

# POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

Meeting Date: April 19, 2016

Agenda Item 7

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 AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND CLAUDIA M. MCKENNA FOR LEGAL SERVICES; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The current phase of redevelopment is focused on vertical development and major land planning with an emphasis on private sector development. Many of these initiatives will require legal expertise related to redevelopment and in particular extensive knowledge of the CRA statute, Chapter 163 Part III. Staff is recommending that special legal counsel, Claudia M. McKenna, continue to be retained for this stage to ensure redevelopment activity positively continues. Ms. McKenna has provided stellar service this past year and is uniquely qualified in that she has served as the CRA attorney for the West Palm Beach CRA, one of the largest most successful CRAs in south Florida. She was also West Palm Beach's city attorney which gave her years of government perspective with a very deep bench of legal knowledge in the public sector.

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: 4/19/2019
- (4) Fiscal impact and source of funding: Estimated \$4,500-\$6,750 per month; Special Legal account 150-1910-539.31-30 and 160-1920-539.31-30 depending on task

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER
City Attorney	<u>4-12-16</u>	<u>✓</u>	

- CRA Executive Director
- Finance Director

  
\_\_\_\_\_

ACTION PREVIOUSLY TAKEN BY CRA BOARD:

<u>Resolution</u>	<u>Consideration</u>	<u>Other:</u>
<u>Results:</u>	<u>Results:</u>	<u>Results:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____



P. O. Drawer 1300  
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## MEMORANDUM

**To:** Pompano Beach CRA Board

**From:** Adriane Esteban, Project Manager

**Date:** April 19, 2016

**Subject:** Professional Services Agreement- Claudia M. McKenna

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### **I. Agenda Item**

Approval of a Professional Services Agreement between the Pompano Beach Community Redevelopment Agency (CRA) and Claudia M. McKenna for professional consulting and legal services on particular matters as requested by the CRA and accepted by the Consultant.

### **II. Recommendation**

CRA Staff recommends approval of this agenda item.

### **III. Background**

The CRA's current phase of redevelopment is focused on vertical development and major land planning with an emphasis on private sector development. Many of these initiatives require legal expertise related to redevelopment and in particular extensive knowledge of the CRA statute, Chapter 163 Part III. This stage of redevelopment requires a broad understanding of real estate and development patterns and options as well as understanding the land use and zoning mechanisms that support but effectively manage private development activity.

Last year the CRA engaged Claudia McKenna as the CRA's counsel to help the agency navigate this redevelopment phase and has found she has provided stellar service. Staff is recommending that the CRA continue to retain Ms. McKenna as special legal counsel at this stage to ensure redevelopment activity continues positively. Ms. McKenna is uniquely qualified in that she served as the CRA attorney for the West Palm Beach CRA, one of the largest most successful CRAs in south Florida. She was also West Palm Beach's city attorney which gave her years of government perspective with a very deep bench of legal knowledge in the public sector. Ms. McKenna retired from the City in 2015 and agreed to act as Pompano Beach's CRA counsel on a part time basis.



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During this past year Ms. McKenna has worked with CRA and City staff and provided legal advice and strategies on all redevelopment activity as well as coordinated the CRA's legal needs with the City Attorney's Office. She has also coordinated with other special CRA counsel including Weiss Serota, the firm engaged in the county lawsuit. CRA staff recommends Ms. McKenna continue these tasks for the next three years to ensure the CRA is prepared for the next stages of redevelopment.

RESOLUTION NO. \_\_\_\_\_

**POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**

**A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY AND CLAUDIA M. MCKENNA FOR LEGAL SERVICES; PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** The Agreement for Professional Services between the Pompano Beach Community Redevelopment Agency and Claudia M. McKenna for legal services, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** The proper officials are hereby authorized to execute said Agreement between the Pompano Beach Community Redevelopment Agency and Claudia M. McKenna.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of April, 2016.

\_\_\_\_\_  
**LAMAR FISHER, CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_  
**MARGARET GALLAGHER, SECRETARY**

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made by and between the **POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY**, a Florida community redevelopment agency, with a physical address of 100 West Atlantic Boulevard, Room 276, Pompano Beach, FL 33060 (the "CRA") and **CLAUDIA M. MCKENNA**, an individual, with an address 4464 Coconut Road, Lake Worth, FL 33461 (the "Consultant").

WHEREAS, Consultant is in the business of providing professional consulting and legal services in connection with certain matters; and

WHEREAS, Consultant is a professional qualified to render said professional services; and

WHEREAS, the CRA desires to engage Consultant to provide such services to the CRA according to the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises as hereinafter set forth and of the faithful performance of as such covenants and conditions, the CRA and Consultant do hereby agree as follows:

### 1. SERVICES.

1.1 Consultant shall provide professional legal services to the CRA on particular matters as requested by the CRA and accepted by the Consultant.

1.2 Consultant agrees to perform all assigned tasks with due diligence and to the best of her abilities consistent with good business practice and shall at all times provide the CRA with the most sound and reasonable recommendations and advice and CRA agrees to use its best efforts to assist Consultant in providing the services set forth above.

### 2. COMPENSATION.

2.1 Fee. In consideration of the satisfactory performance of the Services by Consultant, and the performance by Consultant of all of her other duties and obligations as set forth in this Agreement, the CRA shall pay Consultant the sum of \$225.00 per hour for any services required pursuant to this Agreement ("Fee").

2.2 Payment. Payment will be made within 45 days of receipt of a proper invoice in accordance with the Local Government Prompt Payment Act, Section 218.70, et al., Florida Statutes, which also establishes a process and remedies for non-compliance.

2.3 Invoices. Invoices shall be submitted to: Pompano Beach Community Redevelopment Agency at the address stated above. Invoices shall show the dates(s) of service, the actual hours worked, nature of the service, and hourly rate.

3. TERM. The term of the engagement under this Agreement shall commence on the date executed by the later of CRA and Consultant and shall extend for a term of three (3) years, subject to termination as provided in this Agreement.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF CONSULTANT

4.1 Duly Licensed. Consultant represents that she is duly licensed as an attorney in the State of Florida and that she will continue to maintain such license during the term of this Agreement.

4.2 No Contingency. Consultant warrants that she has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Consultant, the CRA shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the contract fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

4.3 Consultant represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes).

5. STANDARD OF CARE. The standard of care for all Services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstances or at the same time and in the same locality.

6. COMPLIANCE WITH LAWS. In the conduct of the Services under this Agreement, Consultant shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations.

7. INDEPENDENT CONTRACTOR. Consultant acknowledges and agrees that she is an independent contractor of the CRA and is not an employee of the CRA. Consultant more specifically acknowledges that: she will not be eligible to participate in any employee benefit maintained by the CRA; will not be covered by the CRA's workers' compensation insurance; will be solely and exclusively responsible for payment of all federal and state income, social security, unemployment and disability taxes due in respect of all compensation and/or other consideration paid by the CRA to Consultant hereunder. Consultant acknowledges that it shall have no authority to bind CRA to any contractual or other obligation whatsoever. Consultant shall be entitled to seek and accept other engagements and/or employment during the term of this Agreement so long as such other employment or engagements do not interfere or conflict with the performance of Consultant's duties under this Agreement.

8. INSURANCE. Consultant shall maintain a policy of professional errors and omissions insurance in an amount of coverage not less than \$1,000,000/\$1,000,000. Prior to commencing the Services, Consultant shall provide CRA with a certificate evidencing such insurance. Consultant agrees to notify CRA immediately of any material change in such insurance coverage.

9. PUBLIC RECORDS.

9.1 The CRA is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law, as amended. Specifically, the Consultant shall:

- 9.1.1 Keep and maintain public records required by the City in order to perform the service.
- 9.1.2 Upon request from the CRA's custodian of public records, provide the CRA with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- 9.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the CRA.
- 9.1.4 Upon completion of the contract, transfer, at no cost to the CRA, all public records in possession of the Consultant, or keep and maintain public records required by the CRA to perform the service. If the Consultant transfers all public records to the CRA upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CRA, upon request from the CRA's custodian of public records in a format that is compatible with the information technology systems of the CRA.

9.2. Failure of the Consultant to provide the above described public records to the CRA within a reasonable time may subject Consultant to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CRA CLERK**  
**100 W. Atlantic Blvd., Suite 276**  
**Pompano Beach, Florida 33060**  
**(954) 786-5535**  
**[Cathy.trenkle@copbfl.com](mailto:Cathy.trenkle@copbfl.com)**

10. PROPERTY RIGHTS. All work product, including but not limited to all documents, computer files, electronic data and reports prepared or created in the course of the performance of the Services or obtained in the performance of this Agreement, as well as all data and information collected, will be considered works made for hire and shall be the exclusive property of the CRA. All

work product prepared by Consultant at the expense of CRA (or for which CRA is invoiced) shall become the property of the CRA upon full payment of all outstanding invoices. Notwithstanding, CRA authorizes Consultant to maintain copies of all work product for her records. Upon delivery to the CRA of said work product, the CRA will become the custodian thereof in accordance with Chapter 119, Florida Statutes. Consultant will not copyright any material or work product developed under this Agreement.

11. TERMINATION.

11.1 The CRA and Consultant shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, upon five (5) days written notice to Consultant or CRA. In the event of termination, the CRA shall compensate the Consultant for all authorized work satisfactorily performed through the termination date under the payment terms contained in this Agreement.

11.2 Consultant shall immediately deliver all documents, written information, electronic data and other materials concerning CRA projects in its possession to the CRA and shall cooperate in transition of its consulting duties to appropriate parties at the direction of the CRA.

11.3 Upon termination, this Agreement shall have no further force or effect and the parties shall be relieved of all further liability hereunder, except that the provisions of this Section and the provisions regarding the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Agreement and remain in full force and effect.

12. NOTICE. All written notices, demands and other communications required or provided for under this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to Consultant at the address on the first page of this Agreement, or to the CRA, at the address on the first page of this Agreement, attention: CRA Executive Director, with a copy to the City Attorney, or to such other address or person as shall be designated by a party in a written notice given in the manner required hereby.

13. TAXES. Consultant understands that in performing the Services for the CRA, Consultant is not exempt from paying sales tax to Consultant's suppliers for materials required for Consultant to perform under this Agreement. Consultant shall not be authorized to use the CRA's tax exemption number for purchasing supplies or materials.

14. AVAILABILITY OF FUNDS. This Agreement is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the CRA. If funding for this Agreement is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Agreement become unavailable, the CRA may terminate this Agreement upon no less than twenty-four (24) hours' notice to Consultant. The CRA shall be the sole and final authority as to the availability of funds.

15. NON-DISCRIMINATION. In performing under this Agreement, Consultant shall not discriminate against any person because of race, color, religion, sex, gender identity or expression,

genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

16. ASSIGNMENT. This Agreement requires the personal skills and experience of Consultant and may not be assigned by Consultant.

17. FORCE MAJEURE. Any deadline provided for in this Agreement may be extended, as provided herein, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God. When one of the foregoing conditions interferes with contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder

18. ETHICS; CONFLICTS OF INTEREST.

18.1 Consultant represents that she has not given or accepted any payment in relation to this Agreement and has not solicited this Agreement by payment or acceptance of a gratuity or offer of employment.

18.2 Consultant represents that she has not solicited this contract by payment of a gift or gratuity or offer of employment to any official, employee of the CRA or any CRA agency or selection committee.

18.3 Consultant represents that she does not employ, directly or indirectly, the mayor, members of the city commission or any official, department director, head of any City agency, or member of any board, committee or agency of the City.

18.4 Consultant represents that she does not employ, directly or indirectly, any official of the CRA. Consultant represents that it does not employ, directly or indirectly, any employee or member of any board, committee or agency of the CRA.

18.5 Consultant represents that she has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to the mayor, members of the city commission, any department director or head of any city agency, any employee of the city or any city agency, or any member of a board that provides regulation, oversight, management or policy-setting recommendations regarding the Consultant or its business.

18.6 Consultant represents that she presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance under this Agreement. The Consultant further represents that no person having any interest shall be employed or engaged by it for said Services.

18.7 Consultant shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Consultant's exercise of judgment or quality of the Services being provided under this Agreement. Consultant shall not perform consulting work for any third party that would in any way be in conflict with the Services to be provided to the CRA under this Agreement.

18.8 Consultant shall not, during the term of this Agreement, serve as an expert witness against CRA in any legal or administrative proceeding unless compelled by court process. Further, Consultant shall not give sworn testimony or issue a report or writing, as an expression of her expert opinion, which is adverse or prejudicial to the interests of CRA or in connection with any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

18.9 Consultant shall promptly notify the CRA in writing of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that Consultant intends to undertake and shall request the opinion of the CRA as to whether such association, interest or circumstance would, in the opinion of the CRA, constitute a conflict of interest if entered into by the Consultant. The CRA agrees to notify the Consultant in writing of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the CRA, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the CRA shall so state in its opinion and the Consultant may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CRA by Consultant under this Agreement.

18.10 Consultant shall comply with all federal, state and local ethics laws and regulations.

19. PUBLIC ENTITY CRIMES ACT. Consultant represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that Consultant and its subconsultants under this Agreement have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within 36 months from the date of submitting a proposal for this Agreement or entering into this Agreement. Violation of this section may result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CRA's competitive procurement activities.

20. LOBBYING CERTIFICATION. Consultant certifies to the best of its knowledge and belief that no funds or other resources received from the State in connection with this Agreement will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

21. GOVERNING LAW. This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The CRA and Consultant submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Broward County, Florida, or the Federal Southern District of Florida. Consultant agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

22. SEVERABILITY. In the event that any term or provision of this shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

23. WAIVER. Any waiver by either party hereto of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

24. HEADINGS. The headings contained in this Agreement are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Agreement.

25. ENTIRE AGREEMENT. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Agreement may only be modified by written amendment executed by the CRA and Consultant.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year indicated below.

Signed, Sealed and Witnessed  
In the Presence of:

**POMPANO BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

\_\_\_\_\_

By: \_\_\_\_\_

Lamar Fisher, Chairman

Print Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Margaret Gallagher, Secretary

Print Name: \_\_\_\_\_

**EXECUTIVE DIRECTOR:**  
Redevelopment Management Associates, LLC  
a Florida limited liability company

\_\_\_\_\_

By: MetroStrategies, Inc., a Florida corporation  
a managing member

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Kim Briesemeister, President

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by LAMAR FISHER as Chairman 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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by MARGARET GALLAGHER, 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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, 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.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**Consultant:**

*Claudia M. McKenna*

Claudia M. McKenna, Esq.

Date: April 12, 2016