

**CITY OF COSTA MESA AND COSTA MESA HOUSING AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT  
(First Time Homebuyer (FTHB) Program - AmeriNational Community Services, Inc.)**

This **PROFESSIONAL SERVICES AGREEMENT (FTHB Program - AmeriNational Community Services, Inc.)** is made and entered into on July 1, 2015 (“Effective Date”), by and among the **CITY OF COSTA MESA**, a municipal corporation (“City”), **COSTA MESA HOUSING AUTHORITY**, a public body corporate and politic (“Authority”), and **AMERINATIONAL COMMUNITY SERVICES, INC.**, a Minnesota Corporation (“Consultant”). Each of the City, Authority and Consultant are referred to as a “Party” and together as the “Parties”; and, the City and Authority are referred to together, as “Costa Mesa”.

**WITNESSETH**

A. Authority is a California housing authority organized, existing and operating under the Housing Authorities Law, Health and Safety Code Section 34200, *et seq.* (“HAL”) and also operating as the “housing successor” to the former and now dissolved Costa Mesa Redevelopment Agency (“former Agency”) under Division 24, Part 1.85 of the Health and Safety Code (“Dissolution Law”).

B. Authority, as housing successor, and City staff acting on behalf of the Authority administer, monitor, enforce, and oversee Costa Mesa Home Buyer Assistance Program (“FTHB Program”) for which there remain outstanding numerous homebuyer loans provided by the former Agency prior to dissolution to certain, eligible income-qualified homebuyers who acquired property at an affordable housing cost with each homebuyer having received a second mortgage assistance loan and entered into series of loan instruments with the former Agency (now held by the Authority), including a promissory note, secured by a deed of trust, and affordability and resale restrictions of record, and other documents (together, “FTHB Documents”). Consultant has provided professional services to Costa Mesa relating to the FTHB Program, and by this Agreement Costa Mesa desires to continue to utilize the services of Consultant as an independent contractor to assist with and oversee the administration of the FTHB Program as more fully described herein.

C. Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated.

D. Costa Mesa and Consultant desire to contract for the specific services described in Exhibits A and B (together, “Services”) and desire to set forth their rights, duties and liabilities in connection with the Services to be performed under this Agreement.

E. No official or employee of Costa Mesa has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

F. The contract for servicing and compliance monitoring service changes as a result of the May 29, 2015, O'Brien-Staley Partners (“OSP”) purchase of 100% of the common stock of AmeriNational Community Services from American Bank of St. Paul (“American Bank”); provided however, that Consultant and Costa Mesa will, in an amendment or other modification instrument to be executed within 30 days of the Effective Date hereof, establish the procedures, process and

administration of the funds disbursement and funds administration under this Agreement going forward.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

## **1.0 SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in Exhibit A and Exhibit B, both of which are attached hereto and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise Costa Mesa of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of Costa Mesa. Consultant agrees to perform all the work to the complete satisfaction of Costa Mesa and within the hereinafter specified. Evaluations of the work will be done by the City Manager/Authority Executive Director or his designee. If the quality of work is not satisfactory, Costa Mesa in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the Services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless both City and Authority, and their appointed and elected officials, officers, employees, and agents from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City and/or Authority for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that either or both City and Authority may enter into contracts with other consultants for services similar to the Services that are subject to this Agreement or may have its own employees perform services similar to those Services contemplated by this Agreement. In this regard, Consultant acknowledges and agrees that certain City staff in the Community Development Department, including the housing/neighborhood improvement division, and other City departments and divisions provide administrative support in implementation and administration of the FTHB Program.

1.7. Delegation and Assignment. This is a personal services contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of both City and Authority, which may be authorized, or not, in Costa Mesa's sole discretion. Consultant may engage subcontractor(s) as permitted by law and may employ other personnel to perform the Services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of Costa Mesa. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by Costa Mesa. Costa Mesa shall grant such authorization if disclosure is required by law. All City and Authority data shall be returned to Costa Mesa upon the termination of this Agreement. Consultant's covenant under this Section 1.8 shall survive the termination of this Agreement.

## 2.0 COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit C attached hereto and made a part of this Agreement ("Fee Schedule"). During the Term of this Agreement, Consultant's total compensation shall not exceed Three Thousand Dollars (\$3,000.00), unless authorized in writing by amendment to this Agreement.

2.2. Additional Services. Consultant shall not receive compensation for work or other services provided outside the scope of Services specified in Exhibits A and B hereto unless Costa Mesa or the assigned Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to Costa Mesa for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's Services that have been completed to Costa Mesa's sole satisfaction. Costa Mesa shall pay Consultant's invoice within forty-five (45) days from the date Costa Mesa receives said invoice. Each invoice shall describe in detail the Services performed, and the date of performance. Any additional services approved in writing and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's Services relating to this Agreement shall be maintained in accordance with generally accepted accounting principles and shall be made

available to Costa Mesa or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

### **3.0 TIME OF PERFORMANCE**

3.1. Commencement and Completion of Services. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said Services shall be performed expeditiously by Consultant. The Project Schedule may be amended by mutual agreement of the Parties. Failure to commence performance of the Services in a timely manner and/or diligently pursue undertaking of the Services to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. No Party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of a Party or Parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with new laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a Party.

### **4.0 TERM AND TERMINATION**

4.1. Term. The "Term" of this Agreement shall commence on July 1, 2015 and continue for a period of one year, ending on June 30, 2016, unless previously terminated as provided herein; provided however, prior to the end of the Term, Consultant and Costa Mesa may mutually agree, in writing, to renew this Agreement for up to three (3) additional single, one-year periods.

4.2. Notice of Termination. Costa Mesa reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the Services contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination by Consultant from Costa Mesa. In the event of such termination, Consultant shall immediately stop rendering Services under this Agreement unless directed otherwise by Costa Mesa.

4.3. Compensation. In the event of termination, Costa Mesa shall pay Consultant for the Services, including reasonable costs incurred, actually and satisfactorily performed up to and including the date of Costa Mesa's written notice of termination. Compensation for Services under way and in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the Services contemplated herein whether delivered to Costa Mesa or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to Costa Mesa within thirty (30) days of delivery of termination notice to Consultant, at no cost to Costa Mesa. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## 5.0 INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by the City's risk management department:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and Costa Mesa Housing Authority and their elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City and Authority; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."

- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to Costa Mesa.
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa and Costa Mesa Housing Authority and their officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City or Authority shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City and Authority and their officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by Costa Mesa. No policy of insurance issued as to which the City and/or Authority is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to Costa Mesa certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by Costa Mesa, prior to performing any Services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit D and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section 5.5 shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## 6.0 GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the Parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Chief Executive Officer/Authority Executive Director or his designee shall be the representative of Costa Mesa for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of Costa Mesa, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. Costa Mesa shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with Costa Mesa during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by Costa Mesa.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

AmeriNational Community Services, Inc.  
217 South Newton Avenue  
Albert Lea, MN 56007  
Tel: 866-779-5546  
Fax: 562-745-1281  
Attn: Amber Anderson  
Marketing and Contracts Manager

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-4870  
Fax: (714) 754-4913  
Email: JACQUIE.REEVES@costamesaca.gov  
Attn: Jacqueline Y. Reeves  
Program Manager/Management Analyst  
With Copy to:  
City Attorney, City of Costa Mesa and  
Chief Executive Officer  
FEIN # 95-600-5030

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in Costa Mesa Council Policy 100-5, attached hereto as Exhibit E and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by Costa Mesa.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing Party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that

the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without Costa Mesa's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of Costa Mesa's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City and Authority, their elected and appointed officials, officers, agents and employees, and volunteers at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City and/or Authority, their elected officials, officers, agents, employees or volunteers arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the Services and related work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City and/or Authority, their elected and appointed officials, officers, agents, employees and volunteers based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City and Authority for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City and/or Authority. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, if any, which shall be of no force and effect.

Costa Mesa agrees to indemnify, defend and hold harmless Consultant and its respective employees, representatives, agents, successors and assigns (individually and collectively, "Indemnitees") from and against any and all losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by the Consultant in connection with a breach by Costa Mesa of any of the covenants, agreements, representations or warranties contained herein, or the sole, wilful negligence or intentional misconduct of Costa Mesa, or any of its employees, subcontractors or agents.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of Costa Mesa. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Costa Mesa or otherwise act on behalf of Costa Mesa as an agent. Neither Costa Mesa nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its employees are in any manner agents or employees of Costa Mesa. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its



officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City and Authority harmless from any and all taxes, assessments, penalties, and interest asserted against Costa Mesa by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City and Authority harmless from any failure of Consultant to comply with the applicable worker's compensation laws. Costa Mesa shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Costa Mesa from Consultant as a result of Consultant's failure to promptly pay to Costa Mesa any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Costa Mesa, Consultant shall indemnify, defend, and hold harmless City and Authority for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Costa Mesa.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing any work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by Costa Mesa, including but not limited to eligibility to enroll in PERS as an employee of Costa Mesa and entitlement to any contribution to be paid by Costa Mesa for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against Costa Mesa relating to Consultant's performance or Services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which Costa Mesa might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of Costa Mesa. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of Costa Mesa. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of Costa Mesa and without liability or legal exposure to Consultant. Costa Mesa shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from Costa Mesa's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to Costa Mesa any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by Costa Mesa or its authorized representative, at no additional cost to Costa Mesa.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this

Agreement and provided to Costa Mesa may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250, *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs Costa Mesa of such trade secret. Costa Mesa will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. Costa Mesa shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090, *et seq.* During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the authorized Costa Mesa representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by Costa Mesa's representative, regarding any Services rendered under this Agreement at no additional cost to Costa Mesa. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to Costa Mesa, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of Costa Mesa and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of Costa Mesa while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Costa Mesa and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate

description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**[Signature blocks begin on next page.]**

IN WITNESS WHEREOF, the parties hereto have caused this *Professional Services Agreement (FTHB Program - AmeriNational Community Services, Inc.)* to be executed by and through their respective authorized officers, as of the Effective Date.

**CITY:**

**CITY OF COSTA MESA,**

a California municipal corporation

REDACTED

Date: 6-29-15

BY: Gary Armstrong, AICP  
Economic Development and Development  
Services Director/Deputy Chief Executive Officer

REDACTED

Date: 6/30/15

BY: Thomas R. Hatch, Chief Executive Officer

**AUTHORITY:**

**COSTA MESA HOUSING AUTHORITY,**

a public body corporate and politic

REDACTED

Date: 6/30/15

Thomas R. Hatch, Executive Director

**ATTEST:**

REDACTED

Date: 6/30/15

City Clerk/Housing Authority Secretary

**APPROVED AS TO FORM:**

REDACTED

Date: 6/29/15

City Attorney/Housing Authority General Counsel

**APPROVED AS TO INSURANCE:**

REDACTED

Date: 6/29/15

Risk Management

**APPROVED AS TO CONTENT:**

REDACTED

Date: 6/29/15

Project Manager

[Signature blocks continue on next page]

**CONSULTANT:**

**AMERINATIONAL COMMUNITY SERVICES, INC.,**

a Minnesota corporation

REDACTED

Date: 6-26-15

Adrienne Thorson, CEO

REDACTED

Date: 6-26-15

Michael Torres, President and COO

REDACTED

Taxpayer ID Number

## EXHIBIT A

### SCOPE OF SERVICES

#### **Loan Servicing, Loan Payoffs and All Related Loan Administration of Outstanding Home Buyer Assistance Loans now Held by Costa Mesa Housing Authority, as housing successor to the now dissolved Costa Mesa Redevelopment Agency (FTHB Program)**

##### **Loan Processing and Underwriting**

The Consultant shall provide financial services related to Loan Servicing, Loan Payoffs and All Related Loan Administration of Outstanding Home Buyer Assistance Loans (each a “Loan” and together, “Loans”) under the Homebuyer Assistance Program (“FTHB”). Consultant warrants that all Services will be performed in a competent, professional and satisfactory manner in accordance with the standard prevalent in the industry for such services and in conformance with applicable federal, state and local laws and regulations.

The Consultant and the City of Costa Mesa and Costa Mesa Housing Authority (together City and Authority are referred to as, “Costa Mesa”) agree that the primary objectives are for the Consultant to service the existing FTHB Loans and as and when required prepare related loan servicing documents for the Program, such as subordination agreements, notices of default, etc. The existing FTHB Loans issued by Costa Mesa are of two types: (1) as to FTHB Loans issued prior to January 1, 2006, each Loan was a 30-year second lien mortgage with an initial ten-year deferral and amortized payments thereafter commencing at year 10 with payment in full due at year 30; (2) as to FTHB Loans issued on and after January 1, 2006, each was a 45-year second lien mortgage, with an initial 30-year deferral and amortized payments thereafter commencing at year 30 with payment in full due at year 45.

##### **Fund Disbursement Services**

Upon request of Costa Mesa, to ensure that Costa Mesa’s loan proceeds are used in the manner intended by the program design, Consultant provides a unique funds disbursement service, which meets the needs of both Program staff and the City’s finance department.

Total loan proceeds are forwarded to Consultant and held in trust for disbursement of funds according to Costa Mesa’s requirements. Consultant shall deposit the funds into a custodial trust account at an FDIC insured bank. The City’s finance department will be required to issue only one check or initiate one EFT, and Consultant will disburse an unlimited number of checks for construction contractor stage payments, multiple equipment purchases, and/or stage disbursements of working capital loans and grants, if applicable.

Consultant is experienced with the multiple funding sources used in housing and economic development programs. Consultant will prioritize the disbursement of funds from several funding sources associated with one project and will provide corresponding reports to be used as official subsidiary journals to the City’s finance department.

A fast turnaround of stage payments ensures delivery of checks back to Costa Mesa or directly to payee(s) is made within 48 hours of request. When requests are made by 11:00 a.m. (Eastern Time), the check will be cut the same day.

The funds disbursement services will be based on the following detailed steps, as applicable to new loans, if any, and as to all existing FTHB Program loans:

1. Opening Account: Upon loan approval, Consultant will open a borrower account that includes borrower and project information. Costa Mesa will then forward loan proceeds and completed Control Instructions to Consultant. The Control Instructions should include the following information:
  - a. Owner/Borrower(s) name
  - b. Contractor(s)
  - c. Job site address
  - d. Amount of funds being held
  - e. Instructions on how funds are to be disbursed
  - f. Original signatures of borrower/owner and Client representative
2. Disbursement Process: When requested by Costa Mesa, Consultant will provide check disbursements to parties designated by Costa Mesa in connection with the loans. Such disbursements are outlined in an Authorization for Payment, which includes information regarding the amount of the disbursement, the parties to be paid, signatures of Costa Mesa representatives authorized to make disbursements, and the borrower's authorizing signatures. Consultant will verify proper authorization to disburse funds and that amounts are correct and in agreement with original Control Instructions and Authorized Signatures. All checks shall be sent to Costa Mesa, unless otherwise directed by Costa Mesa. Checks will be issued payable to the contractor(s), or other payee(s) as directed by Costa Mesa. Funds will be disbursed from Costa Mesa's account the same day when the request is received by 11:00 a.m. (Eastern Time). Requests received after 11:00 a.m. (Eastern Time) are processed the next business day.
3. Change Orders: Change Orders are used to make a change in the project amount or payment schedule. A Change Order may occur at any time during a project.
4. Contingency: Additional funds may be added to a project in anticipation of unforeseen construction costs. Consultant will hold contingency at Costa Mesa's request and release funds upon receipt of an Authorization for Payment. This process is subject to Costa Mesa's financial policies and procedures.
5. Retention Fund: As applicable, Consultant shall hold a retention fund of at least 10%. Retention is then paid out sixty-five (65) days after the recording of the Notice of Completion. Based on Costa Mesa's policies and procedures, the retention will be paid out upon receipt of an Authorization for Payment.
6. Recording the Notice of Completion: As applicable, after the City's final inspection on a project, a Notice of Completion is executed by the borrower and forwarded to Consultant

for recording with the County Recorder. Consultant shall mail the Notice of Completion by certified mail within two (2) business days after receipt.

7. Reports and Record Keeping: AmeriNational will provide Costa Mesa a detailed monthly Account Status Report of all transactions completed and the balances remaining in each account. Records will be maintained for all accounts and are available to the City upon request.
8. Account Close Out: After payout of all funds in the account, excess funds will be disbursed according to Costa Mesa's instructions. Consultant will forward a Final Closing Statement to Costa Mesa, comprising a complete record of all transactions in one report. Consultant will also forward a copy of the report to the borrower for their records, if requested by Costa Mesa.

### **Loan Servicing for Amortized and Deferred Loans**

1. Introductory Package: Upon boarding of each new loan, AmeriNational will send to each borrower a welcome package. This welcome package contains a Notice of Servicing Transfer, Fair Debt Notice, FACT Act Letter, ACH sign-up form and a supply of coupons.
2. Collection and Remittance of Payments: For all loans, Consultant will collect, as applicable, payments from the borrowers through monthly or other scheduled remittances (including final payoffs) of principal, interest, fees, escrow balances and other identified payments. These remittances will be posted to the loan and ancillary records in accordance with the loan documents and Costa Mesa's written instructions. Payments will be posted the same day as receipt. All funds will be maintained in an FDIC insured banking institution in a custodial account for the benefit of Costa Mesa and the borrowers as applicable. Consultant will ensure the proper balancing of cash received and transmitted and loan portfolio totals on a daily and monthly basis. Remittances will be forwarded to Costa Mesa monthly net of fees and other authorized charges due to Consultant.
3. Payment of Property Taxes: At Costa Mesa's request, Consultant will monitor the timely payment of property taxes. Tax service will be required to monitor payment of property tax.
4. Insurance Monitoring: Consultant will notify the insurance agent in writing that Consultant is monitoring premium payments and that we are to be made aware of delinquencies or cancellations. Consultant will force place insurance in accordance with respective regulation (see Insurance section).
5. Late Fees: In keeping with the provisions of Costa Mesa's promissory note, Consultant will assess and retain a late fee when payment is not made within the grace period.



### **Lender Placed Insurance**

In accordance with respective regulation, upon notification of a policy cancellation from the borrower's insurance carrier, or when proof of a current policy is not received, Consultant will request lender-placed insurance from Consultant's insurance provider.

1. Coverage is instantly bound upon receipt of request with an effective date up to 90 days prior to receipt of our request.
2. Consultant's insurance provider or their carrier will send out three letters to the borrower over the course of forty-five days. If the borrower provides proof of coverage, lender-placed coverage will be cancelled.
3. If the effective date of this coverage is the same and there is no lapse in coverage, there will be no premium charged. If there is a lapse in coverage, there may be a fee charged to the borrower's account for an earned premium.
4. If the borrower does not provide proof of coverage, Consultant's insurance provider will send an insurance policy and notification of premium to the borrower and bill Consultant for a one-year policy. If the borrower does not have an established impound account; Consultant will create one and disburse the premium from it. If the borrower fails to pay the premium before the end of the month, and the disbursed premium results in an escrow deficit balance, said balance will be accounted for in that month's reconciliation of the Client Escrow Deficit Account. If the aggregate portfolio remittance for said month is insufficient to cover the deficit amount, Costa Mesa will be billed and responsible for the cost until recouped from the borrower. Any pay-off quotations or demands will reflect any impound deficit amounts (caused by the cost of any forced-place insurance or other advances) so that the borrower will still be held responsible for the cost even if they are unresponsive.

The Portfolio Status Report, delivered monthly to Costa Mesa, will also reflect such negative impound balances (i.e. the total amount of such premiums owed by borrower).

5. The one-year policy is cancelable at any time by either Consultant or Costa Mesa.

### **Account Inquiries**

Borrowers and Costa Mesa have, and shall continuously have, 24-hour electronic access to their loan information via Consultant's Website at [www.amerinternational.net](http://www.amerinternational.net). Continuous access to all loan account information is also provided during normal working hours through our toll free customer service telephone lines. In addition, we can provide hard copy account payment histories or other information through facsimile transmission or email. When requested by a borrower, Consultant will provide, without charge, a detailed statement of all transactions relating to the borrower's payments and/or escrow account.

### **Non-sufficient Funds (NSF) Checks**

In the event that a check is returned to us unpaid due to non-sufficient funds, a returned check fee will be assessed. A letter will be sent to the borrower requesting immediate payment plus the

returned check fee. If this fee is not received, a memo will be placed on the individual's account and the fee will be collected at the time the loan is paid off.

### **Additional Portfolio Management Services**

1. **Loan Payoff Quotations, Satisfactions, Reconveyances:** Consultant will provide Loan Payoff Quotations and will perform Satisfactions and Reconveyances of Mortgage at the borrower's expense for any loan at Costa Mesa's request.
2. **Loan Amortization Schedules:** Consultant will provide Loan Amortization Schedules for any loan at Costa Mesa's request.
3. **1098 Tax Forms:** Pursuant to IRS regulations and, on behalf of Costa Mesa, Consultant will submit required 1098 tax form for any and all borrowers paying interest on any Costa Mesa loan.
4. **Year-End Account Summary:** Consultant will supply a year-end account summary statement to each borrower if there has been principal, interest or escrow activity on their account. The report will indicate principal and interest paid, amount of payments Consultant made on the borrower's behalf for taxes and insurance, and any remaining escrow balance.
5. **Tickler Notifications:** Consultant will provide for an annual tickler notification to any borrower, at Costa Mesa's request.

### **Loan Transfer**

In the event Costa Mesa requires Consultant to transition loans back to Costa Mesa or to another Servicer, Consultant will gather and package all loan files (hard-copy and/or electronic copy) for shipment. Consultant has an in-house IT department that is dedicated to the maintenance and enhancement of its proprietary loan servicing system. Consultant's IT department will work with Costa Mesa's staff to electronically transmit servicing data in an agreed upon format.

### **Loan Reconstruction**

Over the course of our history, we have assisted our wide range of clients in reconstructing their portfolio of loans to ensure the accuracy and consistency of the booked loans with the terms and conditions of the original loan documents. Reconstruction work may involve a detailed review of payment histories to determine posting accuracy and compliance with promissory notes, truth in lending statements, and other applicable related loan documents.

### **Loss Mitigation**

Consultant provides treatment for delinquent mortgages through positive pressure that is fair but firm. If delinquent borrowers have a positive attitude toward their obligations, we will work with them to help them retain title to their property.

The following policy of follow-up will be adhered to by Consultant to minimize any loss of income to Costa Mesa:

1. New Borrower Delinquency: Early delinquency can be a sign of a chronic delinquent borrower. Consultant forwards its first letter to new delinquent borrowers at 5 days past the first payment due date. If there is no response, a second letter is sent at 15 days. Borrowers are invited to contact our office to discuss difficulties they may be facing in meeting their obligations. If no response is received to either letter, due diligence phone calls begin at 17 days delinquent.
2. Delinquency/Default Letter Production: While most borrowers will pay without much individual attention, delinquencies will rise because some borrowers, left alone, will fall into poor paying habits. Therefore, letters of varying tone and composition will be sent at 15, 30 and 45 and 90 days past the payment due date. The 45 day letter will include the Consumer Financial Protection Bureau (CFPB) mandated notification informing the borrower of the available loss mitigation options. The 90 day letter will detail for the borrower possible escalated collection activity up to and including foreclosure. The letters emphasize the seriousness of the situation, the potential for loss of the borrower's property, and demands immediate payment.
3. Due Diligence Phone Calls: Telephone calls will be placed to all mortgage loan borrowers in accordance with CFPB guidance and best practices. We will attempt to establish live contact with the borrower beginning at the 17th day of delinquency with a good faith goal of establishing contact with the borrower by the 36th day of delinquency. We will make one or more subsequent attempts to contact the borrower every 30 days thereafter. Telephone contact offers several advantages: it demands attention; it interrupts other activity; it establishes a personal communication; and it requires immediate response. The objective of the call is to secure or demand prompt payment, obtain information needed to determine the reason for the delinquency, and to gain a commitment for future payments.
4. Credit Reporting: Consultant will report to the credit bureaus any borrower payment activity on a monthly basis.
5. Confirmation Letters: Contact with borrowers is used to solicit commitments to repay past due amounts. A borrower will be provided with the opportunity to bring the loan current immediately, and within six months. Once a commitment is gained, Consultant will forward a confirmation letter to document both the call and the commitment. The revised payment plan of no greater than six month's duration is then implemented. Default under this plan may cause Consultant to recommend foreclosure.

## Reports

Consultant's standard reports are designed to meet Costa Mesa's objectives and funding source requirements. Data reporting is flexible and can be reported in several ways, including program type, funding source and funding year. Hard-copy reports are available as indicated in addition to the electronic reporting available to Costa Mesa online through our Internet LoanLink service. Through LoanLink, Costa Mesa has unlimited access to account and portfolio data, and can view the information as well as generate reports that can be downloaded into Excel.

1. Portfolio Status Report: The report provides a complete accounting per loan of the total portfolio. The report identifies annual payments made, remaining balances, borrower's name and account number, original loan balance, interest rate, and loan term. For those deferred loans accruing interest, the report shows the ongoing accrued interest balance.

*Frequency: Available on-line, one hard-copy report forwarded monthly to Costa Mesa.*

2. Current Month Reconciliation Report: This report serves as reconciliation for the loan payments remitted by borrowers.

*Frequency: Available on-line, one hard-copy report, along with remittance check, forwarded to Costa Mesa within ten working days of the close of the month.*

3. Delinquent Aging Report: This report reflects delinquent accounts at the 30, 60, 90, and over 90 day levels. Borrower accounts moved into the forbearance or foreclosure process are designated.

*Frequency: Available on-line, one hard-copy report forwarded monthly to Costa Mesa.*

4. Loan Amortization Schedule: The Loan Amortization Schedule shows the breakout of principal and interest paid for each payment during the term of the loan. This schedule is useful in determining how much principal is still owed and how much interest has been paid, at any period of time. This report can also be used in determining any balloon amounts due per the terms of the note.

*Frequency: Available to Costa Mesa upon request.*

5. Account Status Information Report: Provides borrower profile, loan term and current balance and status information for individual borrower accounts within a client's portfolio. This report includes a vast amount of information on any particular account within the City's portfolio.

*Frequency: Available on-line.*

- a. Current Year Payment History: Details transactions on individual accounts for the current year's activity.

*Frequency: Available on-line.*

6. Payment History with Memos: Consultant uses a series of memo codes to help classify various borrower requests or processing activity. Activities subject to memo code classification include, for example, requests for duplicate coupon books, payoff requests, and other miscellaneous borrower questions. This report summarizes the loan history with identification of these types of activities along with associated comments by Consultant personnel.

*Frequency: Available on-line.*

7. Memo Listing Report: This report lists the various coded activities and their dates. It is particularly useful when researching activity on any particular borrower account.

*Frequency: Available on-line.*

### **Loan Foreclosure**

The mortgage transaction and all collections efforts are predicated on the assumption that the borrower is motivated and able to meet the mortgage obligation. A decision to foreclose is based on an analysis of an individual loan. We will look at the borrower with particular emphasis on basic motivation, ability to pay; and attitude or level of cooperation. If a borrower has been uncooperative, non-responsive, or unwilling to cure the existing default by all reasonable means, Consultant will recommend foreclosure.

This step is generally not taken until after a loan becomes over 120 days delinquent. Upon Costa Mesa's approval, and in accordance with respective local, state and federal statutes, Consultant will send the borrower a notice of intent to foreclose/demand letter, with a copy to Costa Mesa. If no response is received within 30 days, Consultant will advise Costa Mesa of the non-response. Upon Costa Mesa's direction, Consultant will proceed to foreclosure. Consultant will properly document all steps taken to affect a cure.

If the loan is not reinstated or paid off, Consultant will continue foreclosure up to and including the sale of the property. Upon sale of the property, Consultant will return all proceeds of the sale to Costa Mesa less foreclosure fees and any previously un-reimbursed costs incurred.

In the event the borrower reinstates the loan, Consultant will remit to Costa Mesa all payments received from the borrower. For those loans that are reinstated by the borrower, Consultant will resume normal servicing functions.

### **Bankruptcy Administration Services**

#### 1. Chapter 13 Bankruptcy:

- a. Upon receipt of notification from a court of law, debtor (borrower), or Costa Mesa of a Chapter 13 bankruptcy for a debtor serviced by Consultant, Consultant will forward a notification letter to Costa Mesa indicating intention to file a Notice of Claim as well as supporting bankruptcy documentation. Such Notice of Claim will indicate the total amount past due at time of Chapter 13 filing. Consultant will then file a Proof of Claim to the appropriate court. Upon receipt of a returned filed Proof of Claim from the court, Consultant will forward a copy of same to Costa Mesa and will begin monitoring post and pre-petition payments to borrower's loan account.
- b. Upon any default of borrower in the remittance of post-petition payments, Consultant will contact the borrower's (debtor's) counsel to notify counsel of the default, instructing that any further default will result in the filing of a Motion to Lift the bankruptcy stay. If the borrower has no legal counsel and has filed their bankruptcy petition "pro se", (on their own behalf) or with the assistance of a licensed paralegal; Consultant can communicate directly with the borrower. In addition, notification of the default will be

forwarded to the Trustee's office. Should there be a continued default in post-petition payments and at the instruction of Costa Mesa, the Motion to Lift will be filed by Consultant and Consultant will begin foreclosure proceedings as directed by Costa Mesa.

2. Chapter 7 Bankruptcy:

- a. Upon receipt of notification of a Chapter 7 bankruptcy for a debtor serviced by Consultant, Consultant will establish a file for the borrower and monitor payments. Additionally, a reaffirmation agreement will be generated and forwarded to the borrower's attorney (debtor's counsel) for signature, and to the appropriate court upon receipt of the executed document. This fully enforceable agreement, if executed, will retain the lien as secured and will keep the lien from being discharged as part of the Chapter 7 discharge. If the borrower has no legal counsel and has filed their bankruptcy petition "pro se", (on their own behalf) or with the assistance of a licensed paralegal; Consultant can communicate directly with the borrower.
- b. Upon any default of borrower's remittance of payments during the bankruptcy, Consultant will contact the borrower's (debtor's) counsel advising of the default, but if filed pro se, then the debtor would be contacted directly.
- c. Should the Chapter 7 Trustee determine that assets are available for distribution to creditors, Consultant will file a Proof of Claim on behalf of Costa Mesa, indicating total amount due.

Subordination Processing

1. Subordination Request Package: Costa Mesa, upon receiving a request for subordination, may refer the borrower to Consultant (or Costa Mesa may handle subordination requests itself) without charge imposed by Consultant). If this service is requested by Costa Mesa of the Consultant, then Consultant will send a Subordination Request Package to the borrower or designee (lender or title). Costa Mesa may require the borrower to pay the cost of the subordination processing at application or Costa Mesa may pay the cost upon billing from Consultant.
2. Review Process: The purpose of the subordination review process is to determine that the new senior loan on the borrower's property will be made in conformance with Costa Mesa's specific subordination criteria policies and that Costa Mesa's title position and security for its note is an remains in second lien position and is otherwise properly treated. Documentation typically required for the review may include the following:
  - a. Letter from borrower with reasons for requesting subordination and all required supporting documentation to evidence compliance with Costa Mesa subordination criteria;
  - b. FNMA 1003 application, or other applicable application, for new senior loan;
  - c. Lender's approval of new senior loan, with all conditions to such loan approval in writing for review by Costa Mesa or its Consultant;

- d. Title report;
  - e. Appraisal;
  - f. Closing instructions and estimated closing statement;
  - g. Credit report (if required);
  - h. Tax return or other income documentation (if required);
  - i. Completed Subordination Agreement ready for signature, using only the form/template prepared by provided to Consultant for use with each and any approved subordination of a FTHB Program Loan. (See exhibit hereto for current form/template of Subordination Agreement); and
  - j. Request for Notice document on new senior loan(s).
3. Document Preparation: Consultant prepares (or reviews docs prepared by new senior lender) and shall use only the Subordination Agreement in form and content provided by Costa Mesa:
- a. Subordination Agreement using the form/template provided by Costa Mesa;
  - b. Request for Notice document on new senior loan(s); and
  - c. Closing instructions.
4. Recommendation: At the completion of the review, a report is forwarded to Costa Mesa with a recommendation to either approve the request and to execute the Agreement, or to deny the request. The report will contain a recapitulation of pertinent information such as lowered monthly payment amounts, old and new LTV's, new and old senior debt loan amounts, etc. In no event shall a requesting borrower receive any cash withdrawal or proceeds of the new loan if subordination of Costa Mesa's loan is approved and proceeds to closing.
5. Approval: Upon Costa Mesa's approval of a request for subordination, Costa Mesa will forward to borrower's lender or Title Company:
- a. Completed and executed Subordination Agreement between Costa Mesa, the new lender, and borrower;
  - b. Closing instructions dictating terms / use of Subordination Agreement document; and
  - c. Request for Notice document for new senior loan.

**Property Conditions Profile and Affidavit of Owner**

1. Property Conditions Profile:

- a. As requested by Costa Mesa, Consultant engages an outside vendor to perform a site visit to each owner's property to determine the outer condition of the dwelling and the condition of any detached structures and grounds. Two photos will be taken to document the condition of the property. NOTE: Consultant will not, at any time, enter upon the owner's private property.
- b. Property profiles shall rate (good, fair, poor) the condition of the property, and also comment on the following: roof type, property type, structure color, neighborhood condition, construction type, environmental hazards, and status of utilities.
- c. If the dwelling appears vacant or abandoned, it will be noted in the report.
- d. Property profiles may be ordered by Costa Mesa with any frequency desired, e.g., once every two years, once every three years, etc.

2. Affidavit of Owner:

Consultant will forward an instructional letter and Affidavit of Owner to each borrower. The Affidavit requires the owner to affirm continued compliance with all provisions of the promissory note and/or rehabilitation agreement. Such provisions may include, but are not limited to, the following:

- Continued residence
  - Timely payment of property taxes
  - Ongoing hazard and flood insurance coverage
  - Timely payment of all sums due to superior lien holders
  - Proper maintenance of the property
  - Non-subordination
- a. If no response is received within two weeks, Consultant will send a second letter, again requesting owner to sign and return affidavit.
  - b. Consultant will compile responses and will forward original affidavits to the City.



**Attachment A-1 to Exhibit A  
Template/Form of Subordination Agreement FTHB Program (June 2015)**

<b>Recording Requested By and When Recorded Mail to:</b>  <b>COSTA MESA HOUSING AUTHORITY HCD, 2<sup>nd</sup> FLOOR P.O. BOX 1200 77 FAIR DRIVE COSTA MESA CA 92628-1200 Attn: Jacqueline Y. Reeves</b>	
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This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103 and Government Code Section 27383.

**SUBORDINATION AGREEMENT**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY BUT NOT LOWER THAN SECOND PRIORITY, THAN THE LIEN OF SOME OTHER OR LATER RECORDED SECURITY INSTRUMENT.**

This **SUBORDINATION AGREEMENT**, made this as of the \_\_\_\_\_, by and among Costa Mesa **HOUSING AUTHORITY**, a public body corporate and politic (“Authority”), and **[insert owner(s) name(s) and full legal vesting]**, (herein together, “Owner”), and **[insert full legal name of Primary Lender for New Loan]** (“Primary Lender”). Owner is the fee owner of that certain real property commonly known as \_\_\_\_\_ **Costa Mesa, CA 926\_\_**; (APN # \_\_\_\_\_) and more fully described in the legal description, Exhibit “A”, attached hereto and incorporated by this reference, (“Property”). Authority is the present owner and holder of that certain Authority Deed of Trust (defined below) and that certain Authority Note (defined below).

**WITNESSETH**

**WHEREAS**, Owner did execute that certain **Shared Appreciation Deed of Trust** dated as of \_\_\_\_\_, to \_\_\_\_\_ Title Insurance Company, a California corporation as trustee, covering the subject Property to secure that certain **Agency Loan and Equity Sharing Payment Promissory Note (Promissory Note Secured By Deed of Trust)** (“Authority Note”) in the sum of \$ \_\_\_\_\_ in favor of Costa Mesa Redevelopment Agency, which deed of trust was recorded in the Official Records, County of Orange, State of California on \_\_\_\_\_ as **Instrument No. \_\_\_\_\_** (“Authority Deed of Trust”); and

**WHEREAS**, as of February 1, 2012 the former Agency became a dissolved redevelopment agency pursuant to the requirements of Assembly Bill x1 26 that added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code commencing with Section 34161, *et seq.*, and as amended by the California Supreme Court’s decision in *California Redevelopment Association*,

*et al. v. Matosantos*, and as amended by Assembly Bill 1484 chaptered and effective June 27, 2012, and amended by subsequent legislation (together, "Dissolution Law"); and

**WHEREAS**, pursuant to Section 34176 of the Dissolution Laws, on January 17, 2012 the Authority adopted a resolution by which the Authority elected to assume the housing assets and functions of the former Agency and by operation of law on and as of February 1, 2012 and pursuant to Section 34181 such transfer was confirmed by the Oversight Board to the Successor Agency by Resolution adopted on April 19, 2012, and also pursuant to Section 34176 the Authority prepared and submitted to the DOF a housing asset transfer schedule in July 2012, and in January 2013 the DOF approved the transfer of such housing assets that include, among other assets, the subject Authority Note and Authority Deed of Trust, and thereby the Authority is now the legal owner, holder and beneficiary of the former Agency's housing assets, including without limitation the subject Authority Note and Authority Deed of Trust and instruments related thereto; and

**WHEREAS**, Owner has an existing first lien mortgage with \_\_\_\_\_, which mortgage was obtained in connection with Owner's original purchase of the Property, which first mortgage loan was reviewed and authorized by the former Agency; and

**WHEREAS**, currently, Owner is in the process of refinancing their existing first lien mortgage with the Primary Lender; and

**WHEREAS**, in connection with such refinancing, Owner has executed, or is about to execute, a new deed of trust securing a promissory note for a new loan in the principal amount of \$ \_\_\_\_\_ and dated as of \_\_\_\_\_, 201\_\_ in favor of Primary Lender \_\_\_\_\_ whose address is: \_\_\_\_\_ ("Primary Lender") relating to Loan No. \_\_\_\_\_, Escrow/Title No. \_\_\_\_\_, payable with interest and upon the terms and conditions described therein ("Primary Lender Deed of Trust"), which the Primary Lender Deed of Trust is to be recorded concurrently and of even date with this Subordination Agreement as a part of the pending escrow for the new loan (together herein, "New Loan"); and

**WHEREAS**, Primary Lender and Owner represent and warrant to the Authority that the New Loan is a fixed rate, fully amortized mortgage with a thirty (30) year term; and

**WHEREAS**, a condition precedent to Owner's obtaining said New Loan from the Primary Lender is that the Primary Lender Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Authority Deed of Trust; and

**WHEREAS**, Primary Lender is willing to make said New Loan to Owner provided the Primary Lender Deed of Trust securing such New Loan is a lien or charge upon the Property prior and superior to the lien or charge of the Authority Deed of Trust and provided that Authority will specifically and unconditionally subordinate the lien or charge of its Authority Deed of Trust to said Primary Lender Deed of Trust subject to the terms and conditions set forth herein, including the notice and cure rights provided by the Primary Lender to the Authority hereunder; and

**WHEREAS**, it is to the mutual benefit of Primary Lender, Owner, and Authority that Primary Lender make said New Loan to Owner; and Authority is willing that the Primary Lender Deed of Trust securing such New Loan shall constitute a lien or charge upon the Property which is unconditionally prior and superior to the lien or charge secured by the Authority Deed of Trust subject to the provisions set forth herein.

**NOW THEREFORE**, in consideration of the mutual benefits accruing to Primary Lender, Owner, and Authority and other valuable consideration, the receipt and sufficiency of such consideration is hereby acknowledged, and in order to induce Primary Lender to make said New Loan above referred to, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Primary Lender Deed of Trust in favor of Primary Lender for the New Loan as well as all other obligations recited as being secured thereby shall unconditionally be and remain at all times a lien or charge of the Property prior and superior to the lien or charge of the Authority Deed of Trust; provided however, that the Authority Deed of Trust shall in no event be or become lower than second lien priority.

2. Primary Lender Reliance. The Primary Lender would not make this New Loan as described without this Subordination Agreement.

3. Owner Representations to Authority. As a condition to Authority authorizing the refinancing and entering into this Subordination Agreement, the Owner has represented and warranted to Authority, and hereby confirms such representations and warranties, that: (a) Owner has not in the past rented, and does not currently rent out, all or any part of the subject Property, (b) Owner continues to reside at and occupy the Property as his/her/their primary personal residence, and (c) if Owner has made improvements to the Property, then each and all such improvements were completed with proper building or other permits, if any, required by federal, state or local laws and regulations, including without limitation Costa Mesa Municipal Code and all applicable uniform codes.

4. Authority Reliance. The Authority would not enter into this Subordination Agreement as described and the Authority is relying on the documentation submitted and representations made to the Authority by the Owner and Primary Lender about the New Loan and thereby the Authority has consented to the New Loan.

5. Entire Agreement re Subordination. This Subordination Agreement shall be the whole and only agreement with regard to the subordination of the Authority Deed of Trust to the Primary Lender Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between the deeds of trust hereinbefore specifically described, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Authority Deed of Trust, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

6. Declarations. The parties declare, agree, and acknowledge as follows:

i. Authority consents to the Primary Lender Deed of Trust securing said New Loan.

ii. Primary Lender in making disbursements pursuant to the New Loan is under no obligation or duty to, nor has Primary Lender represented that it will, see to the application of such proceeds by the person or persons to whom Primary Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such New Loan agreement shall not defeat the subordination herein made in whole or in part.

iii. Authority intentionally and unconditionally waives, relinquishes, and subordinates the lien or charge of the Authority Deed of Trust in favor of the lien or charge upon said land of the Primary Lender Deed of Trust, as to said New Loan as well as all other obligations recited therein as being secured thereby, and understands that in reliance upon and in consideration of this waiver, relinquishment and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; provided however, in no event shall the Authority Deed of Trust be or become lower than second lien priority and in no event shall Owner and Primary Lender extend, amend, or otherwise modify such New Loan that would increase the principal amount above the initial amount of \$           , increase the interest rate, or change the amortization or length of the term of such New Loan; and

iv. An endorsement has been placed upon the promissory note secured by the Authority Deed of Trust that said deed of trust has been subordinated to second lien priority by this Subordination Agreement to the first lien or charge of the Primary Lender Deed of Trust.

7. Notice to Primary Lender from Authority of Alleged Default by Owner under the Authority Deed of Trust. Authority agrees to send to Primary Lender written notice of default issued by Authority under the Authority Note, Authority Deed of Trust, or related subordinate loan documents at the same time any such notice is sent to Owner.

8. Authority Notice and Cure Rights. Primary Lender agrees to send to Authority written notice of any default under the Primary Lender Deed of Trust or any of the other loan documents related to the New Loan at the same time any such notice is sent to Owner. Following any such notice from Primary Lender to Authority ("Senior Default Notice"), Primary Lender acknowledges and agrees that Authority may, but is not obligated to:

i. Cure the default listed in the Senior Default Notice by giving Primary Lender written notice of its election to do so ("Cure Notice") within thirty (30) days following its receipt of the Senior Default Notice, and, in the case of a monetary default, curing such monetary default prior to the end of such thirty (30) day period following Authority's receipt of a Senior Default Notice, or, in the case of a non-monetary default, after delivering to Primary Lender a Cure Notice, thereafter proceeding to cure the noticed non-monetary default within an additional thirty (30) days (such 30 day period for monetary defaults and the sixty (60) day period for non-monetary defaults, each, respectively, the "Cure Period"); provided, however, that notwithstanding the preceding provision, in the event of a non-monetary default that is susceptible to being cured only after Authority has obtained possession of the Property, Authority shall have as long as is reasonably necessary (i) to obtain possession of the Property pursuant to Section 7(b) below, and (ii) to cure the default, so long as Authority does so with reasonable and continuous diligence; provided further, however, that notwithstanding its receipt of a Cure Notice from Authority, Primary Lender may, during the Cure

Period, record a notice of default against the Property and obtain a receiver in accordance with the terms and conditions of the New Loan documents; provided further, however, that in the event Authority cures the noticed default within the Cure Period, Primary Lender will rescind its notice of default and request the dismissal of any appointed receiver after reimbursement by Authority of all of Primary Lender's costs, including, without limitation, its reasonable attorneys' fees and court costs; and provided further, however, that prior to Primary Lender accepting any such cure by Authority, Authority shall have delivered a written statement itemizing all consideration, if any, given by Owner to Authority in exchange for Authority's agreement to cure; and

ii. Acquire the Property from Owner on the following terms and conditions ("Acquisition"): (i) Authority shall have delivered to Primary Lender a written notice of its election to acquire the Property ("Acquisition Notice"); (ii) Owner shall execute and deliver to Authority such documents and instruments as Authority reasonably request or as maybe necessary to transfer the Property to Authority ("Conveyance Documents") within thirty (30) days from the date Owner receives notice of Authority's election to acquire the Property pursuant to the terms hereof; and (iii) Authority shall be entitled to acquire the Property from Owner for no fee or other consideration; provided, however, that prior to or substantially concurrently with the completion of such Acquisition, and as a condition precedent thereto, Authority shall or Authority shall have caused Owner to repay Primary Lender in full the entire amount of principal, interest and fees then outstanding under the New Loan documents for the New Loan; provided further, however, that notwithstanding its receipt of an Acquisition Notice from Authority, Primary Lender may, during the Cure Period, record a notice of default against the Property and obtain a receiver in accordance with the terms and conditions of such New Loan documents; provided further, however, that in the event Authority acquires the Property and Primary Lender is repaid as provided in this Section 7 within sixty (60) days from the date it delivers the Acquisition Notice to Primary Lender, Primary Lender will rescind its notice of default and request the dismissal of any appointed receiver after reimbursement by Authority of all of Primary Lender's costs, including, without limitation, its reasonable attorneys' fees and court costs.

**[Signature blocks begin on next page]**

**NOTICE: THE OBLIGATION SUBORDINATED BY THIS SUBORDINATION AGREEMENT PROHIBITS THE OWNER OBLIGATED ON THE REAL PROPERTY SECURITY FROM USING ANY PORTION OF THE NEW LOAN PROCEEDS FOR ANY PURPOSE OTHER THAN THE SUBJECT REFINANCING AND REASONABLE CLOSING COSTS; NO NEW LOAN PROCEEDS SHALL BE WITHDRAWN BY OR DISBURSED TO OWNER UNDER ANY CIRCUMSTANCE.**

(ALL SIGNATURES MUST BE NOTARIZED)

[PRIOR TO AND IN CONNECTION WITH EXECUTION OF THIS SUBORDINATION AGREEMENT, IT IS RECOMMENDED THAT EACH PARTY CONSULT WITH ITS ATTORNEY]

**AUTHORITY:**

**COSTA MESA HOUSING AUTHORITY**

a public body, corporate and politic

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Thomas R. Hatch, Executive Director/City Chief Executive Officer  
or Authorized Designee

**ATTEST:**

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Housing Authority Secretary/City Clerk

[Signature Block for Subordination Agreement continues on next page]

[Signature block for Subordination Agreement continued from previous page]

**OWNER:**

\_\_\_\_\_  
Name(s) and Vesting of Owner(s)

\_\_\_\_\_ DATE: \_\_\_\_\_

**PRIMARY LENDER**

\_\_\_\_\_

By: \_\_\_\_\_  
[insert name/title of authorized corporate officer]

By: \_\_\_\_\_  
[insert name/title of authorized corporate officer]

**EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

[insert legal description from title report]

Commonly known as: \_\_\_\_\_, COSTA MESA, CA 926\_\_

Tax ID Number/APN: \_\_\_\_\_

[insert/attach appropriate jurats/notary forms]



**EXHIBIT B**

**AmeriNational Community Services  
8121 East Florence Avenue  
Downey, California 90240  
(562) 927-6686**

**Program Guidelines / Loan Servicing**

Date: July 1, 2015

Client Name: Costa Mesa Housing Authority and/or City of Costa Mesa Client #: 470 Group #: 470

Amortized Loans Only       Deferred Loans Only       Both Amortized and Deferred Loans

Project Name: FTHB Program  
Project Name:  
Project Name:  
Project Name:

Project #: 470  
Project #:  
Project #:  
Project #:

**A. Services Provided**

	Yes	No
Loan Processing and Underwriting	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Loan Document Preparation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funds Disbursement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AmeriNational to Prepare Subordinations	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tax Monitoring	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tax Escrows	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Insurance Monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Insurance Escrows	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Delinquency Follow Up / Loss Mitigation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Credit Reporting	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bankruptcy Monitoring	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AmeriNational to prepare Forbearance Agreements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AmeriNational to prepare Foreclosure Agreements	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AmeriNational to prepare Payoff Demands	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Costa Mesa Approval required for Payoff Demands	<input checked="" type="checkbox"/>	<input type="checkbox"/>
AmeriNational to prepare Substitution of Trustee / Deed of Reconveyance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Borrower Affidavits	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Property Condition Profiles	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Termination Declaration of Covenants, Conditions, and Restrictions ("CC&Rs")	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**B. Level of Service**

As applicable, Loans sent to AmeriNational for servicing/warehousing must be accompanied by a Loan Servicing Set Up Sheet (sample attached to this document).

1. As and if requested by Costa Mesa, if AmeriNational is monitoring Hazard Insurance coverage, what level of insurance is required:

- Replacement Insurance – replaces improvements to the property if destroyed
- Hazard Insurance – covers balances outstanding against the property
- Place Forced Insurance on an "As Requested" Basis if cancellation notices are received

2. If AmeriNational is to place Forced Insurance, the cost of such insurance shall be: N/A

- Billed to Costa Mesa each month – See Section D: Special Instructions
- Deducted from monthly remittance
- Deficit account to be set up \$

3. If AmeriNational is preparing payoff demands and Costa Mesa approval is required, Costa Mesa will review and approve payoff demands within 2 business days of receipt.

## E. Reporting

### 1. Reports with remittance sent to:

Client Name	City of Costa Mesa and Costa Mesa Housing Authority
Department	Community Development Department, Division of Housing and Neighborhood Improvement
Address	PO Box 1200
City, State, Zip	Costa Mesa, CA 92628-1200
Attention	Jacqueline Y. Reeves, Management Analyst

## G. Costa Mesa Contact Information

### General Contact

Name: Jacqueline Y. Reeves; Title: Management Analyst  
 Phone: 714/754-4870 Fax: 714/754-4913 Email Address: JACQUIE.REEVES@costamesaca.gov

### Tax and Insurance Contacts

**Primary Contact:** Name: Jacqueline Y. Reeves; Title: Management Analyst  
 Phone: 714/754-4870 Fax: 714/754-4913 Email Address: JACQUIE.REEVES@costamesaca.gov

**Secondary Contact:** Name: Willa Bouwens-Killeen; Title: Principal Planner  
 Phone: 714/754-5153 Email Address: WILLA.BOUWENS-KILLEEN@costamesaca.gov

### Delinquency Follow Up / Loss Mitigation Contacts

**Primary Contact:** Name: Jacqueline Y. Reeves; Title: Management Analyst  
 Phone: 714/754-4870 Fax: 714/754-4913 Email Address: JACQUIE.REEVES@costamesaca.gov

**Secondary Contact:** Name: Willa Bouwens-Killeen; Title: Principal Planner  
 Phone: 714/754-5153 Email Address: WILLA.BOUWENS-KILLEEN@costamesaca.gov

## **Authorized to Approve Forbearance and Foreclosure Agreement**

Name: Willa Bouwens-Killeen; Title: Principal Planner  
Phone: 714/754-5153 Email Address: [WILLA.BOUWENS-KILLEEN@costamesaca.gov](mailto:WILLA.BOUWENS-KILLEEN@costamesaca.gov)

## **Payoff and Reconveyance Contacts**

**Primary Contact:** Name: Jacqueline Y. Reeves; Title: Management Analyst  
Phone: 714/754-4870 Fax: 714/754-4913 Email Address: [JACQUIE.REEVES@costamesaca.gov](mailto:JACQUIE.REEVES@costamesaca.gov)

**Secondary Contact:** Name: Willa Bouwens-Killeen; Title: Principal Planner  
Phone: 714/754-5153 Email Address: [WILLA.BOUWENS-KILLEEN@costamesaca.gov](mailto:WILLA.BOUWENS-KILLEEN@costamesaca.gov)

## **Authorized to Approve Payoff Demands**

**Primary Contact:** Name: Jacqueline Y. Reeves; Title: Management Analyst  
Phone: 714/754-4870 Fax: 714/754-4913 Email Address: [JACQUIE.REEVES@costamesaca.gov](mailto:JACQUIE.REEVES@costamesaca.gov)

**Secondary Contact:** Name: Willa Bouwens-Killeen; Title: Principal Planner  
Phone: 714/754-5153 Email Address: [WILLA.BOUWENS-KILLEEN@costamesaca.gov](mailto:WILLA.BOUWENS-KILLEEN@costamesaca.gov)

## **Authorized to Sign Substitution of Trustee / Deeds of Reconveyance**

Thomas R. Hatch,  
Phone: 714/754-5107 Email Address: [Thomas.Hatch@costamesaca.gov](mailto:Thomas.Hatch@costamesaca.gov)

**EXHIBIT C**  
**FEE SCHEDULE**

**Loan Portfolio Management**

**Amortized Loans:**

- i. Monthly Service Fee: 1/24 of 1% per month of original principal amount with a minimum monthly fee of \$8.50 and a maximum monthly fee of \$25.00 for each loan in the portfolio. Escrowing and/or monitoring of taxes and insurance are included with the service at no additional cost (except for a potential one-time tax service fee). Please note: The establishment of a new tax service contract or the transfer of an existing contract from an acceptable service provider is required for the escrowing and/or monitoring of taxes. Tax service vendor fees are outside costs passed through from outside vendors and are subject to marketplace increases. Such costs shall be reasonable and competitive with other similar services provided in the general vicinity of the projects.

**Deferred Loans:**

*Loans serviced by Consultant prior to July 1, 2015. Fee already paid under a prior contract.*

- i. Flat fee for receiving occasional payments on deferred loans: \$9.00 per payment

*Loans serviced by Consultant on or after July 1, 2015:*

- i. Warehouse: \$2.15 per loan per month  
Warehouse and monitor of taxes and/or insurance: \$2.70 per loan per month plus a one-time tax service vendor fee.
- ii. Warehouse and escrow of taxes and/or insurance: \$9.67 per loan per month plus a one-time tax service vendor fee.
- iii. Flat fee for receiving occasional payments on deferred loans: \$9.67 per payment

**Loss Mitigation**

As and if requested by Costa Mesa, an additional servicing fee of \$4.35 per loan per month shall be charged for all amortized loans in the portfolio.

**Per-Event Fees**

Tickler Notifications:	\$12.50 per notification
Loan Transfer Fee:	\$50.00 per loan one-time fee if transferred from Consultant
Property Conditions Profile:	\$50.00 per occurrence
Affidavit of Owner:	\$12.00 per loan (entire portfolio done at one time) with a \$500 minimum fee.

## **Loan Foreclosure.**

**Document Preparation:** A one-time charge of \$350.00 to prepare documents to commence foreclosure proceedings and to manage the foreclosure process on behalf of Costa Mesa. In addition to the above foreclosure service fee, Consultant will deduct and pay from remittance or bill Costa Mesa for other costs incurred in the foreclosure process such as, but not limited to, conventional legal fees, sheriffs' deposits, bankruptcy closing costs, fees set by law, etc. These fees will be accurately quoted on a case-by-case basis upon request by Costa Mesa and within all applicable statutory limits. Reinstatement figures provided more frequent than monthly may be subject to an additional charge of \$15.00 per occurrence.

1. **Reinstatement Terms:** Costa Mesa reimbursement for foreclosure services rendered, and its costs and other charges, will be made by the borrower upon reinstatement or full payment of any Deed of Trust or Mortgage under foreclosure.

## **Bankruptcy Services**

1. Filing of Proof of Claims Fee: \$100 per occurrence
2. Filing of Reaffirmation Agreements Fee: \$75 for each occurrence
3. Monitoring and Repayments Fee: \$12.00 per loan per month for the duration of an active Chapter 7/13 case for monitoring Chapter 7/13 plans and Discharges or Debtors (Chapter 13), and the receipt of post and pre-petition payments.
4. Filing of Lift Stays Fee: \$175 per occurrence plus out-of-pocket fees and costs. Such fees and costs include, but are not limited to, obtaining local council in the bankruptcy jurisdiction and as approved by the City. The City will be responsible for the payment of any fees for filing suit or related outside costs due Consultant that cannot be reimbursed from the borrower.

## **Subordination Processing**

A fee of \$325.00 per analysis per loan.

## **Extraordinary Services and Research:**

As requested only, Consultant will conduct ongoing routine maintenance and general customer service activities on borrower information and balances as part of its servicing duties at no additional cost.

Should Costa Mesa request additional research to be conducted, or if Costa Mesa engages Consultant to conduct a Loan Reconstruction Service on its portfolio, an extraordinary research fee of \$100.00 per hour will be charged, with a minimum of one hour per occurrence. Any such fee will be approved by Costa Mesa before the research is conducted.

When research is conducted at the request of Costa Mesa because of a discrepancy between Costa Mesa's records and Consultant's records relating to the principal balance or other loan information, and the result of the research determines that the discrepancy was the result of activity being posted

at Costa Mesa and not forwarded to Consultant for updating of its records, the extraordinary research fee will be charged for the time spent on the research.

In the event Costa Mesa requests additional services to be performed by Consultant not specifically set forth in the Scope of Services and Consultant agrees to perform the requested additional service(s), Consultant shall undertake such services(s) after receiving written authorization from Costa Mesa. Additional compensation for such service(s) shall be allowed as agreed upon in writing by both Costa Mesa and Consultant.