

## NMTC PROFESSIONAL SERVICES AGREEMENT

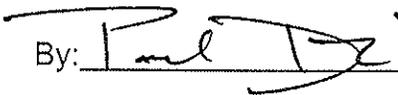
This Professional Services Agreement (“Agreement”) is made and entered into by and between the Port of Camas-Washougal (hereinafter referred to as Port), City of Camas (hereinafter referred to as Camas), City of Washougal (hereinafter referred to as Washougal), and Camas-Washougal Economic Development Association (hereinafter referred to as CWEDA) for professional services in the form of establishing a Community Development Entity (hereinafter referred to as CDE) that can further build community capacity and economic development efforts. This PSA is consistent with the Interlocal Agreement between Port, Camas, Washougal, and CWEDA.

- 1. Purpose.** To retain consultant Pilot Management Resources LLC that will develop an organization (including a CDE) and resources necessary for attracting capital investment in areas of Camas and Washougal that are not presently receiving sufficient economic development. Formation of a CDE is a necessary prerequisite to applying for and obtaining New Market Tax Credits (hereinafter referred to as NMTC) that can help bridge the financial gap in projects that otherwise would be infeasible to pursue.
- 2. Scope of Work.** CWEDA will serve as the lead agency coordinating the consultant’s work efforts on behalf of the other three parties. The specific scope of the consultant is set forth in the Consulting Services Agreement and the Term sheet attached as Exhibit A.
- 3. Compensation.**
  - a. Payment Schedule. The parties agree to a payment of up to \$87,500, which will be used exclusively for completing the consultant work as identified in Exhibit A. Each partner will pay a share of the total project costs commensurate with the funding allocations for CWEDA operations (all payment will be divided as follows: Camas 25%, Washougal 25%, and Port 50%). The funding will be disbursed as follows:
    - b. Phase 1, Assisting with the feasibility analysis, will begin upon execution of this Agreement and the Services Agreement. The total cost for this phase will be \$12,500, of which \$5,000 will be paid upon execution of this agreement. The remainder of \$7,500 will be due upon completion of Phase 1.
    - c. Phase 2, establishing and certifying a CDE, will commence: (1) at the completion of Phase I, and (2) upon agreement of the governing bodies of the parties. The fee for Phase II is \$25,000.
    - d. Phase 3 consists of developing a strategy for completing and filing a NMTC application. Phase 3 will commence only at the request and direction of the governing bodies of the parties. The fee for completion of Phase 3 is \$50,000.

4. **Term.** The parties intend the maximum term of this Agreement to last though the completion of phase 3, which will provide the seed money necessary for completing the services outlined in Exhibit A. It is the intent of all parties that the CDE be self sufficient once the services in Exhibit A are completed. If the parties choose not to proceed with Phases 2 and/or 3, this agreement is terminated without further obligation beyond the funds necessary to complete Phase 1.
5. **General Considerations.** CWEDA will keep the Port, Camas, and Washougal advised as to the status and progress of all matters. CWEDA will provide regular progress reports to the governing body's other the parties. Files on "public" matters will be open for inspection by each of the three public partners at any reasonable time. CWEDA will make every effort to handle public matters promptly and efficiently according to established legal and ethical standards.

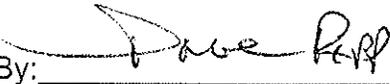
Dated: April 29, 2014. CWEDA

A Washington State Non-Profit Corporation  
UBI#: 603-137-678

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

Dated: April 15, 2014.

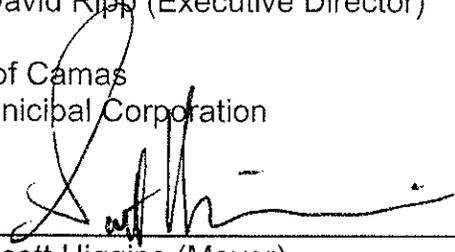
PORT OF CAMAS-WASHOUGAL  
A Municipal Corporation

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

David Ripp (Executive Director)

Dated: April 21, 2014.

City of Camas  
A Municipal Corporation

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

Scott Higgins (Mayor)

Dated: April 28, 2014.

City of WASHOUGAL  
A Municipal Corporation

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

Sean Guard (Mayor)

# Exhibit A

**CONSULTING SERVICES AGREEMENT**

This Services Agreement (this "Agreement") is entered into as of the Effective Date (the "Effective Date") set forth herein, by and between Pilot Management Resources, LLC, an Oregon limited liability company ("Consultant") and \_\_\_\_\_ a Washington \_\_\_\_\_ (the "Client").

**SERVICES**

Consultant will perform for the Client the consulting services (the "Services") specified in Exhibit A (the "Term Sheet") attached hereto and made a part hereof. In the event of a conflict between any term of this Agreement and the Term Sheet, the terms of this Agreement will prevail. Changes within the scope of the Services will be made only in a writing executed by authorized representatives of both parties. Consultant will have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change is agreed upon by the parties in writing.

**PAYMENT FOR SERVICES AND EXPENSES**

The Client will pay Consultant for Services, and the amounts otherwise payable to Consultant hereunder, within ten (10) days of receipt of invoices submitted by Consultant. Except as otherwise specified on the Term Sheet, Consultant will be solely responsible for its expenses incurred in the completion of this project. If the Term Sheet provides for the payment of expenses by the Client, Consultant will not incur any such expenses without the prior approval of the Client.

**WORK PRODUCT**

All deliverables, work-product, written materials and other information originated and prepared for the Client by Consultant pursuant to this Agreement will belong exclusively to the Client and will be deemed work-made-for-hire under applicable law. Consultant assigns to the Client Consultant's entire interest in such property (including, but not limited to all copyrights, patents, trade secrets, trademark rights, moral rights and other intellectual property rights in such property). Consultant agrees to take such actions as are reasonably necessary to confirm, perfect and protect the Client's ownership interest in such property.

**CONFIDENTIAL INFORMATION**

The Client considers all information provided to Consultant pursuant to this Agreement, whether conveyed electronically, verbally, in writing or otherwise, to be Confidential Information. Consultant may not disclose any Confidential Information to any person not in the Client's employ, without the Client's express prior consent.

**WARRANTY**

Consultant warrants that its Services will be performed in a professional and workmanlike manner in accordance with

applicable professional standards and will reperform any work not in compliance with this warranty brought to its attention within three (3) months after that work is performed. Consultant further warrants that any deliverables provided pursuant to the Term Sheet will conform in all material respects to the specifications for such deliverable included in the Term Sheet and Consultant will at its own cost and expense, remedy any such nonconformance brought to its attention within three (3) months after that work is performed.

THE PRECEDING IS CONSULTANT'S ONLY WARRANTY CONCERNING THE SERVICES AND ANY WORK PRODUCT, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.

**INDEMNIFICATION**

Consultant will indemnify and hold harmless the Client, its employees and agents, from and against any claims, demands, loss, damage or expense relating to (a) bodily injury or death of any person or damage to real and/or tangible personal property incurred while Consultant is performing services hereunder, (b) any claim that any deliverable provided to the Client hereunder violates the intellectual property rights of a third party, (c) any claim by governmental agencies arising out of the characterization Consultant or any of its employees or consultants contrary to that provided in Section 7, or (d) any claim by any employee of or consultant to Consultant arising out of this Agreement.

Consultant will not indemnify the Client under Section 6.1(b) if the claim of infringement is solely caused by (a) the Client's misuse or modification of such deliverable item(s); (b) the Client's failure to use corrections or enhancements made available by Consultant; (c) the Client's use of such deliverable item(s) in combination with any product or information not owned or developed by Consultant; or (d) information, direction, specification or materials provided by the Client or any agent of the Client. If any such deliverable item is, or in the Client's reasonable opinion is likely to be, held to constitute an infringing product, Consultant will at its expense and option either (w) procure the right for the Client to continue using it, (x) replace it with a noninfringing equivalent, (y) modify it to make it noninfringing or (z) accept return of the deliverable item and refund to the Client the fees paid for such deliverable item. The

foregoing remedies constitute the Client's sole and exclusive remedies and Consultant's entire liability with respect to infringement.

#### **INDEPENDENT CONTRACTOR**

In connection with this Agreement each party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein will be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose.

Consultant acknowledges and agrees that Consultant is not entitled to unemployment insurance benefits or industrial insurance benefits from the Client and that Consultant is solely and exclusively responsible for payment of all federal and state taxes on any monies paid to Consultant under this Agreement.

#### **LIMITATION ON LIABILITY**

*Except for any liability under Section 6, the maximum liability of either party relating to services rendered under this agreement (regardless of form of action, whether in contract, negligence or otherwise) will be limited to the charges paid to Consultant for the portion of its services or work products giving rise to liability. In no event will either party be liable for consequential, special, incidental or punitive loss, damage or expense (including without limitation, lost profits, opportunity costs, etc.) even if it has been advised of their possible existence. The allocations of liability in this Section 8 represent the agreed and bargained-for understanding of the parties and Consultant's compensation for the Services reflects such allocations.*

#### **TERMINATION**

Either party may, upon giving ten (10) days written notice, terminate this Agreement for breach of a material term or condition of this Agreement, provided the breaching party will not have cured such breach within the ten (10) day period.

The Client may upon giving forty five (45) days written notice, terminate this Agreement.

Upon any termination of this Agreement, Consultant will deliver copies of any deliverables, including any work in process to the Client. Upon receipt of such information, and evidence of compliance with the terms of the Non-Disclosure Agreement between the parties, the Client will pay Consultant all amounts due for work completed under this Agreement and a reasonable proportion of fees for uncompleted projects for which partial work has been performed. The terms of Sections 4, 5, 6, 8, 9 and 12 will survive termination of this Agreement.

#### **FORCE MAJEURE**

*Neither party will be liable for any delays or failures in performance due to circumstances beyond its control.*

#### **EQUAL EMPLOYMENT**

*Consultant agrees not to discriminate against any person on the basis of race, creed, color, national origin, sex, age, mental or physical handicap, sexual orientation, or status as disabled veteran or a veteran of the Vietnam era, in the performance of services under this contract.*

#### **GENERAL**

No Assignment. Consultant may not assign or delegate any of Consultant's rights or obligations under this Agreement to any person without the prior written consent of the Client, which the Client may withhold in the Client's sole discretion.

Amendment. This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.

Notices. All notices or other communications required or permitted by this Agreement must be in writing and must be delivered to the parties at the addresses set forth in the Term Sheet, or any other address that a party may designate by notice to the other party. All such notices or other communications are considered delivered: (a) upon actual receipt if delivered personally or by fax or an overnight delivery service; and (b) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

Waiver. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

Severability. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle of any jurisdiction. Any action or proceeding arising out of this Agreement will be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

Attorney Fees. If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under

the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

Stephen Brooks  
Pilot Management Resources  
3545 NE 25<sup>th</sup> Avenue  
Portland, OR 97212

Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

Contractor Address. All written communication by the Client to the Contractor shall be addressed to:

The parties have signed and entered into this Services Agreement as of November 15, 2013, the Effective Date herein.

**CONSULTANT:**

**CLIENT:**

By: \_\_\_\_\_  
Name: Stephen Brooks  
Title: Principal

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**Term Sheet**

Client:

Effective Date:

Address:

Term:

This Agreement will commence on the Effective Date and terminate as specified in this Term Sheet. Any extension or other modification of the term of this Agreement must be in writing signed by the Parties.

Services:

The Contractor will provide the Services in three stages: (1) provide recommendations regarding the appropriate structure for Client to establish, or participate in establishing, a Community Development Entity ("CDE"); (2) assist with formation and governance structuring of the CDE, and prepare and file a Application for Certification of the CDE by the Community Development Financial Institutions Fund (the "CDFI Fund"); and (3) prepare and file, in coordination with the CDE and its Governing Board, the Port of Washougal, and the Camas Washougal Economic Development Association ("CWEDA"), an application for New Market Tax Credit Allocation, in response to the Notice of Allocation Award to be issued by the CDFI Fund in 2014.

Contractor will provide reports and materials that address the following:

1. A written recommendation for the appropriate legal, organizational and governance structure for the CDE.
2. A written analysis of the feasibility of NMTC financing for projects presented by Client, prior to May 5, as prospective projects for funding by the CDE.
3. The critical path for CDE Certification, including recommendations with respect to Service Area, Advisory Board composition, operating structure, internal controls, professional services, and compliance systems.
4. A three-year strategic plan for the CDE.
5. A proposed NMTC Allocation strategy, including (1) Business Strategy; (2) Community Impact; (3) Management Capacity; and (4) Financing Capacity
6. Preparation and filing the NMTC Application, which will commence immediately upon publication of the Allocation Application by the CDFI Fund.

Compensation and Expenses:

**(1) Compensation: Client agrees to pay Consultant a total fee of \$87,500, as follows**

- a. **Client will pay a fee of \$12,000 for Phase 1 services, including the materials numbered 1 & 2 above; provided that \$5,000 of the Phase 1 fee will be payable immediately upon execution of this Agreement**
- b. **Client will pay Contractor a fee of \$25,000 upon completion of Phase 2, which will consist of completion of materials under item 3 above, and execution and filing of the CDE Certification Application, and all requisite ancillary documents**
- c. **Client will pay Contractor a fee of \$50,000 upon completion of Phase 3, which will consist of completion of materials listed as items 4 through 6 above, and completion and filing of the Application for Allocation of NMTC Authority.**

(2) **Expenses:** Client will reimburse the Contractor for the following expenses upon receipt of Contractor invoice:

- a) Copying, printing and other document production or reproduction costs, for production of materials executed at the Client's request.
- b) Transportation, lodging and a travel per-diem of \$50, for out-of-town travel undertaken at the Client's request or prior approval.
- c) Any other expense for which the Contractor receives prior written authorization from the Client, including authorization by e-mail communication or by phone text.

(3) **Billing:** Contractor will Invoice for services on completion of each Phase as described herein, to be paid within 10 business days. Expenses will be billed monthly, payable within 10 business days.

Approved by \_\_\_\_\_