

9. **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (THE AGENCY) APPROVING A CONTRACT WITH CATALYST CONSULTING, LLC (CONSULTANT) TO PROVIDE THE AGENCY PROFESSIONAL SERVICES IN COMPLETING AN APPLICATION FOR A MINIMUM OF \$50 MILLION IN NEW MARKETS TAX CREDIT AUTHORITY; PROVIDING AN EFFECTIVE DATE.  
(ATTACHMENT - # 9)**

RESOLUTION NO. 2011-\_\_\_\_

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (THE AGENCY) APPROVING A CONTRACT WITH CATALYST CONSULTING, LLC (CONSULTANT) TO PROVIDE THE AGENCY PROFESSIONAL SERVICES IN COMPLETING AN APPLICATION FOR A MINIMUM OF \$50 MILLION IN NEW MARKETS TAX CREDIT AUTHORITY; PROVIDING AN EFFECTIVE DATE.

\*\*\*\*\*

WHEREAS, the Agency desires Consultant to provide professional services to the Redevelopment Agency providing professional consultation services to complete a new market tax credit application for a minimum of \$50 million in new markets tax credit authority pursuant to the Scope of Work detailed in Exhibit "A" attached to contract and,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The Agency hereby approves the attached contract for Consultant/Professional Services with Catalyst Consulting, LLC.

SECTION 2. This resolution shall be effective immediately upon its adoption.

[Signatures on next page]

PASSED AND ADOPTED this \_\_\_ day of May, 2011.

RIVIERA BEACH COMMUNITY  
REDEVELOPMENT AGENCY

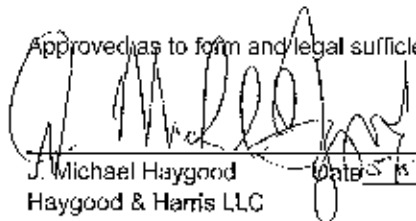
ATTEST:

By: \_\_\_\_\_  
Name: Judy L. Davis  
Title: Chairperson

\_\_\_\_\_  
Executive Director

MOTION BY: \_\_\_\_\_  
SECONDED BY: \_\_\_\_\_

B. BROOKS \_\_\_\_\_  
D. PARDO \_\_\_\_\_  
C. THOMAS \_\_\_\_\_  
S. LOWE \_\_\_\_\_  
J. DAVIS \_\_\_\_\_

Approved as to form and legal sufficiency  
  
\_\_\_\_\_  
J. Michael Haygood Date: 5/12/11  
Haygood & Harris LLC  
General Counsel to CRA

**CONTRACT FOR CONSULTANT/PROFESSIONAL SERVICES  
FOR  
NMTC APPLICATION**

This Contract is made as of the \_\_\_\_ day of May, 2011 by and between the RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY, a body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes (hereinafter referred to as the CRA), and CATALYST CONSULTING, LLC, an Ohio limited liability company, authorized to do business in the State of Florida (hereinafter referred to as the CONSULTANT).

In consideration of the mutual promises contained herein, the CRA and the CONSULTANT agree as follows:

**ARTICLE 1 – SERVICES**

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services to complete a new market tax credit application, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The CRA'S representative/liaison during the performance of this Contract shall be Tony Brown, Executive Director, telephone no. (561) 844-3408.

**ARTICLE 2 - SCHEDULE**

The CONSULTANT shall commence services on upon delivery of a work order.

**ARTICLE 3 – PAYMENTS TO CONSULTANT**

- A. The CRA agrees to compensate the CONSULTANT in accordance with the fee proposal set forth in Exhibit A attached hereto and incorporated by reference herein. The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. Reimbursable expenses, as identified in said fee proposal, incurred during the course of performance of this contract shall be itemized and invoiced separately. The CRA shall not reimburse the CONSULTANT for any travel costs incurred as a direct result of the CONSULTANTS providing deliverables to the CRA in pursuance of the scope of work contained in Exhibit A, attached hereto and made part hereof.
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the CRA'S representative, indicating that services have been rendered in conformity with the Contract. Hourly fees for FA services unrelated to bond issuance will be authorized by work order and require detailed time records to accompany the invoices. Invoices will normally be paid within thirty (30) days following the CRA representative's approval.
- C. All requests for payment of expenses eligible for reimbursement under the terms of this Agreement shall include copies of said receipts, invoices, or other documentation acceptable to the CRA. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Agreement. Any travel, per diem, mileage, meals, or

lodging expenses which may be reimbursable under the terms of this Agreement will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the CRA. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CRA. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, overhead charges, and other costs used determined the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract.

#### **ARTICLE 5 – TERMINATION**

This Contract may be canceled by the CONSULTANT upon fifteen (15) days' prior written notice to the CRA'S representative in the event of substantial failure by the CRA to perform in accordance with the terms of this contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the CRA, with or without cause, upon fifteen (15) days written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the CRA'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CRA the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the CRA.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 – PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CRA.

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the Company's personnel (and all Subcontractors) while on CRA premises, will comply with all CRA requirements governing conduct, safety and security.

#### **ARTICLE 7 – SUBCONTRACTING**

The CRA reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CRA.

#### **ARTICLE 8 – FEDERAL AND STATE TAX**

The CRA is exempt from payment of Florida State Sales and Use Taxes. The CRA will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with CRA, nor is the CONSULTANT authorized to use the CRA'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 – AVAILABILITY OF FUNDS**

The CRA'S performance and obligation to pay under this contract is contingent upon an annual appropriation for its purpose by the COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY.

#### **ARTICLE 10 – INSURANCE**

A. Prior to execution of this Contract by the CRA, the CONSULTANT shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with the ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CRA'S representative. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Contract.

- B. The CONSULTANT shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the CONSULTANT from claims for damages for bodily and person injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.
- C. The CONSULTANT shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the CONSULTANT from claims for damages for bodily and personal property damages liability to protect the CONSULTANT from claims for damages for bodily and person injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT.
- D. All insurance to be maintained by the CONSULTANT shall specifically include the CRA as an "Additional Insured".

#### **ARTICLE 11 - INDEMNIFICATION**

The CONSULTANT shall indemnify and save harmless and defend the CRA, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of the CONSULTANT, its agents, servants, or employees in the performance of services under this Contract.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The CRA and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the CRA nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CRA which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CRA and the CONSULTANT.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to very other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 14 – CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes 112.311. The CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify the CRA'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the CRA as to whether the 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 of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. 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 the notification and the CONSULTANT shall, 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 the CONSULTANT under the terms of this contract.

#### **ARTICLE 15 – EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the CRA shall consider the facts and extent of any failure to perform the work, and if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the CRA'S rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 16 – ARREARS**

The CONSULTANT shall not pledge the CRA'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligations or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 17 – DISCLOSURE AND OWNERSHIP DOCUMENTS**

The CONSULTANT shall deliver to the CRA'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CRA under this Contract.



All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CRA or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the CRA'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CRA'S expense shall be and remain the CRA'S property and may be reproduced and reused at the discretion of the CRA.

The CRA and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

#### **ARTICLE 18 – INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CRA. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the CRA shall be that of an Independent Contractor and not as employees or agents of the CRA.

The CONSULTANT does not have the power or authority to bind the CRA in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 19 – CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of making of this Contract.

#### **ARTICLE 20 – ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CRA shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

## **ARTICLE 21 – NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

## **ARTICLE 22 – ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions to this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

## **ARTICLE 23 – AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CRA'S representative upon request.

## **ARTICLE 24 – SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, 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 Contract shall be deemed valid and enforceable to the extent permitted by law.

## **ARTICLE 25 – PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133 by entering into this Contract or performing any work in furtherance hereof, the contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

## **ARTICLE 26 – MODIFICATIONS OF WORK**

The CRA reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the CRA'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CRA of any estimated change in the completion date and (3) advise the

CRA if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the CRA so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CRA'S decision to proceed with the change.

If the CRA elects to make the change, the CRA shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed by the CRA.

**ARTICLE 27 – NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the CRA shall be mailed to:

Executive Director  
Riviera Beach Community Redevelopment Agency  
2001 Broadway, Suite 300  
Riviera Beach, FL 33404

and if sent to the CONSULTANT shall be mailed to:

Catalyst Consulting, LLC (an Ohio Limited Liability Company)  
1638 Minturn Dr.  
New Albany, OH 43054  
Attn: Keena M. Smith

**ARTICLE 28 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The CRA and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 26 – Modifications of Work.

[Signatures on next page]

IN WITNESS WHEREOF, the RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY has made and executed this Contract and the CONSULTANT has herunto set its hand the day and year above written.

RIVIERA BEACH COMMUNITY  
REDEVELOPMENT AGENCY

ATTEST:

\_\_\_\_\_

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

JUDY L. DAVIS, CHAIR

Approved as to form and legal sufficiency:

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

J. Michael Haygood

CONSULTANT

CATALYST CONSULTING, LLC

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

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

# Contract Exhibit "A"

## Summary

Catalyst shall provide project advisory services related to New Market Tax Credits Program and the Riviera Beach Community Redevelopment Agency's desire to participate in the program. Services will include completion of an application for a minimum of \$50 million in New Markets Tax Credit (NMTC) authority. The successful funding of NMTC authority will be applied towards a business strategy for the Riviera Beach CRA.

The Services provided by Catalyst will help the CRA maximize tax increment revenues and the investments of its master developer, Viking Developers, LLC to improve the Community Redevelopment Area by using tax credits to attract additional sources of privately funded capital. The Financial Advisor shall provide the following:

### **Task 1 – Organization Structure and CDE Certification:**

Consult with the CRA staff to complete an application for CDE Certification. The legal entity to be formed, at the CRA's sole expense, shall be the Riviera Beach CDE.

### **Task 2 – Complete NMTC Application:**

Assist the CRA staff complete an application for NMTCs for a minimum of \$50 million in NMTC authority. The application is to be completed in four parts: Business Strategy, Community Impact, Management Capacity and Capitalization Strategy.

## Fee

Compensation shall be provided in four stages:

**CDE Certification:** In stage one, Catalyst shall charge a flat fee of \$5,000 to direct staff in completing a certification application for a Community Development Entity.

**NMTC Application:** In stage two, Catalyst shall charge a flat fee of up to \$45,000 to direct and assist staff and sub-contractors in completing a an application for an allocation of a minimum of \$50 million in NMTC authority. The CRA will be billed as first drafts of the applications are completed and reviewed:

Business Strategy:	\$20,000.00 (Payable upon completion and review of draft questions)
Community Impact:	\$15,000.00 (Payable upon completion and review of draft questions)
Management Capacity:	\$ 5,000.00 (Payable upon completion and review of draft questions)
Capitalization Strategy:	\$ 5,000.00 (Payable upon completion and review of draft questions)

The fees during each stage will be assessed based on an hourly rate as follows:

Keena Smith, Project Manager	\$175. Per hour
Dr. William Stronge, Community Impact Consultant	\$175. Per hour
Various Reviewers	\$70-\$125. Per hour