agreement.

IN WITNESS WHEREOF, the parties have cause this Seventh Amendment to the Agreement to be duly executed on the day and year first above written.

APPROVED and **ACCEPTED** this _____ day of _____, 2015.

Witnesses:

"CRA"

POMPAÑO BEACH COMMUNITY

REDEVELOPMENT AGENCY

By: _____

LAMAR FISHER, CHAIRPERSON

ATTEST:

By: _____

MARGARET GALLAGHER, SECRETARY

STATE OF FLORIDA

COUNTY OF BROWARD

I HEREBY CERTIFY, that on this _____ day of _____, 2015 before me personally appeared LAMAR FISHER, Chairperson of the Pompano Beach Community Redevelopment Agency, and he acknowledged that he executed the foregoing instrument as the proper Official of the Pompano Beach Community Redevelopment Agency, and the same is the act and deed of said Pompano Beach Community Redevelopment Agency.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by MARGARET GALLAGHER as Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONSULTANT"

Witnesses:

REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC, a Florida limited liability company

Managing Member:

MetroStrategies, Inc.

By: _____
Kim Briesemeister, President

Managing Member:

By: _____
Christopher J. Brown, Manager

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Kim Briesemeister, President of MetroStrategies, Inc., as Managing Member of Redevelopment Management Associates, LLC on behalf of the limited liability company. She is personally known to me or who has produced _____ (type of identification) as identification.

STATE OF FLORIDA
COUNTY OF BROWARD

NOTARY'S SEAL

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Christopher J. Brown, as Managing Member of Redevelopment Management Associates, LLC on behalf of the limited liability company. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number