

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
AMERINAT COMMUNITY SERVICES, LLC DBA AMERINAT
AND
FARMERS STATE BANK OF HARTLAND**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 18th day of January, 2018 ("Effective Date"), by and among the CITY OF COSTA MESA, a municipal corporation ("City"), AMERINAT COMMUNITY SERVICES, LLC, a Minnesota limited liability company DBA AMERINAT ("Consultant"), and FARMERS STATE BANK OF HARTLAND, a Minnesota corporation (the "Bank"). City, Consultant, and the Bank are collectively referred to herein as "Parties."

WITNESSETH:

A. WHEREAS, the City administers, monitors, enforces, and oversees certain affordable housing programs that are eligible for funding from the California Department of Housing and Community Development's CalHome Program (the "Program"); and

B. WHEREAS, City desires to utilize the services of Consultant as an independent contractor to provide financial services related to processing, providing, and servicing, as necessary, new and existing loans under the Program, as more fully described herein; and

C. WHEREAS, City desires to utilize the services of Bank as an independent contractor to provide funds disbursement services, as more fully described herein; and

D. WHEREAS, Consultant and Bank represent that they have that degree of specialized expertise contemplated within California Government Code section 37103, and hold all necessary licenses to practice and perform the services herein contemplated; and

E. WHEREAS, the Parties desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

F. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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 and Bank shall provide the professional services described in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant and Bank 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 and Bank also warrant that they are familiar with all laws that may affect its performance of this Agreement, including but not limited to CalHome Program Requirements, and shall advise City of any changes in any laws that may affect Consultant's or Bank's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant and Bank agree to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant and/or Bank to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant and/or Bank 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 and Bank warrant that they 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, including but not limited to the CalHome Program Requirements. Consultant and Bank shall indemnify and hold harmless City 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 for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's or Bank's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant and Bank shall not engage in, nor permit their agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant and Bank acknowledge that City may enter into agreements 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.

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

1.8. Confidentiality. Employees of Consultant and Bank in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant and Bank covenant that all data, documents, discussion, or

other information developed or received by Consultant and Bank or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant or Bank without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's and Bank's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant and Bank shall be paid in accordance with the fee schedule set forth in Exhibit "B" attached hereto and made a part of this Agreement by this reference (the "Fee Schedule"). The total annual compensation under this Agreement shall not exceed One Thousand Dollars (\$1,000.00).

2.2. Additional Services. Consultant and Bank shall not receive compensation for any services provided outside the Scope of Services unless the City or the 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 and Bank may submit invoices to the City 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 and Bank's services which have been completed to City's sole satisfaction. City shall pay an invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved 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 and Bank's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work 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 the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with 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. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, ending on January 17, 2019, unless previously terminated as provided herein or as otherwise agreed to in writing by the Parties. This Agreement may be extended by three (3) additional one (1) year periods upon written agreement of the Parties.

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

4.3. Compensation. In the event of termination, City shall pay Consultant and Bank for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work 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 effective 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 the City or in the possession of the Consultant or the Bank.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant and Bank in their 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 the City within thirty (30) days of delivery of termination notice to Consultant and Bank, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant or Bank shall be at City's sole risk and without liability or legal expense to Consultant or Bank.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant and Bank 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 City:

- (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 its elected and appointed boards, officers, officials, agents, employees, and volunteers shall be named as additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant or Bank pursuant to their contract with the City; products and completed operations of the Consultant or Bank; premises owned, occupied or used by the Consultant or Bank; automobiles owned, leased, hired, or borrowed by the Consultant or Bank.
- (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 City.
- (c) Other insurance: Each of Consultant's and Bank's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by Consultant's or Bank's policy.
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) Consultant's and Bank'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 City. No policy of insurance issued as to which the City 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 and Bank shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant or Bank 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 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 City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

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

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

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

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery 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, and (b) 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:

AmeriNat
217 South Newton Ave.
Albert Lea, MN 56007
Tel: (866) 779-5546
Attn: Amber Loverink,
Marketing and Contracts Manager

IF TO BANK:

Farmers State Bank of Harland
1452 W Main Street
Albert Lea, MN 56007
Tel: (507) 373-1945
Attn: Mark Heinemann, President/CFO

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-4870
Attn: Jacqueline Reeves,
Program Manager/Management Analyst

With a courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Department – Purchasing

6.5. Drug-Free Workplace Policy. Consultant and Bank shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "D" and incorporated herein by reference. Consultant's or Bank'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 City.

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. Neither Consultant nor Bank shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's or Bank's interest in this Agreement without City'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 City's consent, no subletting or assignment shall release Consultant or Bank of Consultant's or Bank's obligation to perform all other obligations to be performed by Consultant or Bank hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant and Bank agree to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's and Bank's sole expense, from and against any and all losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant or Bank, their employees, and/or authorized subcontractors, of the 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 or Bank, their respective 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 or Bank, or their respective employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant or Bank, or their respective employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant or Bank, their respective employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Consultant and Bank shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained in the City's specifications, which shall be of no force and effect.

The City agrees to indemnify, defend and hold harmless Consultant and Bank and their 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 or Bank in connection with a breach by the City of any of the covenants, agreements, representations or warranties contained herein, or the sole, willful negligence or intentional misconduct of the City, or any of its employees, subcontractors or agents.

6.10. Independent Contractor. Consultant and Bank are and shall be acting at all times as independent contractors and not as employees of City. Consultant and Bank shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or Bank or any of their employees, except as set forth in this Agreement. Consultant and Bank shall not, at any time, or in any manner, represent that they or any of their agents or employees are in any manner agents or employees of City. Consultant and Bank shall secure, at their 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 Bank and their respective officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant and Bank shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created with each by this Agreement. Consultant and Bank further agree to indemnify and hold City harmless from any failure of Consultant or Bank to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant or Bank under this Agreement any amount due to City from Consultant or Bank as a result of Consultant's or Bank's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or Bank or any employee, agent, or subcontractor of Consultant or Bank 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 the City, Consultant or Bank shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or Bank or their respective 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 City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and Bank and any of their employees, agents, and subcontractors providing service 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 City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's and/or Bank's performance or services rendered under this Agreement, Consultant and Bank shall render any reasonable assistance and cooperation which City 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 Bank or any of their subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant and Bank agree that any such documents or information shall not be made available to any individual or organization without the prior consent of City. 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 City and without liability or legal exposure to Consultant or Bank. City shall indemnify and hold harmless Consultant and Bank from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant or Bank. Consultant and Bank shall deliver to City 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 City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant and Bank have been advised and are 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 and Bank, or any of their subcontractors, pursuant to this Agreement and provided to City 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 or Bank informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City 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 Bank and their officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's and Bank'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. During the term of this Agreement, Consultant and Bank and their officers,

employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant or Bank is not currently performing work that would require Consultant or Bank or one of their 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 and Bank shall be responsible for their respective work and results under this Agreement. Consultant and Bank, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant or Bank occurs, then Consultant or Bank shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant or Bank professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant and Bank will not employ any regular employee of City 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 City, Consultant, and Bank 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 any party at any time to require performance or compliance by another party 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 the 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.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

AMERINAT COMMUNITY SERVICES, LLC DBA AMERINAT



Adrienne Thorson
CEO/CFO

Date: 1-23-18

FARMERS STATE BANK OF HARTLAND



Mark Heinemann
President/CFO

Date: 1-19-18


CITY OF COSTA MESA



Thomas Hatch
City Manager

Date: 1/31/18

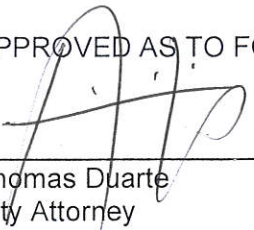
ATTEST:



Brenda Green
City Clerk




APPROVED AS TO FORM:



Thomas Duarte
City Attorney

Date: 1/30/18

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 1/29/18

APPROVED AS TO CONTENT:



Jacqueline Y. Reeves
Project Manager

Date: JAN 29, 2019

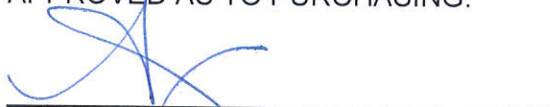
DEPARTMENTAL APPROVAL



Barry Curtis
Economic and Development Services
Director

Date: 1.29.18

APPROVED AS TO PURCHASING:



Stacy Daugherty
Finance Director

Date: 1/20/18

EXHIBIT A

CALHOME PROGRAM SCOPE OF SERVICES

Consultant and Bank agree to provide the following services in compliance with all applicable CalHome Program Requirements.

SERVICES STRICTLY PERFORMED BY CONSULTANT

I. LOAN PROCESSING AND UNDERWRITING

Consultant agrees to provide experienced loan processing, underwriting services and loan servicing, as needed, to meet the complex needs of Costa Mesa for Deferred Payment Loans under the CalHome Program ("Program"), both for existing loans provided by Costa Mesa prior to the Effective Date of the Agreement and for new loans, if any, provided by Costa Mesa after the Effective Date of this Agreement (on and after, Consultant shall work with Costa Mesa to streamline all phases of loan production, from loan processing to closing, and for funds disbursement, and continuing through loan servicing, refinancing and re-subordination, if any, and final pay off of the loan, all for increased speed and efficiency).

II. LOAN APPLICATION AND PRELIMINARY ANALYSIS

Costa Mesa will continue to undertake and handle the loan application and initial underwriting of prospective applicants/homeowners for new Deferred Payment Loans, if any, to be issued by Costa Mesa under the Program. As and if requested, Consultant will assist Costa Mesa in the underwriting and evaluation of potential new loans to be issued by Costa Mesa, which services may include, as and when requested by Costa Mesa the following:

A. Underwriting Assistance. Upon receipt of an approval to proceed, Consultant will order applicable outside services such as a preliminary report of title, related title documents, a lender's policy and pro forma therefor, appraisal, credit report and verifications. For rehabilitation work, once the firm cost of rehabilitation work is known (a contractor bid has been awarded) a final underwriting analysis will be prepared, addressing the following items:

1. Affordability (Debt to Income Ratio Analysis)
2. Current and past credit history
3. Financial interest in the property (Loan to Value)
4. Appraisal (full or drive-by where applicable)
5. Status of title to insure Costa Mesa will be in second lien position
6. Title Report (PIRT, CLTA, or ALTA for all loans that include a living trust)

a. PIRT Requests are to be ordered within 72 hours of receipt of request from Costa Mesa, and provided to Costa Mesa within two (2) business days of receipt by Consultant from the Title Company. Upon receipt of verifications and reports, a Final Loan Recommendation (FLR) will be prepared and sent to Costa Mesa for review, approval and funding.

III. LOAN DOCUMENT PREPARATION.

Once a new Program loan has been approved, Costa Mesa shall forward to Consultant a Request for Loan Documents containing required information to complete the preparation of loan documents.

A. Costa Mesa will provide to Consultant "template" documents that will comprise the "loan documents". For each new loan and in accordance with a loan document request from Costa

Mesa, Consultant within five (5) business days shall prepare and forward the following documents completed as to the homeowner for Costa Mesa's and the homeowner's execution:

1. Loan Agreement
2. Deed of Trust
3. Promissory Note
4. Truth in Lending Disclosure Statement
5. Request for Notice of Default and Sale
6. Notice of Right to Cancel
7. Control Instructions
8. Regulatory Agreement
9. Other documents as agreed to by Consultant and Costa Mesa

B. Once the loan documents are executed by the homeowner/borrower, the Deed of Trust, Regulatory Agreement and Request for Notice shall be returned to Consultant for recordation with the County Recorder. Following the recording of the Deed of Trust Regulatory Agreement, and Request for Notice, Consultant shall confirm that Costa Mesa's second lien position is secure by updating title and causing issuance of the lender's policy (when approved by Costa Mesa).

C. *Deferred Payment Loans for Rehabilitation Improvements.* If after the lead-based paint ("LBP") notification and evaluation phases, Costa Mesa elects to approve payment for treatment through clearance of LBP and LBP hazards as set forth in the Loan Agreement and Costa Mesa also approves the homeowner's application for funding of the rehabilitation improvements through the deferred payment loan option of the City's CALHOME Deferred Payment Loan Program, then Costa Mesa may make available Deferred Payment Loans to eligible Low Income homeowners, as specifically provided below, in original loan amounts of up to Fifty Thousand Dollars (\$50,000.00) exclusive of the costs of treatment through clearance of LBP. Deferred Payment Loans are only available to qualifying Low-Income property owners for rehabilitation of owner-occupied, single-family residential properties. If Program participants do not receive the maximum loan amount, they will be allowed to receive a second loan, which when added to the first loan equals or is less than the maximum loan amount only after being placed on and waiting for their name to become first on the waiting list. The City Manager, or his/her designee, may approve Deferred Payment Loans in excess of fifty thousand dollars (\$50,000.00) as determined necessary, in his/her sole and absolute discretion, to complete the rehabilitation of eligible property. When added to the existing encumbrances; actual loan amounts shall not exceed eighty-five percent (85%) of the current fair market value of the property.

1. Deferred Payment Loans shall be non-interest bearing and fully deferred without principal repayment until the *earlier* to occur of the (i) sale or transfer of all or any interest in the Property, (ii) refinancing of the Deferred Payment Loan or any lien which the Deferred Payment Loan is subordinate for a loan amount in excess of the then current loan balance secured by such liens plus reasonable and customary closing costs as approved in writing by Costa Mesa in its sole and absolute discretion, (iii) non-owner-occupancy of the Property by the homeowner, or (iv) other default by the homeowner of the terms and conditions of the Loan Agreement. In the event of default by the homeowner under the Program, interest shall accrue from the date of default at the default rate of ten percent (10%) per annum. In any event, upon (i) sale or transfer, (ii) refinancing, or (iii) non-owner occupancy or other default, as described above, the entire principal amount of the loan plus accrued interest shall be immediately due and payable. City Manager may, but is not required to, waive loan acceleration in the event of a homeowner default and establish an amortization and monthly payment schedule and/or adjustment in the interest rate for repayment.

IV. LOAN SERVICING FOR DEFERRED PAYMENT LOANS

A. 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.

B. Insurance Monitoring: At Costa Mesa's request, 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.

V. ACCOUNT INQUIRIES

Homeowners/Borrowers and Costa Mesa will have 24-hour electronic access to their loan information via Consultant's Website at www.amerinatls.com. Continuous access to all loan account information is also provided during normal working hours through Consultant's toll-free customer service telephone lines. In addition, Consultant can provide hard copy account payment histories or other information to Costa Mesa through facsimile transmission or email. When requested by a homeowner/borrower, Consultant will provide, without charge, a detailed statement of all transactions relating to the homeowner/borrower's loan.

VI. ADDITIONAL PORTFOLIO MANAGEMENT SERVICES

A. Loan Payoff Quotations; Satisfactions, Reconveyances: At Costa Mesa's request, Consultant shall: (1) provide loan payoff quotations, and (2) prepare satisfactions and reconveyances of mortgage at the homeowner/borrower's expense for any Program loan.

B. 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 Program loan.

C. Year-End Account Summary: Consultant shall prepare and submit to each Costa Mesa borrower each year; a year-end account summary statement if there has been account activity. The report will indicate principal and interest outstanding and payoff information, if any, for the applicable year.

VII. LOAN TRANSFER

In the event Costa Mesa requires Consultant to transition loans back to Costa Mesa or to another loan servicer, Consultant shall 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.

VIII. PROPERTY CONDITIONS PROFILE AND AFFIDAVIT OF HOMEOWNER

A. Property Conditions Profile:

1. If requested by Costa Mesa, Consultant will utilize the services of its outside vendor to perform a site visit to a homeowner'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; provided however, that Consultant does not and will not, at any time, enter upon or into the homeowner's private property.

a. If requested by Costa Mesa, 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.

b. If the dwelling appears vacant or abandoned, it will be noted in the report.

c. Property profiles may be ordered by Costa Mesa with any frequency desired, e.g., once every two years, once every three years, etc.

B. Affidavit of Homeowner. If requested by Costa Mesa, Consultant will forward an instructional letter and Affidavit of Homeowner to a borrower. The Affidavit requires the homeowner to affirm continued compliance with all provisions of the promissory note, deed of trust, Regulatory Agreement and Loan Agreement. Such provisions may include, but are not limited to, the following:

1. Continued residence in the property as primary home
2. Timely payment of property taxes
3. Ongoing hazard and flood insurance coverage
4. Timely payment of all sums due to superior lien holders
5. Proper maintenance of the property
6. Non-subordination

SERVICES STRICTLY PERFORMED BY BANK

A. Fund Disbursement Services

1. To ensure that Costa Mesa loan proceeds are used in the manner intended by the Program and City's policies and procedures, Bank provides a unique funds disbursement service, which meets the needs of both the Program and Costa Mesa's Finance Department.

2. Total loan proceeds are forwarded to Bank and held in trust for disbursement of funds according to Program and Costa Mesa's requirements. Bank shall deposit the funds into a custodial trust account at an FDIC insured bank. Costa Mesa's Finance Department will be required to only issue one check or initiate one EFT, and Bank 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, all pursuant to the Program requirements.

3. Bank is experienced with the multiple funding sources used in housing and economic development programs. Bank will prioritize the disbursement of funds from several funding sources associated with a single loan and work write-up for the rehabilitation at the subject property and will provide corresponding reports to be used as official subsidiary journals to Costa Mesa's Finance Department.

4. Bank agrees to provide a prompt turnaround of stage payments to ensure delivery of checks back to Costa Mesa or directly to the payee(s) within 48 hours of Costa Mesa's request. When requests are made by 11:00 a.m. (Eastern Time), the check will be cut the same day.

5. The funds disbursement services will be based on the following detailed steps:

a. *Opening Account:* Upon loan approval, Bank will open a borrower account that includes borrower and project information. Costa Mesa will then forward loan proceeds and completed Control Instructions to Bank. The Control Instructions should include the following information:

- (i) Homeowner/Borrower(s) name

- (ii) Contractor(s)
- (iii) Property/job site address
- (iv) Amount of funds being held
- (v) Instructions on how funds are to be disbursed
- (vi) Original signatures of Homeowner/Borrower and Costa Mesa representative

b. *Disbursement Process:* When requested by Costa Mesa, Bank will provide check disbursements to parties designated by Costa Mesa in connection with Program 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 Homeowner/borrower's authorizing signatures. Bank 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.

c. *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.

d. *Contingency:* Additional funds may be added to a project in anticipation of unforeseen construction costs. Bank will hold contingency at Costa Mesa's request and release funds upon receipt of an Authorization for Payment. This process is subject to the Costa Mesa's financial policies and procedures.

e. *Retention Fund:* As applicable, Bank 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 the Program and City's policies and procedures, the retention will be paid out upon receipt of an Authorization for Payment.

f. *Recording the Notice of Completion:* As applicable, after Costa Mesa's final inspection on a rehabilitation project, a Notice of Completion is executed by the Homeowner/borrower and forwarded to Bank for recording with the County Recorder. Bank shall mail the Notice of Completion by certified mail within two (2) business days after receipt.

g. *Reports and Record Keeping:* Bank 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 Costa Mesa upon request.

h. *Account Close Out:* After payout of all loan proceeds in the account, excess funds will be disbursed according to Costa Mesa's instructions. Bank will forward a Final Closing Statement to Costa Mesa, comprising a complete record of all transactions in one report. Bank will also forward a copy of the report to the borrower for their records, if requested by Costa Mesa.

IX. REPORTS

Consultant and Bank understand that City is required to meet certain monthly and annual reporting requirements pursuant to the Program. Consultant and Bank shall cooperate with City in the preparation of all reports required by the Program, and shall provide all documentation and reports requested by City to meet its Program reporting requirements.

AmeriNat
 8121 East Florence Avenue
 Downey, California 90240 (562)
 927-6686

Program Guidelines / Loan Servicing

Date:

Client Name: City of Costa Mesa and Costa Mesa Housing Authority Client #: _____ Group #: _____

Amortized Loans Only Deferred Loans Only

Project Name: CALHOME Program
 Project #: Project Name:

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

A. Services Provided

	Yes	No
Loan Processing and Underwriting	<input checked="" type="checkbox"/>	
Loan Document Preparation	<input checked="" type="checkbox"/>	
Amerinat to Prepare Subordinations		<input checked="" type="checkbox"/>
Tax Monitoring		<input checked="" type="checkbox"/>
Tax Escrows		<input checked="" type="checkbox"/>
Insurance Monitoring		<input checked="" type="checkbox"/>
Insurance Escrows		<input checked="" type="checkbox"/>
Delinquency Follow Up Loss Mitigation		<input checked="" type="checkbox"/>
Credit Reporting		<input checked="" type="checkbox"/>
Bankruptcy Monitoring		<input checked="" type="checkbox"/>
Amerinat to prepare Forbearance Agreements		<input checked="" type="checkbox"/>
Amerinat to prepare Foreclosure Agreements		<input checked="" type="checkbox"/>
Amerinat to prepare Payoff Demands		<input checked="" type="checkbox"/>
Agency Approval required for Payoff Demands	<input checked="" type="checkbox"/>	
Amerinat to prepare Substitution of Trustee / Deed of Reconveyance form/template to be provided by Costa Mesa	<input checked="" type="checkbox"/>	
Termination of Regulatory Agreement	<input checked="" type="checkbox"/>	
Borrower Affidavits		<input checked="" type="checkbox"/>
Property Condition Profiles		<input checked="" type="checkbox"/>
Entire Year End Reporting for New Portfolio Transfer	N/A	

B. Billing Selection (N/A)

C. Level of Service (N/A)

E. Special Instructions (N/A)

F. Reporting

1. Reports with remittance sent to:

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

G. Agency Contact Information - 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

Payoff and Reconveyance Contacts

Primary Contact: Name: Jacqueline Y. Reeves; Title: Management Analyst
Phone: 714/754-4870 Fax: 714/754-4913 Email Address: JACQUIEREEVES@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 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

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

Authorized to Sign Substitution of Trustee / Deeds of Reconveyance

Thomas R. Hatch, City Manager and Executive Director
Phone: 714/754-5107 Email Address: THOMAS.HATCH@costamesaca.gov

EXHIBIT B

FEE SCHEDULE

Loan Processing and Underwriting Services (Upon request)

- | | | |
|----|--|----------|
| 1. | Ordering credit, title or appraisal | \$50.00 |
| 2. | Loan Processing through the completion of the Preliminary Risk Analysis (PRA) to City, plus outside costs. Due within 60 days of submission of PRA. | \$190.00 |
| 3. | Loan Processing, underwriting, and production of Final Loan Recommendation (FLR), plus all remaining direct outside loan costs.* Due 60 days from FLR or fund control opening. | \$205.00 |
| 4. | Loan Cancellation Fee: Within 60 days of a loan being considered cancelled, in addition to all outside costs, the fee due will be the sum of all fees for tasks (1-3 above) completed, plus one-half of the fee for the task in process at the time of cancellation.
*Outside costs as used herein include, but are not limited to, title, credit, and appraisal. These costs are 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 project. | |

Loan Document Preparation Services

1. A fee of \$225.00 plus pass through costs, if any, for the preparation of all loan documents. For each project for which credit, title, or appraisals have been supplied by Consultant, but which is thereafter canceled without performance of loan document preparation, a cancellation of \$65.00 plus outside costs for title and/or credit reports. A project will be considered canceled if a Loan Document Request is not received within sixty (60) days of ordering a title report, credit report, or any other outside service.
2. A fee of \$22.00 will be charged for each document re-drafted at the request of Costa Mesa due to actions by Costa Mesa.

Funds Disbursement

A fee of \$130.00 for each new Program loan. Full funds for the project/loan must be received by Bank upon Costa Mesa's approval of a new loan. These funds will be deposited into a custodial trust account at an FDIC insured bank.

Deferred Loan Servicing

Loan Set-Up Fee: \$45.00 per loan

- i. Warehouse: \$2.25 per loan per month
- ii. Warehouse and monitor of taxes and/or insurance: \$2.85 per loan per month plus a one-time tax service vendor fee.

- iii. Warehouse and escrow of taxes and/or insurance: \$18.00 per loan per month plus a one-time tax service vendor fee.
- iv. Flat fee for receiving occasional payments on deferred loans: \$18.00 per payment.

Tax service 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 project.

Tax Service Fee:

If it is determined that Tax Service is needed, then a one-time fee of \$69.00 per loan upfront at time of servicing commencement will be charged (may be assessable to borrower) for all loan amounts up to \$500,000. For loan amounts over \$500,000, there is an additional charge of \$10 per \$100,000. Future charges may vary based on outside vendor pricing.

Please note: Any additional or supplemental charges that may be imposed by the respective taxing authority for procurement of duplicate tax bills will be directly passed through to the City.

Per-Event Fees

Property Conditions Profile:	\$50.00 per occurrence
Affidavit of Owner:	\$13.00 per loan (entire portfolio done at one time) with a \$500 minimum fee
Portfolio Transfer Fee	\$75.00 per loan one-time fee if transferred from AmeriNat