



AGREEMENT FOR PROFESSIONAL SERVICES

Contract No. 14349

THIS AGREEMENT is made by and between the **CITY OF WEST PALM BEACH, FLORIDA**, a Florida municipal corporation, with a physical address of 401 Clematis Street, West Palm Beach, Florida and a mailing address of P.O. Box 3366, West Palm Beach, FL 33402-3366 (the "City") 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 matter; and

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

WHEREAS, the City desires to engage Consultant to provide such services to the City 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 City and Consultant do hereby agree as follows:

1. SERVICES.

1.1 Consultant shall provide professional consulting and legal services to the City for a minimum of thirty-two (32) hours per month. Services shall include but are not limited to:

- a) Providing general information related to her work as former city attorney for the City of West Palm Beach as requested by the City and accepted by the Consultant; and
- b) Provide legal advice and consulting services on particular matters as requested by the City and accepted by the Consultant.

1.2 In order to perform the services, Consultant shall have access to and is authorized to use the Office of the City Attorney's Westlaw account.

1.3 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 City with the most sound and reasonable recommendations and advice and City 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 City shall pay Consultant the sum of Four Thousand Eight Hundred Dollars (\$4,800.00) per month for the 32 hours of services; and shall pay an additional \$150.00 per hour for any services required in a month in excess of 32 hours ("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: West Palm Beach Finance Department, Attn: Accounts Payable, P.O. Box 3366, West Palm Beach, FL 33402-3366. Invoices must identify the PO number. Invoices shall show the date(s) of service, the actual hours worked, nature of the service, and hourly rate. All services rendered prior to September 30th of any given year are required to be invoiced by September 30th of that year. Consultant shall submit a W-9 to City prior to submittal of the first invoice.

2.4 No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement by Consultant, either wholly or in part, and no payment shall be construed to be an acceptance of or to relieve Consultant of liability for the defective, faulty or incomplete rendition of the Services.

3. TERM. The term of the engagement under this Agreement shall commence on the date executed by the later of City and Consultant and shall extend for a term of one (1) year, 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 City 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 City and is not an employee of the City. Consultant more specifically acknowledges that: she will not be eligible to participate in any employee benefit maintained by the City; will not be covered by the City'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 City to Consultant hereunder. Consultant acknowledges that it shall have no authority to bind City 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 with the performance of Consultant's duties under this Agreement.

8. INDEMNIFICATION. Consultant agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from City, its officials, agents, or employees by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way connected with Consultant's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of Consultant in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with Consultant's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Consultant. This indemnification includes, but is not limited to, any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. To the extent considered necessary by the City, any sums due Consultant under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This paragraph shall not be construed to require Consultant to indemnify the City for its own negligence, or intentional acts of the City, its agents or employees. Nothing in this Agreement shall be deemed to be a waiver of the City's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

9. INSURANCE. Consultant requested, and City agreed, to waive the requirements for Consultant to maintain a policy or policies of commercial general liability and property damage insurance, workers' compensation and professional errors and omissions insurance, protecting the City, its officers, agents and employees, against any and all liability due to death, injury or damage to property arising out of, or any way incidental to Consultant's performance of the Services and workers' compensation as required by federal law. In consideration of the same, Consultant agrees that it shall not make a claim against the City's insurance on any claim which would have been insured by Consultant if the City had required standard insurance coverage.

10. RIGHT TO AUDIT. Consultant shall maintain adequate records for the services performed under this Agreement for five (5) years following completion of the services or conclusion of any litigation services provided by Consultant under this Agreement. The City shall have the right to audit Consultant's invoices, books and records, at the City's expense, upon prior notice, with regard to the services provided under this Agreement. If an audit inspection in accordance with this section discloses overbilling (of any nature) by Consultant to the City in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the City's Internal Audit

department shall be reimbursed to the City by the Consultant and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Consultant within 45 days from presentation of City's findings to Consultant. Failure by Consultant to permit such audit shall be grounds for termination of this Agreement by the City.

11. PUBLIC RECORDS LAW. Consultant shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the City.

12. PROPERTY RIGHTS. All work product, including but not limited to 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 City. Copies of all pleadings, correspondence and all documents created or maintained by Consultant under this Agreement shall be sent by Consultant to the City Attorney's Office, preferably by electronic means, at the time of sending or filing. All work product prepared by Consultant at the expense of City (or for which City is invoiced) shall become the property of the City upon full payment of all outstanding invoices. Notwithstanding, City authorizes Consultant to maintain copies of all work product for her records. Upon delivery to the City of said work product, the City 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.

13. MEDIA. Absent specific authorization, Consultant shall not respond on City's behalf to media requests concerning any matter under this Agreement, and shall direct such requests to the City's Public Information Officer.

14. TERMINATION.

14.1 The City 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 City. In the event of termination, the City shall compensate the Consultant for all authorized work satisfactorily performed through the termination date under the payment terms contained in this Agreement.

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

14.3 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.

15. 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 City, at the address on the first page of this Agreement, attention: City Administrator, 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.

16. TAXES. Consultant understands that in performing the Services for the City, 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 City's tax exemption number for purchasing supplies or materials.

17. 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 City. 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 City may terminate this Agreement upon no less than twenty-four (24) hours' notice to Consultant. The City shall be the sole and final authority as to the availability of funds.

18. 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.

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

20. 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

21. ETHICS; CONFLICTS OF INTEREST.

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

21.2 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 City or any City agency or selection committee.

21.3 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.

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

21.5 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.

21.6 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.

21.7 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 City under this Agreement.

21.8 Consultant shall not, during the term of this Agreement, serve as an expert witness against City 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 City 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.

21.9 Consultant shall promptly notify the City in writing by certified mail 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 City as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Consultant. The City agrees to notify the Consultant by certified mail of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City 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 City by Consultant under this Agreement.

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

22. 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 City's competitive procurement activities.

23. 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.

24. 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 City 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 Palm Beach 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.

25. 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.

26. 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.

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

28. INSPECTOR GENERAL. Consultant is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from the Consultant. Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Consultant to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

29. 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

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Consulting (McKenna)

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matter. This Agreement may only be modified by written amendment executed by the City and Consultant.

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

ATTEST:

CITY OF WEST PALM BEACH

By: *Hazel F. Cannon*
City Clerk

By: *Geraldine Muoio*
Geraldine Muoio, Mayor

Date: 5/13, 2014

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: *KLR*

Consultant:

Claudia M. McKenna
Claudia M. McKenna, Esq.