

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made effective as of April 1, 2015 by and among **Cascade Management, Inc.** an Oregon corporation ("**Consultant**")

and Mason County Housing Authority ("**Owner**").

Recitals

Owner is engaged in providing housing for low-income persons in Mason County, Washington, and has sought the services of Consultant to perform development services necessary for the refinancing and redevelopment of certain Projects in Shelton, Washington. Properties that will receive services under this agreement include Kneeland Park and Pine Gardens – two of the Owner's four properties.

Consultant is an experienced and qualified housing development consultant which provides project development and asset assessment consulting services to owners and developers of housing projects serving low-income populations.

Owner wishes to avail itself of certain professional services offered by Consultant on the terms and conditions set forth herein. Consultant is willing to provide the professional services described herein on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the promises set forth below, Owner and Consultant hereby agree as follows:

Agreement

- 1. Definitions.** The Recitals above and the definitions appearing in the Recitals are incorporated into this Agreement.
- 2. Scope of Work.** Consultant shall assist Owner in obtaining and analyzing proposal for refinancing and redevelopment of the Projects. This review/assessment includes procuring proposals from lenders, analyzing proposed financial options based on Project needs/goals, and making recommendations to the Owner on options for proceeding with refinance or redevelopment. This includes assessing all finance options – including but not limited to private, public, predevelopment, bridge, and term loans. In the context of this work, the Consultant may also provide additional property assessments and capital needs budgets, which will inform the Owner and lender as to the true financial needs of the Projects. If completed internally, these assessments are included in this hourly rate and compensation. If external assessments are needed, the Consultant will arrange for these on behalf of and only with the Owner's written permission.

3. **Compensation.** Consultant shall bill Owner \$110/hour for Consulting Services. Consultant will provide Owner a monthly update, via email, of billable time accrued on the Project. Fee accrue monthly. Under no circumstances will the accrued billing exceed \$10,000 without the Owner's consent, which consent can be made in writing via email.
4. The Consultant's fees shall be earned and due as the work is performed. The Consultant is not working on a contingency basis. Consultant understands that the Owner will be applying for predevelopment loan funds to pay for project related expenses, including consulting fees. Further Consultant understands that their work is crucial to the Owner obtaining these funds. The Consultant, at its discretion, may defer payment of fees earned under this contract until either the closing of loans to pay for predevelopment/consulting costs related to restructures or increased cash flow from Project operations.

Reimbursable expenses will accrue separately from the hourly rate for services and will be due as the expenses are incurred. These will include mileage to the Properties in Shelton or to Seattle, where the majority of finance partners for these Projects are located. If overnight stays are warranted, the Consultant will bill back to the Owner amounts that will not exceed the federal per diem rates for lodging and food, as can be found at <http://www.gsa.gov/portal/category/100120>. Such reimbursables shall not exceed \$2,500 without the permission of the Owner and will be paid per terms outlined above. The Consultant, at its discretion, may defer payment of reimbursable expense under this contract until either the closing of loans to pay for predevelopment/consulting costs related to restructures or increased cash flow from Project operations in a similar manner as fees earned above.

Since the extent of the services required of the Consultant are undetermined at this time, Owner and Consultant agree to revisit the terms of this agreement once the maximum fees outlined have been reached. At that time the parties may agree to extend the Agreement terms or restructure Consultant Services under a separate agreement.

5. **Independent Contractor Status:** Consultant will perform work as an independent contractor and is responsible for its own insurance, tax and reporting obligations. Nothing in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates thereof.
6. **Insurance.** Consultant shall obtain and maintain in force, at its own expense, throughout the performance of its obligations under this Agreement, insurance coverage against claims, regardless of when asserted, that may arise out of, or result from, Consultant's performance of Consulting Services under this Agreement.
7. **Consultant's Representations.** Consultant represents and warrants that the Consulting Services performed by Consultant pursuant to this Agreement shall be performed in a professional manner by individuals who are qualified to perform such work.

8. **Contract Managers.** Terri Silvis, Director of Development Services, shall serve as contract manager for Consultant.
9. **Ownership of Work Product.** Subject to payment in full of the fees specified herein, except for Consultant's tools, processes, pre-existing materials, methodologies and derivative works thereof which Owner acknowledges and agrees are owned by Consultant, Consultant hereby agrees that all work product produced by Consultant under this Agreement shall become the property Owner. Consultant shall retain a non-exclusive right to use intellectual property that is subject to this paragraph.
10. **Binding Effect; Assignment.** This Agreement shall be binding on and enforceable by and against the parties to it and their respective heirs, legal representatives, successors, and permitted assigns. Except as expressly provided herein, duties of Consultant shall not be assigned to any other party.
11. **Modification, Amendment.** The terms of this Agreement may be waived, altered, amended, modified, or repealed, in whole or in part, only in a writing bearing the signatures of all parties to this Agreement.
12. **Termination.** This Agreement may be terminated by either party at any time upon 30 days' written notice to the other party. In the event of termination by Consultant, Owner shall pay Consultant all amounts owed to Consultant (whether for Consulting Services or Reimbursable Expenses) within fifteen (15) days following termination (subject to any rights of setoff which shall be applicable, if at all, solely to Consulting Services and not to Reimbursable Expenses). Upon payment of amounts owed, Consultant shall deliver all work product to Owner. Amounts owed to Consultant as of the date of termination shall be calculated as follows: (a) All Reimbursable Expenses incurred as of the date of termination shall be payable in full; (b) Fees for Consulting Services shall be payable at the rate of \$110 / hour for time spent by Consultant.
13. **Indemnification.** Consultant, and Owner mutually agree to defend, indemnify, and hold harmless each other from and against any and all claims, demands, and actions, and any liabilities, damages, or expenses resulting therefrom, including court costs, expert witness fees and reasonable attorney fees (whether at trial, mediation, or arbitration, on appeal or review or petition for review), arising out of or by reason of the other party's gross negligence, fraud, or willful misconduct related to the provision of Consulting Services under this Agreement. The obligations of the parties under this section shall survive the termination of this Agreement. Each party agrees to give each other prompt notice of any claim, demand, or action covered by this section and shall, to the extent a party is not adversely affected, cooperate fully with each other in defense and settlement of said claim, demand, or action.

Owner further agrees to defend, indemnify, and hold harmless Consultant from and against any and all claims, demands, and actions (including third-party claims or claims for contribution), and any liabilities, damages, or expenses resulting therefrom, including court costs, expert witness fees and reasonable attorney fees (whether at trial, mediation, or arbitration, on appeal or review or petition for review), arising out of any claim, demand, action or dispute relating to the design or construction of the Project excepting only such claims, demands or actions which (i) are commenced directly by

Owner against Consultant and (ii) arise from the gross negligence, fraud, or willful misconduct of Consultant.

- 14. Force Majeure.** Consultant shall not be liable to Owner for any failure or delay caused by events beyond Consultant's control, including, without limitation, Owner's failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, illness or death of Consultant's personnel, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failures.
- 15. Limitation on Liability.** Owner agree that Consultant's liability hereunder for damages, costs, fees, expenses, or with respect to any obligation to defend, indemnify and/or hold harmless any other party to this Agreement, regardless of the form of action, shall not exceed, in the aggregate, the total amount actually paid by Owner to Consultant for Consultant Services, exclusive of Reimbursable Expenses, under this Agreement (as it may be amended from time to time).
- 16. Arbitration / Mediation.** Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, scope, or validity of this Agreement or this arbitration provision, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate through either of the organizations named above or any other mediation process or mediator as the parties may agree upon.
- 17. Applicable Law.** This Agreement shall be subject to, and interpreted in accordance with, the laws of the State of Washington without respect to conflict of law principles.
- 18. Attorney Fees.** In the event any arbitration, action or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs (including expert witness fees) incurred at arbitration, trial, appeal, review or petition for review.
- 19. Notice.** All notices required or permitted under this Agreement must be in writing. Notices may be given by facsimile, email attachment, overnight delivery, hand delivery, or certified mail with return receipt requested addressed as set forth below. In the case of notices given by email attachment or facsimile, hand delivery, or air courier, such notices shall be effective when delivered on a business day to an address of the party set forth herein. Notices given by certified mail shall be sent postage prepaid and shall be effective upon delivery or refusal to accept delivery. Either party may, by written notice to the other, change its address for purposes of notice given under this Agreement.

Consultant: Cascade Management, Inc.
13221 SW 68th Parkway, Suite 310
Portland, OR 97223
Attn: Terri Silvis

Email: terri.silvis@cascade-management.com
Facsimile: 503-682-5656
Telephone: 503-682-7788

Owner:

Email:
Facsimile:

20. Final Agreement. Unless otherwise provided in writing in this Agreement or amendments thereto, this Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Consultant or Owner and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever.

21. No Warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONSULTANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES TO BE RENDERED OR WORK PRODUCT TO BE PROVIDED BY ITS PERSONNEL OR THE RESULTS TO BE OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, OR FOR ACTS OTHER THAN THOSE WHICH ARE GROSSLY NEGLIGENT OR CONSTITUTE INTENTIONAL MISCONDUCT, REGARDLESS OF WHETHER OR NOT THE OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN WITNESS WHEREOF, the parties to this Agreement have executed it as of the date first set forth above.


Owner

Mason County Housing Authority

By: *Karen G. Monroe* *4/1/2015*
Karen Monroe, Vice-Chair

Consultant

Cascade Management, Inc.

By: 
Ryan McClung, President and CFO