

PUBLIC NOTICE

The Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District announces a Special Meeting to be held on Wednesday, June 4, 2014 at 12:00 p.m. in the Woodley Island Marina Meeting Room, Eureka, CA. The purpose of the Special Meeting is for the Board in Closed Session to discuss the purchase of Freshwater Tissue Company Samoa Pulp Mill Parcels B, C and 4. Also in Open Session the Board will consider the following: purchase of Freshwater Tissue Company Samoa Pulp Mill Parcels B, C and 4; Agreement for Bond Counsel Services with The Weist Law Firm; Investment Banking Services Agreement with Stern Brothers and Company; and New Markets Tax Credits Consulting Agreement with Lowe Enterprises Real Estate Group.

AGENDA
SPECIAL MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

DATE: June 4, 2014
TIME: 12:00 p.m. Special Meeting
PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 24 hours in advance of the meeting.

- 1. Call to Order Special Meeting at 12:00 p.m. and Roll Call**
 - 2. Pledge of Allegiance**
 - 3. Public Comment**
 - 4. Move to Executive Closed Session**
 1. Move to Executive Closed Session pursuant to the provisions of the California Government Code Sections 54956.8 (Conference with Real Property Negotiator)
 - a) Conference with Real Property Negotiator
Negotiating Parties: Paul Brisso, District Counsel; Richard Marks, Board President; Jack Crider, Chief Executive Officer

Under Negotiation:
Freshwater Tissue Company Samoa Pulp Mill Parcels B, C and 4
- 5. Adjourn Executive Closed Session**
- 6. Report on Executive Closed Session**
- 7. Move to Regular Session**
- 8. New Business**
 - a) Consideration of approval of Option Agreement to purchase of Freshwater Tissue Company Samoa Pulp Mill Parcels B, C and 4.
 - b) Consideration of approval of Agreement for Bond Counsel Services with The Weist Law Firm.
 - c) Consideration of approval of Investment Banking Services Agreement with Stern Brothers & Company.
 - d) Consideration of approval of New Markets Tax Credits Consulting Agreement with Lowes Enterprises Real Estate Group.
- 9. Adjourn Special Meeting**

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AGREEMENT FOR BOND COUNSEL SERVICES

THIS AGREEMENT is made and entered into as of this _____ day of May, 2014 by and between the Humboldt Bay Harbor, Recreation & Conservation District (the "District"), whose address is 601 Startare Dr, Eureka, CA 95501, and The Weist Law Firm (the "Bond Counsel"), whose address is 108 Whispering Pines Drive, Suite 235, Scotts Valley, CA 95066.

WITNESSETH:

WHEREAS, the District desires to arrange for the procurement of low interest rate municipal refunding bond obligations in connection with the proposed refunding (the "Refunding") of the District's remaining outstanding long-term indebtedness (the "Prior Obligations"); and

WHEREAS, the District desires to retain Bond Counsel to do the necessary consulting, legal and analytical work hereinafter outlined, upon the terms and conditions hereinafter set forth, to structure, issue and deliver said low interest rate municipal refunding bond obligations (the "2014 Refunding Obligations") as necessary to successfully accomplish the separate Refunding of the Prior Obligations; and

WHEREAS, Bond Counsel is specifically trained and experienced in the conduct of Refunding proceedings for accomplishing the issuance of the 2014 Refunding Obligations, and hereby represents that it is ready, willing and able to perform said work; and

NOW, THEREFORE, in consideration of the covenants and premises herein contained and other good and valuable consideration, the parties hereto agree as follows:

Section 1. Scope of Services.

Bond Counsel Services: Bond Counsel shall provide the following legal services in connection with the preparation of the resolutions, documents and certifications necessary for the sale and delivery of the 2014 Refunding Obligations. Such services shall include the following:

1. Consulting with representatives of the District, including the Chief Executive Officer, Treasurer, Secretary, as well as the District's attorneys, engineers, consultants, and others, with respect to the timing, terms and legal structure of the proposed issuance of 2014 Refunding Obligations.

2. Preparing all resolutions, ordinances, notices, affidavits, Depository Trust Company agreements, escrow agreements, indentures, installment sale agreements, lease or loan agreements, and other legal documents customarily prepared by Bond Counsel, as required for the issuance of 2014 Refunding Obligations (the "Principle Documents").

3. Reviewing documents prepared by District staff, advisors, and/or consultants, including audit reports and budgets, project descriptions, rate setting documents, the purchase contract(s) to be derived therefrom, and all continuing disclosure undertakings.

4. Preparing documentation with respect to any bond provisions, parity debt provisions and reserve fund policy provided or required in connection with the 2014 Refunding Obligations, if any.

5. Preparing the escrow agreements (including all required call notices) necessary for the full and proper defeasance of the Prior Obligations.

6. Reviewing and evaluating the various financing structures that may be available to the District for the securing of the 2014 Refunding Obligations.

7. Reviewing the financing plan for the Refunding and the issuance of 2014 Refunding Obligations.

8. Attending such meetings or hearings of the Business/Finance Committee and District Board of Commissioners (the "Board"), and working group meetings or conference calls as the District may request, and as Bond Counsel deems prudent and necessary.

9. Advising as to the prudence of seeking a rating and/or bond insurance. If the District chooses to proceed with a rating and/or bond insurance or other form of credit enhancement, we will be proactive in the process of obtaining the best rating and terms possible.

10. Preparing all final closing papers required to effect delivery of the 2014 Refunding Obligations, and coordinate the closing of the 2014 Refunding Obligations.

11. Rendering Bond Counsel's customary final legal opinion as to the validity of the 2014 Refunding Obligations and the exemption from gross income for federal income tax purposes and from California personal income tax of interest thereon.

12. Preparing the required reports to the California Debt and Investment Advisory Commission (pursuant to section 8855 et seq. of the Government Code) respecting the sale of the 2014 Refunding Obligations and Form 8038-G to the Internal Revenue Service (pursuant to Section 149 of the Internal Revenue Code of 1986).

13. Preparing a complete transcript of the proceedings, containing originally signed copies of all resolutions, ordinances, legal agreements, disclosure statements, certificates and notices. Copies shall be provided to the District and certain members of the financing team, not to exceed four total copies.

Excluded Services Bond Counsel's services are limited to those specifically set forth above. Bond Counsel's services do not include representation of the District or any other party to the transaction in any litigation or other legal or administrative proceeding involving any of the 2014 Refunding Obligations, the Refunding or any other matter. Bond Counsel's services also do not include compliance with the California Environmental Quality Act, the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the Porter-Cologne Water Quality Control Act, the Safe Drinking Water and Toxic Enforcement Act of 1986, the Hazardous Substance Account Act, the Hazardous Waste Control Act, or any determinations pertaining to completion and readiness for acceptance.

Bond Counsel's services also do not include any responsibility for compliance with state blue sky, continuing disclosure undertakings, environmental, land use, real estate or similar laws or for title to or perfection of security interests in real or personal property, including the acquisition of interests in real property, whether through gift, negotiation or the exercise of the power of eminent domain. Bond Counsel's services also do not include any responsibility the negotiation or preparation of joint powers agreements with other agencies. Bond Counsel will not be responsible for the services performed or acts or omissions of any other participant. Also, Bond Counsel's services will not extend past the date of issuance of the 2014 Refunding Obligations and will not, for example, include services related to on-going administration, annexation, rebate compliance or continuing disclosure or otherwise related to the 2014 Refunding Obligations, proceeds of the 2014 Refunding Obligations or a refunding after issuance of the 2014 Refunding Obligations.

Bond Counsel may be willing to perform such excluded services on such terms as might be mutually agreed to at the time of need. The performance by Bond Counsel of services excluded by the above paragraph, if required by the District, shall be under separate written agreement.

Section 2. Compensation.

- A. Legal Fees for Bond Counsel Services. For all bond counsel services rendered in connection with the Refunding of the Prior Obligations and the corresponding issuance of the 2014 Refunding Obligations offered on a private placement basis, our fee shall be a contingent flat fee of \$37,500. Payment of said amount shall be entirely contingent upon the successful placement of such 2014 Refunding Obligations.
- B. Out-of-Pocket Expenses. In addition to the legal fees, Bond Counsel shall be reimbursed its normal and customary out-of-pocket expenses, including travel (which includes an out of office fee of \$550 for each day of travel) and customary mileage rates; parking charges and bridge tolls as incurred, photocopies at forty-five cents per page, transcript preparation and distribution; telephone and facsimile charges as incurred, and postage and express delivery charges as incurred, with a cap of \$2,750.

Section 3. Termination of Agreement and Legal Services.

This Agreement and all legal services to be rendered under it may be terminated at any time by written notice from either party, with or without cause. In that event, all finished and unfinished documents prepared for adoption or execution by the District, shall, at the option of the District, become its property and shall be delivered to it or to any party it may designate; provided that Bond Counsel shall have no liability whatsoever for any subsequent use of such documents. In the event of termination by the District, Bond Counsel shall nevertheless be entitled to receive full compensation in the exact manner set forth in Section 2 hereof (which shall remain similarly contingent) if the District concludes a refunding of the Prior Obligations within three years from the date of termination of this Agreement, regardless of the amount of work or length of time invested by Bond Counsel up to the point of termination. This continuing, but contingent, right to receive full compensation shall survive the term of this Agreement. If not sooner terminated as aforesaid, this Agreement and all legal services to be rendered under it shall terminate upon final issuance of the 2014 Refunding Obligations. Upon termination, Bond Counsel shall have no future duty of any kind to or with respect to the 2014 Refunding Obligations or the District.

Section 4. Insurance.

Bond Counsel specifically represents that it maintains errors and omissions insurance of a minimum of \$1,000,000/\$2,000,000 aggregate applicable to the Bond Counsel services to be rendered under this Agreement.

Section 5. Nature of Engagement.

The District acknowledges that Bond Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Bond Counsel has represented, is representing or may in the future represent other public entities, underwriters, trustees, rating agencies, insurers, credit enhancement providers, banks, lenders, contractors, suppliers, financial and other consultants/advisors, accountants, investment providers/brokers, providers/brokers of derivative products and others who may have a role or interest in the Refunding proceedings or the financing of 2014 Refunding Obligations or that may be involved with or adverse to the District in this or some other matter.

Bond Counsel agrees not to represent any such entity in connection with the 2014 Refunding Obligations, during the term of this Agreement, without the consent of the District. Given the special, limited role of Bond Counsel described above, the District acknowledges that no conflict of interest exists or would exist, and waives any conflict of interest that might appear actually or potentially to exist, now or in the future, by virtue of this Agreement or any such other attorney-client relationship that Bond Counsel may have had, have or enter into, and the District specifically consents to any and all such relationships.

Section 6. Standards of Professional Conduct.

Bond Counsel and every employee thereof shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. Bond Counsel represents that it is specially trained, experienced, expert and competent to perform the services required under this Agreement, and that each individual providing legal services is a member in good standing of the State Bar and is licensed to practice in California.

Bond Counsel certifies that it will not accept representation in any matters, including litigation, under this Agreement if it or any employee thereof has any personal or financial interest therein. Bond Counsel certifies that it accepts this retention because it has the time, energy, skills and ability necessary to perform the duties required in an efficient, trustworthy, professional and businesslike manner.

It is understood that the services under this Agreement must be provided immediately, and that they are time-critical. Bond Counsel is engaged by District for its unique qualifications and skills. Bond Counsel agrees that it will comply with all ethical duties, will maintain the integrity of the Bond Counsel-client relationship, and will take all steps available to preserve all applicable legal privileges, confidences, and records from disclosure; however, it is hereby understood and agreed that proceedings related to the 2014 Refunding Obligations are public in nature, and the District hereby waives its right to confidential communications, and protecting of records from disclosure.

Section 7. Independent Contractor.

Bond Counsel and District understand and agree that Bond Counsel is an independent contractor and that the District shall not be liable for Workers' Compensation, retirement or unemployment benefits for Bond Counsel or Bond Counsel's agents, partners or employees.

Section 8. No Guarantee of Outcome.

District hereby acknowledges and agrees that this is a best efforts undertaking, and that no guarantee of success or outcome has been, or can be, made by Bond Counsel.

Section 9. Arbitration.

Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled solely and exclusively by binding arbitration in San Francisco, California. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of JAMS/Endispute ("JAMS"), with the following exceptions if in conflict: (a) one arbitrator shall be chosen by JAMS; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the JAMS' rules and regulations) of the proceedings has been given to such party. Each party shall bear its own attorneys fees and expenses.

The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided however, that nothing in this Section shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY submits to the ongoing jurisdiction of the state of California and/or the United States District Court for THE ENFORCEMENT HEREOF.

Section 10. Entire Agreement.

This Agreement contains the entire understanding between Bond Counsel and District. All previous proposals, offers and communications relative to the Refunding and this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement.

No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by both Bond Counsel and District. No oral agreement or implied covenant shall be held to vary the provisions of this Agreement.

This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors or assigns as may be permitted pursuant to the provisions of this Agreement.

Section 11. Modification.

Both District and Bond Counsel understand that it may be desirable or necessary during the execution of this Agreement for Bond Counsel or District to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with District and all changes and their cost shall be memorialized in a written amendment to this original Agreement prior to the performance of the additional work.

Until a written change order is so executed, District shall not be responsible to pay any charges Bond Counsel may incur in performing such additional services, and correspondingly Bond Counsel shall not be required to perform any such additional services.

Section 12. Severability.

All sections and subsections of this Agreement are severable, and the unenforceability or invalidity of any of the sections or subsections of this Agreement shall not affect the validity or enforceability of the remaining sections or subsections of this Agreement, but such remaining sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the parties.

Therefore, if any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be effected by such holding and shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 13. Waiver.

The waiver by either party of a default or breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent default or breach of the same or of a different provision of that party. No waiver or modification of this Agreement or of any covenant condition, or limitation contained in this Agreement shall be valid unless in writing and duly executed by the party or parties to be charged therewith.

Section 14. Counterparts.

This Agreement may be executed in any number of counterparts and each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers and representatives thereto duly authorized, all as of the day and year first above written.

**HUMBOLDT BAY HARBOR, RECREATION
& CONSERVATION DISTRICT**

THE WEIST LAW FIRM

By: _____
Jack Crider, Chief Executive Officer

By: _____
Cameron A. Weist, Esq.

Friday, May 23, 2014

Mr. Jack Crider
Chief Executive Officer
Humboldt Bay Harbor, Recreation & Conservation District
P.O. Box 1030
Eureka, CA 95502
Re: Investment Banking Services Agreement

Dear Mr. Crider:

Thank-you for requesting that Stern Brothers & Co. ("Stern") provide an engagement letter to provide investment banking services to the Humboldt Bay Harbor, Recreation & Conservation District (the "District") in connection with the Stern's proposed refunding of the District's 2004 Revenue Bonds and outstanding loan with the California Department of Boating and Waterways (the "Refundings").

This proposal contemplates Stern's provision of the investment banking services described herein to assist the District in financing the Refunding as described below. It is premised upon information obtained through your audited financial statements, prior official statements as well as meetings held at the District on April 16 and May 8, 2014. The proposal reflects Stern's extensive experience with numerous, successful port finance transactions, including our teams several decades of work in this area.

Our experience teaches that each project finance transaction is unique, and that a financing solution must be tailored to the particular facts and circumstances of an individual project. A solution tailored to your project and the District's needs is what Stern offers, which is reflected in the services we propose to provide. At the outset, however, and in order to ensure the responsiveness of our proposal to the District's needs, I want to share Stern's current understanding of the facts and circumstances surrounding the proposed refunding, set forth Stern's vision of how the District should approach the financial markets in order to most certainly achieve its objectives, and finally, set forth the terms of the engagement for the Services we would provide to assist it in doing so.

Understanding of Facts and Circumstances

Stern Brothers understanding of the engagement is as follows:

1. To structure an economically beneficial refunding of the 2004 Humboldt Bay Harbor, Recreation and Conservation District Refunding Bonds and Notes 2, 3 and 4 issued by the California Department of Boating and Waterways with the following features:
 - a. The 2004 Refunding Bonds which, following the July 1, 2014 maturity will have \$2.180 million in outstanding principal (with final maturity in 2029) and a minimum debt service reserve fund of \$217,702.50. CUSIPs 445105AL3 (2015) through 445105BL6 (2029) with coupons ranging from 4.45% to 6.00% are to be called as part of the proposed refunding. The bonds are callable at 102% as of July 1, 2014.
 - b. The California Department of Boating and Waterway loans which as of the end of fiscal 2013/14 had an outstanding balance of \$1,295,951 which are outstanding at an interest rate of 4.50%;
2. Restructure outstanding debt to provide for level debt service at an interest rate than that currently paid;
3. Participate in the restructuring of Trust Indentures, Resolutions, Escrow Agreement and other related documents to eliminate or revise any identified onerous provisions which serve to hinder efficiency at the District.

Stern's Approach

With the preceding facts and circumstances in consideration we at Stern Brother's recommend approaching this refunding package as a private placement with a backstop option of a public issue should factors cause private placement buyers not respond to the offering.

Why a private placement?

Stern recommends approaching this issue as a private placement for the following reasons:

1. Size of issue: As the size of this refunding is estimated as in the low \$3 million range it is on the smaller size of issues. With refundings of this size the combined cost of issuance (underwriting, legal and trustee fees as well as other costs of issuance) can quickly eat into the savings the issue is structured to create. By structuring the refunding as a private placement the costs of issuance are kept low to allow for maximum savings;
2. Length of issue: As the final maturity on the Department of Boating and Waterways loan is in 2032 a uniform refunding would result in a 17-year issue which is on the long end of a private placement but still within the window of keeping buyers attention. Generally speaking most issues with maturities more than 20-years out are not attractive as private placements.
3. Timing: Given the tight timeframe to achieve the most efficient refunding (July 1, 2014 when a new maturity calendar begins) a private placement provides the best option as they require less documentation than a traditional underwriting and often (but not guaranteed) provide an opportunity to avoid supplementary activities such as rating agency presentations and pre-marketing efforts;
4. Elimination of Debt Service Reserve Fund: An additional benefit to private placements is the possibility of no or reduced debt service reserve fund requirements. This is not a guaranteed result but one that is addressed in almost all private placements and is often a request granted by placement buyers. This is rarely the case for Revenue Bonds where such reserves or a surety in lieu is essentially mandatory.
5. Lesser Continuing Disclosure Requirement: Private Placements do not require the same continuing disclosure requirements of traditional bonds. This eliminates the several man hours required and between \$2,500 and \$4,000 per year continuing disclosure fee (fee costs are best estimates of the costs of filing continuing disclosure with Bloomberg, DTC, FINRA, etc).
6. Bank Qualified status: As the District can reasonably expect to issue less than \$10 million in the calendar year the debt can likely be designated as "Bank Qualified" or a qualified tax-exempt obligation. When purchased by a commercial bank for its portfolio (a key market for private placements), the bank may deduct a portion of the interest cost of carry for the position.

Engagement

As presented in emails commencing in February of 2014 addressing the refunding options available to the District and through other conversations, communications, and documentation, we understand the Client seeks to secure senior tax-exempt debt financing, as applicable, for the purpose of refunding outstanding bonds and loans held by the District.

The District hereby engages Stern as its exclusive private placement agent or investment banker during the term of this Agreement, as defined herein, to manage the financing or private placement, on a best efforts, all-or-none basis, all manner of tax-exempt and/or taxable bonds for such purposes (the "Private Placement" or "Bonds"). The preceding is hereinafter referred to as the "Assignment" or the "Financing." No obligation or undertaking of Stern set forth in this Agreement shall be deemed or interpreted as a firm commitment to underwrite the Financing, unless an addendum hereto is made by the parties wherein Stern specifically agrees to an underwriting, in lieu of a "best efforts placement," in connection with one or more portions of the Financing.

Stern is confident that, should this agreement be approved prior to June 1, 2014 we will be able to assist Client in the accomplishment of the Assignment. It is currently anticipated that the Assignment will be accomplished prior to September 1, 2014.

Scope of Services

During the term of this Agreement, the District agrees that Stern will be its exclusive investment banker for the Assignment. Stern will, in consultation with District and its other specified advisors, coordinate all activities required to perform all aspects of its role as private placement agent or investment banker, related to the Assignment. These activities include, but may not be limited to those items enumerated in *Appendix A*. Unless otherwise specifically stated, this Agreement is not a firm commitment to purchase any securities or to secure financing or credit enhancement or a credit rating of any kind.

Responsibilities of Client

As a condition to Stern's performance under this Assignment, Client and its other specified advisors will cooperate fully and promptly with Stern including but not limited to the following:

1. Obtaining the approvals and agreements necessary from the appropriate authorities, and acknowledging all obligations necessary to complete the Assignment;
2. Honoring reasonable requests for information for the Financing as required by Stern, or other interested parties, as applicable;
3. Attending all calls, presentations, visits, and other meetings where Stern suggests that attendance or attention from Client is necessary;
4. Facilitating communication between Stern and other advisors including legal counsel;
5. Participate in conference calls or otherwise provide information to potential buyers of debt.

Fees and Expenses

In exchange for effort related to this Assignment, Stern will be entitled to fees and expenses as presented in *Appendix A*. These fees are contingent upon the completion of the financing and is payable on the closing of transaction by wire or bank transfer.

Other bond issue or financing transaction costs and expenses, including but not limited to, letter of credit, placement/loan origination fees of any lender or investor, borrower's, bond, lender's, issuer's and placement agent's counsel fees, trustee fees, printing, consultant fees, real estate recording fees, title insurance, appraisal, environmental reports and bond closing fees, will be paid by Client.

Travel and administrative expenses assumed by Stern Brothers are to be paid by the Client. These expenses are not anticipated to exceed \$1,500. Should these expenses exceed \$1,500 approval of the District for additional allocation will be required for further right of reimbursement by Stern Brothers.

Travel expenses are only to include those costs directly attributable to the financing described within this Engagement Letter and are anticipated to include items such as travel to and from the District lodging and meals (receipts or proof of cost required for all expenses and mileage charged at \$0.42 per mile),.

Administrative expenses include such items as postage and shipping, printing, presentation materials or services employed in advancement of the financing described herein. These expenses do not include regulatory costs that Stern Brothers may incur in regards to filing or processing fees charged by federal, state or regulatory agencies in conjunction with this financing (i.e Financial Industry Regulatory Authority, Municipal Securities Rulemaking Board or Depository Trust Corporation fees).

All fees and expense reimbursements are due contingent upon a successful and completed underwriting by Stern Brothers for the District.

Duration and Termination of Agreement

This Agreement shall have a term of twelve (12) months from the date of execution hereof by Client and shall automatically renew for successive six (6) month periods upon expiration of the initial term, unless otherwise extended or terminated as provided herein (the "Term"). Notwithstanding, this Agreement may be terminated by either party with or without cause, which termination shall be effective thirty (30) days after written notice is received by the other party to this Agreement. However, Client acknowledges that its right to terminate this Agreement without the written consent of Stern is subject to payment of the Break-Up Fee set forth in *Appendix A* hereof.

Client and Stern acknowledge that the provisions of *Appendix B* have been specifically agreed upon so as to not permit Client to terminate Stern for the sole purpose of avoiding paying the Success Fees rightfully earned or to be earned at final closing. In addition, the termination of this Agreement shall not affect Client's obligation to pay any fees or expenses otherwise due Stern under this Agreement.

Confidentiality

In connection with the Assignment, each party may disclose to the other confidential technical and business information that the disclosing party desires the receiving party to treat as confidential. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the confidential information provided by the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no case less than reasonable care. Each party understands and agrees that its breach or threatened breach of this provision will cause irreparable injury to the other party and that money damages will not provide an adequate remedy for such breach or threatened breach, and both parties hereby agree that, in the event of such a breach or threatened breach, the non-breaching party will also be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including injunctive relief and specific performance.

Indemnification

In consideration of Stern's signing this Agreement and agreeing to perform the services pursuant hereto, Client agrees to indemnify and hold harmless Stern and each of its directors, officers, agents, employees, controlling persons (within the meaning the Securities Act of 1933, as amended) and independent contractors (including but not limited to accountants and legal counsel), to the extent provided in *Appendix B* attached hereto and incorporated herein by reference. The provisions of this Section and *Appendix B* shall survive any expiration or termination of this Agreement and shall be binding upon any successors or assigns of Client, including any debtor-in-possession or trustee in bankruptcy.

Dispute Resolution

The parties hereby waive their rights to a trial before a judge or jury and agree to arbitrate before a neutral arbitrator any and all claims or disputes arising out of this Agreement, including, but not limited to, breach of contract, breach of covenant of good faith and fair dealing, defamation, fraud, misrepresentation, claims regarding fees, infliction of emotional distress, unfair business practices, or any tort or tort-like causes of action.

The arbitrator's decision shall be written and must include the findings of fact and law that support the decision. The arbitrator's decision will be final and binding on both parties, except to the extent applicable law allows for judicial review of arbitration awards. The arbitration shall be conducted in accordance with the National Rules for the Resolution of Commercial Disputes of the American Arbitration Association. The arbitration shall take place in St. Louis, Missouri. The parties will share the costs of arbitration. The arbitrator may award attorney's fees to the prevailing party, as determined at the arbitrator's discretion. The arbitrator may award any remedies that would otherwise be available to the parties if they were to bring the dispute in court.

Enforceability of Agreement

Client agrees that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of Missouri without regard to the conflict of laws provisions thereof. Client further agrees that if one or more provisions of this Agreement are held to be unenforceable under applicable Missouri law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms.

No Assignment

This Agreement cannot be assigned by either party without the express written consent of the other party.

Not a Financing Commitment

This Agreement does not constitute an offer, approval or commitment to finance.

If the terms of this letter are acceptable to you, please sign in the space provided below, and return one executed copy of this engagement letter to the undersigned by electronic mail. Alternatively, this letter may be accepted through a verbal acknowledgement, which will include the request to initiate work on behalf of Client. We would like to thank you for the opportunity to provide investment banking services for this important Financing.

Very truly yours,

Andrew G. Ciocca
Vice President
Stern Brothers & Co.

Approved and Accepted By:

Jack Crider
Chief Executive Officer
Humboldt Bay Harbor, Recreation & Conservation District

Dated: _____

APPENDIX A

Stern's investment banking/private placement fees and expenses are as described below.

For purposes of this agreement the term "closing" refers to the date that monies from the debt purchasing party are transferred to the District or into escrow for the District to redeem the 2004 Refunding Revenue Bonds and California Department of Boat and Waterways loan or for any other use.

Success Fee

The refunding as presented is described by the District is anticipated to result in a debt structure of between roughly \$3.0 and \$3.1 million. A flat fee has been applied to private placements of \$3.5 million or less to allow for the refunding and approximately \$400,000 to \$500,000 in additional proceeds if needed.

The District agrees to pay Stern Brothers the following contingent or "Success" fees:

Private Placement up to \$3.5 Million

Upon closing of the successful private placement of up to \$3.5 million the District shall pay Stern Brothers a base Success Fee of \$25,000 upon closing by wire or bank transfer.

Private Placement Proceeds in Excess of \$3.5 Million

Should the District require or request funds in excess of \$3.5 million the District shall pay Stern Brothers a calculated fee of \$10 per \$1,000 at closing.

Investment Grade Traditional Underwriting

In the case of an traditional underwriting with an investment grade rating (greater than BBB- Standard & Poor's, Baa3 Moody's or BBB- Fitch or combination thereof based of the lowest rating) the District shall pay Stern Brothers a calculated fee of \$10 per \$1,000 at closing.

Sub-Investment Grade Traditional Underwriting

It is not anticipated that this refunding would achieve the goals set forth in the Engagement Letter but should the District wish to proceed under alternative objectives the following fee schedule is to be applied:

In the case of a traditional underwriting with a sub-investment grade rating (below BBB- Standard & Poor's, Baa3 Moody's or BBB- Fitch or combination thereof base off the lowest rating) the District shall pay Stern Brothers a calculated fee of \$15 per \$1,000 at closing.

Expenses

Travel and Administrative Expenses

Stern's extraordinary out-of-pocket expenses in relation to the financing discussed here within, including but not limited to, travel, air courier mailings, multi-party conference calls, remote computer/internet fees, research and presentation publishing, will be paid by the District upon closing up to \$1,500. Travel and administrative expenses in excess of \$1,500 must be pre-authorized by the District in writing (either in hard copy or by official email from an authorized party) to be honored and reimbursed at closing.

Regulatory Fees and Expenses

In addition, other bond issue or financing transaction costs and expenses, including but not limited to, letter of credit, placement or loan origination fees of the lender or investor, derivative and reinvestment fees, borrower's, bond, lender's, issuer's, placement agent's and underwriter's counsel fees, trustee fees, rating agency fees and expenses, printing, and Stern's bond closing costs (e.g. CUSIP costs, DTC fees, etc.), will be paid by the District up to \$2,500. Any regulatory fees or expenses in excess of \$2,500 must be pre-authorized by the District in writing (either in hard copy or by official email for an authorized party) to be honored and reimbursed at closing.

APPENDIX B

INDEMNIFICATION AGREEMENT BETWEEN DISTRICT AND STERN

The District shall indemnify and hold harmless Stern, and each entity engaged by Stern to assist in this engagement, each of their respective affiliates, members, directors, officers, agents, employees, and each other person controlling Stern or any of its affiliates (each such person, an "Indemnified Person"), from all losses, claims, damages, liabilities and expenses (including reasonable counsel fees and expenses) to which any of them may become subject arising in any manner out of the performance by an Indemnified Person of Services (as defined in the Agreement) to which this *Appendix B* is attached (collectively, "Claims"), except for Claims arising in any manner out of an Indemnified Person's gross negligence or willful misconduct in performing the Services. If the foregoing indemnification is determined to be unenforceable by a court of competent jurisdiction or insufficient to hold Stern harmless, then the District shall contribute to the amount paid or payable by Stern as a result of such Claim in such proportion as is appropriate to reflect the relative economic interests of the District on the one hand and Stern on the other hand in the matters contemplated by this Agreement, as well as the relative fault of the District and Stern with respect to such Claim, and any other relevant equitable considerations.

If a Claim is made against an Indemnified Person for which the District is obligated to provide indemnification, the Indemnified Person shall, promptly upon learning of the existence of such Claim, notify the District of such Claim, but failure to notify the District shall not relieve the District from any liability which it may have to the Indemnified Person hereunder or otherwise, except to the extent that such failure materially prejudices the District's right or ability to defend the Claim. If the District elects or is requested by such Indemnified Person, the District may assume the defense of the Claim, including the employment of counsel reasonably satisfactory to Stern, and the District shall pay the charges, costs, fees and expenses of such counsel. In the event, however, that the Indemnified Person reasonably determines that use of common counsel with the District would present a conflict of interest for such counsel or if the District fails to assume the defense of the Claim in a timely manner, then the Indemnified Person may employ separate counsel to represent and defend it against any such Claim and the District shall pay the charges, costs, fees and expenses of such counsel; *provided, however*, that the District shall not be required to pay the charges, costs, fees and expenses of more than one separate counsel (in addition to any local counsel), for all Indemnified Persons in any jurisdiction for any single Claim. In any Claim the defense of which the District assumes, the Indemnified Person shall have the right to participate in the proceedings and to retain its own counsel at the Indemnified Person's own expense. The District further agrees that it will not settle or compromise or consent to the entry of any judgment in any pending or threatened Claim in respect of which indemnification may be sought hereunder (whether or not an Indemnified Person is a party therein), unless the District has given Stern reasonable prior written notice thereof and used all reasonable efforts, after consultation with Stern, to obtain an unconditional release of each Indemnified Person from all liability arising therefrom.

The rights and obligations of the Indemnified Persons under this *Appendix B* and the respective rights and obligations of the Indemnified Persons and the District under this Agreement shall be governed by and construed in accordance with internal laws of the State of California applicable to contracts executed in and to be performed in that state.



A handwritten signature in the top right corner of the page.

NMTC Consulting Agreement

This NMTC Consulting Agreement (the “Agreement”) dated, May 23, 2014, (the “Effective Date”), is by and between the Humboldt Bay Harbor District, a public corporation (“Sponsor”), and Lowe Enterprises Real Estate Group, a California Corporation (“LEREG”). This Agreement sets forth the exclusive understanding between Sponsor and LEREG with respect to LEREG’s agreement to provide certain consulting services to Sponsor in connection with the potential allocation and monetization of New Markets Tax Credits to fund the redevelopment of the Samoa Pulp Mill site in the City of Samoa, California (collectively, the “Project”).

Description of Transaction

LEREG has expertise with New Markets Tax Credits (“NMTC”), including but not limited to relationships with Community Development Entities (“CDEs”) that have received allocations of NMTCs and debt and equity investors interested in participating in NMTC transactions. Sponsor desires to engage LEREG to perform consulting work respect to the possible allocation, and monetization of NMTCs necessary to fully fund the Project.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sponsor and LEREG hereby agree as follows:

1. **Services to be Provided by LEREG.** Sponsor hereby engages LEREG on an exclusive basis, as the Sponsor’s NMTC consultant, to assist in determining if the development of the Project will qualify for NMTCs, and to provide certain additional consulting services described in Section 2 and in the Scope of Work attached hereto as Exhibit A (collectively, the “Services”). LEREG hereby accepts such engagement in accordance with the terms and conditions set forth in this Agreement. LEREG shall have no duty or obligation to provide any services other than the Services, and no work beyond the Services shall be performed by LEREG unless such services (and any additional compensation for such services) have been approved in by Sponsor and LEREG by duly approved amendment to this Agreement or duly approved separate agreement. Specifically, LEREG will not be responsible for identifying or securing a “leverage loan” for the Project. The source for any leverage loan for the Project will be identified by the Sponsor. Should the Sponsor require and desire support from LEREG in finding and securing a leverage lender for the leverage loan, the compensation for this service will need to be covered under a separate fee agreement.

LEREG shall be solely responsible for determining the details, method and means of performing the Services. LEREG shall devote sufficient time to perform the Services required by this Agreement in a competent and timely manner.

Nothing in this Agreement shall preclude (i) LEREG from representing any other party involved

in transactions similar to those described in this Agreement and earning a fee for such services so long as such transactions are not related to this Project, or (ii) LEREG or its affiliates from earning additional compensation in connection with services provided to or in connection with the Project (other than the Services).

2. **Structure.** The process of obtaining NMTC is dependent on many factors, including, without limitation, a CDE providing its allocation of NMTCs to the Project. As described on Exhibit A, LEREG will assist Sponsor in securing an allocation of NMTCs for the Project on terms acceptable to Sponsor, in structuring the Project financing so as to utilize NMTCs, and in monetizing the NMTCs through participation of an NMTC tax credit investor.
3. **Compensation to LEREG.** Except as otherwise provided herein, LEREG will be compensated only if the Project is funded directly with the benefit of NMTCs, with the exception of a \$25,000 retainer (“Retainer Fee”). The fee payable to LEREG (the “Performance Fee”) shall be 2.5% of the QEI secured for the project by Lowe, not to exceed \$200,000. The Performance Fee shall be paid in full in a single payment from the proceeds of monetizing the NMTCs at the QEI closing. If LEREG or any subsidiary determines that it wants to place its own allocation to enable the Project to go forward, then the LEREG allocation committed to the Project **will not be subject** to the Performance Fee, however, in such event, any QEI (other than a QEI from LEREG) will be subject to the Performance Fee and LEREG will be entitled to its regular Performance Fee as calculated based on the non-LEREG QEI as agreed to by the Sponsor and LEREG. If LEREG invests any of its own allocation, the Performance Fee minimum will be waived. In the event that the Sponsor determines at any time prior to QEI closing, in its sole and absolute discretion, not to proceed with the transaction or is unsuccessful in securing NMTC allocation, then LEREG shall only be entitled to retain the \$25,000 Retainer Fee for its time and services. LEREG shall not be entitled to retain the Retainer Fee if Sponsor terminates this Agreement pursuant to Section 21 (Term and Termination), herein below for Cause.

All reasonable, necessary and ordinary direct, out-of-pocket costs and expenses incurred by LEREG in connection with the Services shall be paid at the closing of the QEI from transaction proceeds, provided that LEREG first provides to Sponsor documentation evidencing such costs and expenses. Such documentation shall be provided on a monthly basis. LEREG will submit any expense in excess of \$500 to Sponsor in advance for pre-authorization, and, furthermore, will not incur expenses totally more than \$10,000 without first obtaining written approval from District to incur up to an additional \$10,000 in such expenses, which approval shall still be subject to the \$500-pre-authorization described above per expense.

In addition, in any action initiated by LEREG in connection with the enforcement of its rights under this Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees, costs and expenses.

4. **Third Party Professional Services.** If and when LEREG concludes that it is advisable that Sponsor retain third party professional services, such as financial advisor, legal and accounting services, in order to more thoroughly evaluate or otherwise facilitate the

financing described in this Agreement, LEREG shall so advise Sponsor and shall make referrals to such third party providers. Sponsor is not obligated to engage the referred third party providers and can engage third party providers of their choosing. If and when Sponsor chooses to engage such professional services, Sponsor agrees to pay for such services from transaction proceeds, contingent upon the successful QEI closing. LEREG shall have no responsibility or obligation to assume payment of any third party professional services fees, costs or expenses associated with the Services set forth in this section.

5. **Exclusivity.** During the period beginning on the Effective Date and ending 720 *calendar days* after the Community Development Financial Institutions Fund (“CDFI”) releases its 2014 NMTC Allocation Award Notification, or such earlier date on which this Agreement shall have been terminated for Cause, as defined herein below, LEREG shall be the exclusive representative of Sponsor in seeking NMTC financing or equity for the Project. In the event that the Sponsor breaches the exclusivity provision above (e.g., the Sponsor retains another NMTC consultant or directly contacts any CDE or Investor in relation to NMTC transactions related to the Project), the Sponsor shall immediately forfeit \$25,000 Retainer Fee and an additional \$25,000 “Break-up Fee” will be due, in addition to any other amounts otherwise due and payable under this Agreement.

LEREG will have 720 *calendar days* after the CDFI releases its 2014 NMTC Allocation Award Notification to obtain commitments, non-binding letters or memoranda of intent or similar documents (“Commitments”) for NMTC Allocation and/or a NMTC equity investor for the Project. If LEREG can secure Commitments, the parties will proceed to close the transaction in a reasonable amount of time (as determined by NMTC investors and CDEs). However, District may, at any time prior to QEI closing, in its sole and absolute discretion, determine not to proceed with transaction. Should LEREG obtain Commitments from particular CDEs at any time during the term of this Agreement, then those CDEs shall remain exclusive to LEREG, and LEREG shall be entitled to a Performance Fee in connection with the closing of any NMTC transaction with such CDEs with respect to the Project (payable immediately at the time of such closing), unless Sponsor shall have terminated this Agreement for Cause. In addition, LEREG shall be entitled to the Performance Fee with respect to any NMTC transaction that occurs with respect to the Project with any CDE or CDEs introduced to Sponsor (but for which a Commitment is not actually obtained) by LEREG for a period of eighteen (18) months commencing from the date of any such introduction provided that District is given written notice identifying such CDE or CDEs within 30 calendar days of such introduction. For purposes of the previous sentence, the term “introduce(d)” or “introduction” shall include the discussion (e.g., e-mail exchanges, in-person meetings, teleconferences, etc., in which the Project was discussed between LEREG and the CDE) of the Project by LEREG, on behalf of the Sponsor, with the CDE, irrespective of whether the Sponsor had any prior contact with or knowledge of the CDE in any context other than with respect to the Project.

6. **Confidentiality.** All opinions and advice (written or oral) given by LEREG to Sponsor

in connection with this engagement are intended solely for the benefit of and use by Sponsor in considering the transaction to which they relate, and Sponsor agrees that no person or entity other than Sponsor, its accountants, lenders, lawyers and other advisors shall be entitled to make use of or rely upon the advice of LEREG to be given hereunder, and no such opinion or advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any other purpose without LEREG's prior written consent. The public approval of this Agreement by the Sponsor, or any subsequent approval of a modification or extension of this Agreement shall not create a breach of confidentiality defined herein. Any obligation of District in this section is subject to District's obligations created by any law, rule, regulation or other authority related to public records, including without limitation, the California Public Records Act and any judicial or administrative order or rule.

7. **Independent Contractor.** Sponsor acknowledges that LEREG shall perform its services hereunder as an independent contractor and not as a partner, employee or an affiliate of Sponsor. It is expressly understood and agreed to by the parties hereto that LEREG shall have no authority to act for or bind Sponsor, and that LEREG owes no duty or obligation to Sponsor except as specifically described in this Agreement. However, LEREG shall, in carrying out its responsibilities hereunder, have a fiduciary duty to act on behalf of the Sponsor and represent its interests. District assumes no liability for LEREG's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for LEREG. LEREG acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. LEREG disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

8. **Insurance:** LEREG shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$250,000 unless Sponsor has

approved of a higher deductible or self-insured retention in writing.

- (b) The Commercial General Liability policy shall be endorsed to include the Sponsor; its agents, officers and employees as additional insureds in the form as required by the Sponsor. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).
 - (c) The coverage provided to the Sponsor, as an additional insured, shall be primary and any insurance or self-insurance maintained by the Sponsor shall be excess of the LEREG's insurance and shall not contribute to it.
 - (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the Sponsor ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - (3) Workers' Compensation, statutory limits, is required of the LEREG and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any

Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.

- (4) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate. Lowe's current deductive for professional liability is \$250,000.
 - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than three (3) years, in an amount no less than the amount required pursuant to this Agreement.
 - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.
 - (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- (5) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions

required above for the General Liability, Automobile Liability and Employer's Liability policies.

- b. LEREG shall furnish Sponsor with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the Sponsor, an exemplar Certificate of Insurance is attached as Exhibit B and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the Sponsor. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the Sponsor in writing at least 30 days in advance of policy cancellation. LEREG shall also provide notice to Sponsor prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- d. Furnishing insurance specified herein by the Sponsor will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on LEREG or LEREG's sub-contractors or any tier of LEREG's sub-contractors. Sponsor shall reserve the right to obtain complete copies of any of the insurance policies required herein.

9. **Reliance.** Sponsor recognizes and confirms that, in fulfilling its engagement hereunder,

LEREG will use and rely on data, material and other information furnished to LEREG by Sponsor and its advisors. Sponsor acknowledges and agrees that in performing its services under this Agreement, LEREG may rely upon the data, material and other information supplied by Sponsor without independently verifying the accuracy, completeness or veracity of the data, material and other information.

10. **Investment Agreement.** Sponsor understands and agrees that any NMTC investment for the Project will be pursuant to additional contractual arrangements between Sponsor, affiliates, and LEREG and/or the CDE's. The terms of such agreements may incorporate many or all of the terms contained in this Agreement, as well as additional provisions to be agreed upon by the parties to an Investment Agreement. However, District may, at any time prior to QEI closing, in its sole and absolute discretion, determine not to proceed with transaction.
11. **No Insurer of Project Success.** LEREG represents that it has a proven record of success in obtaining NMTCs, is aware of the Project, has determined that such Project is preliminarily eligible for NMTC, based on its census tract, and shall use its best efforts to obtain such financing. Sponsor acknowledges and agrees that, although LEREG shall act responsibly and faithfully in using its best efforts in performing the services required pursuant to this Agreement, LEREG does not ensure or guarantee the success of the Project, economically or otherwise. Sponsor agrees and acknowledges that LEREG is not providing legal, tax or accounting advice and that Sponsor will rely on legal advice of its own tax, legal and accounting advisors and counsel for such matters, and will make its own independent analysis and decision regarding any transaction involving the Project.

The Services provided by LEREG pursuant to this Agreement are intended to assist Sponsor with obtaining funding to develop the Project however, this Agreement does not transfer to LEREG the obligation to develop the Project. Sponsor remains the exclusive decision-making authority over all matters relating to the construction and renovation of the Project and the transactions contemplated by this Agreement. LEREG shall have no responsibility for any action or inaction taken by Sponsor relating to a Project. In no event shall Sponsor be deemed to have delegated to either LEREG, or to any other person or entity (including, without limitation, any investor, co-general partner, property manager, lender, state tax credit agency, partner or other third party) any of Sponsor's duties, obligations or responsibilities with respect to development of the Project.

12. **Representations, Warranties and Covenants.** Each party to this Agreement represents and warrants to the other that: (i) it has the requisite power and authority to execute, deliver and perform their respective obligations under this Agreement, (ii) this Agreement is valid, binding and enforceable against it in accordance with the terms of this Agreement, except as may be subject to applicable bankruptcy, insolvency, moratorium or other similar laws, now or hereinafter in effect, relating to or affecting the rights of creditors generally and by legal and equitable limitations, and (iii) to the knowledge of such party, there is no litigation, proceeding or investigation pending or threatened against such party (or any director, manager, officer, owner or employee of such party) which would negatively impact such party's ability in to perform its obligations under this Agreement.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, which together shall constitute one and the same original document.
14. **Assignment; Amendment.** This Agreement is not assignable and cannot be modified or changed, nor can any of its provisions be waived, except by the mutual agreement in writing of both parties.
15. **Severability.** Each paragraph, term or provision of this Agreement shall be considered severed and if, for any reason, any paragraph, term or provision is determined to be invalid or contrary to any existing or future law or regulation, such will not impair the operation, or affect the remaining portions, of this Agreement.
16. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof, and any additional conditions or terms must be agreed to by both parties and expressed in a written agreement executed by the parties.
17. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of California including all matters of construction, performance and validity without giving effect to the principles of conflicts of law.
18. **Joint Preparation; Advice of Counsel.** The parties acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by such parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood the terms and provisions of this Agreement.
19. **Cooperation.** The parties shall cooperate with each other and furnish each other with all reasonably available information needed to apply for and obtain all financing, tax credits and approvals, and Sponsor shall execute whatever instruments are reasonably necessary and take whatever action is reasonably necessary to obtain such financing, tax credits, and/or approvals.
20. **Limited Liability.** LEREG shall have no liability to Sponsor or any affiliate or successor of Sponsor for any reason if it is determined that the Project fails to qualify for NMTCs, or if the Project is unable to be developed or renovated with NMTC financing for any reason.
21. **Term and Termination.** This Agreement will be effective as of the Effective Date and shall remain in effect until all Services required hereunder shall have been performed within the time frames established herein and all compensation earned hereunder shall have been paid. Notwithstanding the foregoing, Sponsor shall have the right to terminate this Agreement for by providing written notice to LEREG. In the event that this

Agreement is terminated for any reason other than for Cause, the Sponsor shall immediately pay any and all expenses incurred by LEREG in connection with this Agreement, but only to the extent such expenses are in accordance with Section 3, herein, and forfeit the Retainer Fee of \$25,000, in addition to any other amounts that due to LEREG under this Agreement.

21. **COMPLIANCE**

- a. In performance of this Agreement, LEREG and LEREG's Sub-LEREGs shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. LEREG shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. LEREG shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

Lowe – Humboldt Bay Harbor District

NMTC Consulting Agreement


Signature Page

Executed as of the date first written above.

HUMBOLDT BAY HARBOR
DISTRICT

LOWE ENTERPRISES REAL ESTATE
GROUP

By: _____

By:  _____

By:
Title:

J. Albert Lemus,
Senior Vice President

APPROVED AS TO FORM AND LEGALITY

PORT ATTORNEY

BY: _____

Exhibit A: Scope of Work

- LEREG understands that the Project will have a total cost of approximately \$10,000,000 to \$15,000,000 dollars:

Project Milestones & Timeline

- Within 7 days of the Effective Date, Sponsor shall assign a Project Manager to work exclusively with LEREG.
- LEREG will work with the Project Manager to ascertain all Project details, including, but not limited to:
 - Construction Costs
 - Sources of Funds
 - Construction Timeline
 - Identify Community Outcomes
 - ***To Be Completed:*** 45 Days after a Project Manager is assigned, LEREG will prepare a written memo summarizing the potential NMTC Structure customized to reflect actual Project information (it being understood that the failure of the Sponsor to provide information requested by LEREG within 21 days of such request shall constitute a breach of this Agreement by the Sponsor)
- LEREG will prepare a Project summary and no less than two NMTC Community Development Entities (“CDEs”) Intake Forms
 - ***To Be Completed:*** 75 Days after a Project Manager is Assigned and all information requested by LEREG is provided by the Sponsor or Project Manager (it being understood that the failure of the Sponsor to provide information requested by LEREG within 21 days of such request shall constitute a breach of this Agreement by the Sponsor)
- LEREG will secure NMTC Commitments from CDEs for the Project.
 - ***To Be Completed:*** 90 Days after the CDFI releases its 2014 NMTC Allocation Award Notification (estimated April 2014)
- Throughout the term of this Agreement, LEREG will be available at District’s request to consult with, or present to, District’s staff, Commissioners, and consultants, concerning NMTC transactions, including by phone and in-person meetings.