

**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN  
RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY  
AND  
MILLER3 CONSULTING, INC.**

This Contract is made as of this \_\_\_\_\_ day of March, 2018 by and between the RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY, a body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes, referred to as "CRA", and MILLER3 CONSULTING, INC., a Georgia corporation authorized to transact business in the State of Florida, hereinafter referred to as the "CONSULTANT".

**WHEREAS**, the CRA has requested professional services from the CONSULTANT to prepare local inclusions and opportunity documents, to plan and develop a community benefits agreement based on the boards priorities, to provide technical review and analysis for the Marina Village Phase II RFP submittals and to assist in negotiations with the highest ranked proposal; and

**WHEREAS**, the CONSULTANT is uniquely qualified and has provided services to the Agency in the past, along with having worked on implementing inclusive economic development projects and designed and operated inclusive procurement systems throughout the country; and

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the CRA and the CONSULTANT agree as follows:

**ARTICLE 1 – SERVICES AND FEES**

The CONSULTANT's responsibility under this Contract is to provide the services and prepare the deliverables identified in the Scope of Service attached hereto.

- A. The CONSULTANT shall commence upon the issuance of a Notice to Proceed.
- B. CONSULTANT shall coordinate all activities with the CRA's designated project coordinator.

The CRA's representative/liason during the performance of this Contract shall be Scott Evans, Interim Executive Director, whose telephone number is (561) 844-3408.

**ARTICLE 2 – CONTRACT TERM**

- A. Time of Completion - Services must begin within two (2) calendar days from the date of receipt of official notice to proceed. The term of this contract shall be from March 28, 2018 to December 31, 2018.
- B. Reports - Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Proposal.

### **ARTICLE 3 – FUNDING/ CONSIDERATION**

The Agency agrees to pay the CONSULTANT for its services per the rate/cost provided in the attached scope of services, not to exceed \$129,170. Payment for services shall be based on the percentage of project completion or as otherwise provided in the scope of services.

### **ARTICLE 4 – TERM OF CONTRACT**

The term of this contract shall be from March 28, 2018 to December 31, 2018.

### **ARTICLE 5 – TERMINATION**

This Contract may be canceled by the CONSULTANT, in whole or in part, upon seven (7) 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; provided the CRA fails to cure same within that ten (10) day period. This Contract may also be terminated, in whole or in part, by the CRA, with or without cause, immediately 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 hereunder 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.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in the Proposal must be made known to the CRA'S representative and written approval must be granted by the CRA'S representative before said change or substitution can become effective.

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

The CONSULTANT agrees that it is fully responsible to the CRA for the acts and omissions of SUBCONSULTANTS and of persons either directly or indirectly employed by the CONSULTANT. Nothing contained herein shall create any contractual relationship between any SUBCONSULTANT and the CRA.

All of the CONSULTANT'S personnel (and all SUBCONSULTANTS) 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 Subconsultant or to reject the selection of a particular Subconsultant and to inspect all facilities and approve all proposal of any Subconsultant in order to make a determination as to the capability of the Subconsultant to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a Subconsultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the Subconsultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new Subconsultant by the CRA.

If SUBCONSULTANT(s) are used, the CONSULTANT shall use only licensed and insured Subconsultant(s). All SUBCONSULTANTS shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONSULTANT shall be responsible for the performance of all Subconsultants.

#### **ARTICLE 8 - 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, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the CRA determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside CONSULTANT's. The CRA shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 9 - INDEMNIFICATION**

To the extent allowed by law, the CONSULTANT shall indemnify and hold harmless the CRA, its agents, officers, and employees from and against any and all claims, liability, losses, and/or

causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct or omission of the CONSULTANT, its agents, officers, or employees in the performance of services under this Contract.

The CONSULTANT further agrees to indemnify and hold harmless the CRA, its agents, officers and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONSULTANT not included in the paragraph above and for which the CRA, its agents, officers, or employees are alleged to be liable except for acts arising out of the negligence of the CRA, its agents, officers, or employees. CONSULTANT shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

Nothing contained in this Article shall be construed or interpreted as consent by the CRA to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

#### **ARTICLE 10 - 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, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. 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 a party may be hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CRA and the CONSULTANT.

#### **ARTICLE 11 – VENUE**

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all actions arising from and/or relating to the Contract shall be Palm Beach County, Florida.

#### **ARTICLE 12-REMEDIES**

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 every 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 13- 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, Section 112.311. The CONSULTANT further represents that no person having any such conflicting 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 14 - INDEBTEDNESS**

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 obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 15 - DISCLOSURE AND OWNERSHIP OF 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 16 - INDEPENDENT CONSULTANT RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work, services and activities under this Contract, an Independent CONSULTANT, 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 CONSULTANT 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 as specifically provided for in this Contract.

**ARTICLE 17 - 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 or making of this Contract.

**ARTICLE 18 - 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 Article for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

**ARTICLE 19 - 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, political affiliation, marital status, handicap, or sexual orientation. Further, CONSULTANT shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

**ARTICLE 20 - ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of 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 21 - 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.

The CONSULTANT shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or CRA agency.

#### **ARTICLE 22 – 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, the remainder of this Contract, or the application of such terms or provisions, 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 23 - MODIFICATIONS OF WORK**

The CRA reserves the right to make changes in the 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 BOARD OF COMMISSIONERS FOR THE CRA OF RIVIERA BEACH or its designated representative.

**ARTICLE 24 - 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:

Attn: Scott Evans, Interim Executive Director  
2001 Broadway, Suite 300  
Riviera Beach, FL 33404

With a copy to:

J. Michael Haygood  
J. MICHAEL HAYGOOD, PA  
701 Northpoint Parkway, Suite 209  
West Palm Beach, FL 33407

and if sent to the CONSULTANT shall be mailed to:

Sherry J. Williams, Esq.  
Miller<sup>3</sup> Consulting, Inc.  
400 Pryor St., Suite 4068  
Atlanta, GA 30302

**ARTICLE 25 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The CRA and the CONSULTANT agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. 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 27 - Modifications of Work.

**ARTICLE 26 – TIME**

Time is of the essence in all respects under this Contract.

**ARTICLE 27 - TERMINOLOGY AND CAPTIONS**

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context



may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

#### **ARTICLE 28 - WAIVER**

Failure of the CRA to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of the CRA'S right to enforce or exercise said right(s) at any time thereafter.

#### **ARTICLE 29 - PREPARATION**

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

#### **ARTICLE 30 - MATERIALITY**

All provisions of the Contract shall be deemed material. In the event CONSULTANT fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and CRA may at its option and without notice terminate this Contract.

#### **ARTICLE 31 - REPRESENTATIONS/BINDING AUTHORITY**

CONSULTANT has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, the CONSULTANT hereby represents to the CRA that he/she has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

#### **ARTICLE 32 - EXHIBITS**

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

#### **ARTICLE 33 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS**

This Contract consists of the Contract and the Scope of Services attached hereto as "Exhibit "A". The CONSULTANT agrees to be bound by all the terms and conditions set forth in this Contract and the Scope of Services. To the extent that there exists a conflict between this Contract and the Scope of Services, the terms, conditions, covenants, and/or provisions of this Contract shall

prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

**ARTICLE 34- LEGAL EFFECT**

This Contract shall not become binding and effective until approved by the COMMISSIONERS OF THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY or its designated representative.

**ARTICLE 35 - NOTICE OF COMPLAINTS OR SUITS**

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named and shall do nothing to impair or invalidate any applicable insurance coverage.

**ARTICLE 36 – SURVIVABILITY**

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

**ARTICLE 37 - WAIVER OF SUBROGATION**

CONSULTANT hereby waives any and all rights to Subrogation against the CRA, its officers, employees and agents for each required policy. When required by the insurer or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONSULTANT enter into such an agreement on a pre-loss basis.

**ARTICLE 38 - RIGHT TO REVIEW**

The CRA, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CRA reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

**ARTICLE 39- FLORIDA PUBLIC RECORDS ACT**

The Consultant shall comply with Florida's Public Records Act, and specifically section 119.0701, Florida Statutes, by agreeing to:

- (a) Keep and maintain all public records that ordinarily and necessarily would be required by the CRA to keep and maintain in order to perform the services under this Agreement.
- (b) Provide the public with access to said public records on the same terms and conditions that the CRA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining said public records and transfer, at no cost, to the CRA all said public records in possession of the Consultant upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. All records stored electronically must be provided to the CRA in a format that is compatible with the information technology systems of the CRA.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS Darlene Hatcher at 561-844-3408 or email [dhatcher@rbkra.com](mailto:dhatcher@rbkra.com), 2001 Broadway, Suite 300, Riviera Beach, FL 33404.

[Signatures on following page]

IN WITNESS, WHEREOF, the parties unto this Contract have set their hand and seal on the day and year above written.

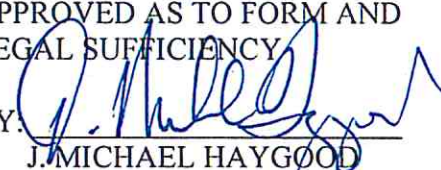
RIVIERA BEACH COMMUNITY  
REDEVELOPMENT AGENCY

BY: \_\_\_\_\_  
TONYA DAVIS JOHNSON  
CHAIRPERSON

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY:  \_\_\_\_\_  
J. MICHAEL HAYGOOD  
J. Michael Haygood, P.A.  
CRA ATTORNEY  
Date: 5/23/2018

CONSULTANT:  
MILLER3 Consulting Incorporated

\_\_\_\_\_  
Dave J. Miller, Sr.  
Chief Executive Officer