

**MAYOR'S OFFICE OF HOUSING
AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO**



EDWIN M. LEE
MAYOR

OLSON LEE
DIRECTOR

**LENDER PARTICIPATION AGREEMENT
(Homeownership Programs)**

THIS AGREEMENT is entered into as of _____, 20__, by and between the City and County of San Francisco, a municipal corporation ("City"), acting through the Mayor's Office of Housing and Community Development ("MOHCD"), and _____ ("Lender").

RECITALS

A. By Ordinance No. 445-97 (the "Ordinance"), the Board of Supervisors of the City and County of San Francisco ("Board") has established the "Affordable Housing and Homeownership Bond Program" in Chapter 81 of the City's Administrative Code (the "Program").

B. By Resolution No. 1074-97 (the "Resolution"), the Board approved regulations for the Program (the "Regulations").

C. One component of the Program is the "Downpayment Assistance Loan Program" ("DALP"), pursuant to which the City intends to make downpayment assistance loans ("DALP Loans") to first-time homebuyers eligible for such assistance under the Program ("Eligible Borrowers"). The City will fund such loans from the "Downpayment Assistance Loan Account" established pursuant to the Regulations.

D. The Mayor's Office of Housing and Community Development ("MOHCD") has prepared a "Program Manual" which further describes the DALP program. The Ordinance, the Resolution, the Regulations and the Program Manual, each as may be amended from time to time, are collectively referred to as the "DALP Documents."

E. The Lender and trained Mortgage Loan Originators ("MLO") for the Lender desire to participate in the Program by providing loans ("First Mortgage Loans") to Eligible Borrowers and by administering on the City's behalf DALP loans to such Eligible Borrowers.

F. Each MLO for Lender whether originating on a retail, correspondent or wholesale basis, must be individually approved to participate in the DALP.

Now, therefore, in consideration of the mutual promises in this Agreement, the City and the Lender agree as follows:

1. **Program Documents.** The City has provided the Lender with a copy of the DALP Documents prior to close of escrow for the sale of a property. The City agrees to provide the Lender with any amendments to such documents, and the Lender agrees to comply with all such documents, as they may be amended from time to time, in performing its obligations under this Agreement.

2. **Lender Participation.** The City hereby authorizes the Lender as one of the City's approved Lenders for receipt and processing of applications for DALP loans in accordance with this Agreement and the DALP Program requirements and documents. The Lender acknowledges that the City may enter into Lender Participation Agreements with other financial institutions in connection with the DALP.

3. **Lender Orientation/Training.** As a condition to the Lender's participation in the DALP, the Lender will attend all orientation and/or training programs provided by the City in connection with the DALP, as applicable, prior to originating a loan. Each individual MLO must attend a lender training session annually.

4. **Education of Potential Eligible Borrowers.** The Lender will provide access to and ensure compliance with the Program Manual for all DALP applicants. The Lender must submit evidence that a prospective Eligible Borrower has completed such education with the application information the Lender submits to MOHCD under Section 9(a).

5. **Eligibility Criteria.** The Lender will screen prospective Eligible Borrowers for compliance with the DALP eligibility criteria and application requirements as described in the DALP Documents. Lender's determination that an applicant qualifies shall have no bearing on the City's application process or the City's determination as to whether an applicant qualifies as an Eligible Borrower.

6. **Applications for DALP Loans.**

(a) The City will provide the Lender with a DALP Loan application in a form approved by the City. The Lender will require that all prospective Eligible Borrowers complete the application form and provide any information necessary to substantiate the information provided on that form.

(b) The Lender will review and verify the information in each application and supporting documentation to determine whether an applicant qualifies as an Eligible Borrower. Lender's determination that an applicant qualifies shall have no bearing on the City's application process or the City's determination as to whether an applicant qualifies as an Eligible Borrower.

7. **Investigation/Underwriting for First Mortgage Loan.**

(a) The Lender agrees that, with respect to a First Mortgage Loan, it shall perform only such investigations and verifications of potential Eligible Borrowers that it would normally perform for a loan where a borrower was not applying for the DALP.

(b) The Lender's fees for the First Mortgage Loan may not exceed fees customarily charged for mortgage loans which are not made in connection with the DALP.

(c) Lender shall not provide a First Mortgage Loan in an amount where total Loan to Value ratio would be less than 50% of the purchase price.

8. **DALP Loan Fees.** The Lender shall charge each applicant for a DALP application fee as published in MOHCD website (non-refundable). The DALP Loan application fees shall be paid to the City. In no event shall the Lender receive any compensation from any applicant, Eligible Borrower, or the City (other than the First Mortgage Loan Fees described in Section 7(b)) in connection with its obligators under this Agreement.

9. **City Commitment for DALP Loans.**

(a) Following the Lender's determination that an applicant may qualify as an Eligible Borrower, the Lender shall deliver to the City the DALP application form, supporting documents, and application fee, together with a copy of the proposed loan documents for the First Mortgage Loan, and request that the City issue a commitment for a DALP Loan.

(b) Upon the City's review and approval of the DALP documents and the First Mortgage Loan Documents, the City may, in its sole discretion, issue a commitment for a DALP Loan.

10. **Limitation of Liability.** Notwithstanding any other provision of this Agreement, in no event shall the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

11. **Documentation of DALP Loans.** The Lender acknowledges that each approved DALP loan shall be evidenced by a Promissory Note, Deed of Trust, and any other documents reasonably required by the City, in form and substance prepared by the City, to ensure compliance with the DALP Documents. The Deed of Trust and any other security for a DALP Loan shall be subordinate to the documents securing the Borrower's obligations under the First Mortgage Loan. Under no circumstance is Lender to provide and/or allow any other mortgage lien to be recorded against the property that is the subject of a DALP Loan without the prior written consent of MOHCD. Lender further agrees to provide MOHCD notice of any loan other than the First Mortgage Loan.

12. **Funding of DALP Loans.** The City shall deposit the principal amount of an approved DALP Loan into escrow for the Borrower's purchase of the single-family residence, together with the City's escrow instructions for the disbursement of the Loan and the receipt of a Lender's policy of title insurance. The City's ability to fund DALP Loans is subject to the budget and fiscal provisions of the City's Charter and certification by the City's controller of the availability of monies to fund a particular DALP Loan.

13. **Lender's Performance.**

(a) The City shall periodically review Lender's performance under this Agreement, including but not limited to the number of loans originated, loan performance, types of loans made to Eligible Borrowers including refinancing on the DALP financed properties, the City's Below Market Rate (BMR) Units, marketing of DALP and other services to Eligible Borrowers, and providing homebuyer education to applicants. In the event the City determines that the Lender has not satisfactorily performed its obligations under this Agreement, the City shall

provide written notice of that fact to the Lender. If, in the City's reasonable judgment, the Lender has not remedied this situation within thirty (30) days of the City's notice, the City may automatically terminate this Agreement as to Lender and all of its MLOs by written notice to the Lender.

(b) This Lender Participation Agreement is applicable to all MOHCD first-time homebuyer programs. The participating Lender will adhere to MOHCD loan processing time lines and conduct business in a professional manner at all times, and adhere to any applicable standards of Nationwide Multistate Licensing System (NMLS), California Bureau of Real Estate (BRE), California Department of Business Oversight (DBO), and all administrative agencies and bodies representing the mortgage loan originations for home buyers.

(c) The Lender understands that submission of incomplete loan application package or submission of inaccurate information declared in Lender forms will delay the processing, review, underwriting, approval and funding of MOHCD loans. MOHCD performs lender training to ensure MLOs will adhere to MOHCD loan policies, standards of Lender form packaging, application process and time lines. Non-compliance of MOHCD's loan policies and MLOs that submit incomplete or inaccurate information on three occasions shall be removed from the Lender list. As a courtesy, a written notice shall be provided by MOHCD with first and second warnings of any non-compliant submissions prior to the MLO removal from the Lender list.

(d) Lender shall utilize only competent MLOs under the supervision of, and in the employment of Lender. Lender will comply with City's reasonable requests regarding assignment and/or removal of MLOs.

14. **Participation Fee.** Lender agrees to pay an initial participation fee as published on the MOHCD website. For each subsequent year, the Lender agrees to pay a renewal fee as published on the MOHCD website. All fees paid by the Lender shall be non-refundable.

15. **Term.**

(a) This Agreement shall continue until terminated by either the City or the Lender. Either party may terminate this Agreement for any reason upon sixty (60) days prior written notice to the other party. In addition, the City may immediately terminate this Agreement upon written notice from the City upon the Lender's failure to comply with any provision of this Agreement. In the event of any termination, the Lender may no longer participate in or make First Mortgage Loans in connection with the City's DALP Program.

(b) Any termination of this Agreement shall not affect (i) the City's obligation to fund a DALP Loan for which the City has issued a commitment, or (ii) any outstanding DALP Loan.

16. **Amendments.** This Agreement may be amended only by a written amendment executed by the City and the Lender.

17. **Independent Contractor.** Lender is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Lender is solely responsible for: (a) its own acts and those of its MLOs, agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other

Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Lender, any of its MLO's, contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Lender in the performance of this Agreement or any other Lender document; and (c) all costs and expenses relating to Lender's participation under this Agreement.

18. **Nondiscrimination.** In the performance of this Agreement, Lender covenants and agrees not to discriminate against any employee, City and County employee working with Lender, applicant for employment with Lender, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

19. **Americans with Disabilities Act.** Lender acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lender shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Lender agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Lender, its employees, agents or assigns will constitute a material breach of this Agreement.

20. **Nondisclosure of Private, Proprietary or Confidential Information.**

(a) Lender must be sensitive to the privacy interests of the Borrowers, and should use the information received only for purposes of verifying the borrowers' eligibility for a first mortgage loan and qualification for a BMR and any City administered homeownership loan program.

(b) If this Agreement requires City to disclose "Private Information" to Lender within the meaning of San Francisco Administrative Code Chapter 12M, Lender and MLOs shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services set forth in this Agreement. Lender is subject to the enforcement and penalty provisions in Chapter 12M.

(c) Lender understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Lender may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Lender agrees that all information disclosed by City to the Lender shall be held in confidence and used only in performance of the Agreement. Lender shall exercise the same standard of care to protect such information as a reasonably prudent the Lender would use to protect its own proprietary data.

21. **Public Records Act and Sunshine Ordinance.** The City is subject to the requirements of California Public Records Act, Government Code Section 6250, et seq. The Public Records Act provides that virtually all documents held or used by the City in the course of conducting the public's business are public records which the City, subject to certain limited exemptions, must make available for inspection and copying by the public. Applications for loans or grants from the City are public records as are the completed loan and grant documents. Under Section 67.24(e) of San Francisco Administrative Code, applications for financing and all other records of communications between the City and the Borrower must be open to public inspection immediately after a contract has been awarded. All information provided by Borrower which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request. In addition, contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22. **Compliance.** Lender will comply with all federal, state and local laws in connection with fair lending and fair housing regulations, including any and all regulations which govern housing, residential and mortgage lending. Lender shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

23. **Notices.** Any notice or other communication shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

To the City: Mayor's Office of Housing and Community Development
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: BMR Homeownership Programs

To the Lender: _____

Attn: _____

Any notice or other communication shall be deemed given two (2) days after the date when mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

24. **Dispute Resolution Procedure.**

(a) The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Lender's claim(s). Upon such request, the Contracting Officer shall promptly

issue an administrative decision in writing, stating the reasons for the action taken and informing the Lender of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Lender shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or for matters costs resolved under this section.

(b) No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Lender's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

25. **Assignment.** This Agreement nor any duties or obligations hereunder may be assigned or delegated by Lender unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

26. **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

27. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

28. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

29. **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Lender to remove from, City facilities personnel of any Lender that City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

30. **Limitations on Contributions.** By executing this Agreement, Lender acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for

the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Lender's board of directors; Lender's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Lender; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Lender. Lender must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

31. **Conflicts of Interest.** Through its execution of this Agreement, Lender acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

32. **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Lender confirms that Lender has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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THIS AGREEMENT is entered into as of the date first written above.

Lender's Name: _____

Lender's Address: _____

Signature of Authorized Signer

Printed Name of Authorized Signer

Title of Authorized Signer

Email Address

Telephone # _____

Fax#: _____

CITY:

Mayor's Office of Housing and Community Development
Of the City and County of San Francisco

By: _____

Maria Benjamin
Director of Homeownership & Below Market Rate Programs

**CITY AND COUNTY OF SAN FRANCISCO
MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT**

**LENDER PARTICIPATION AGREEMENT
(Mortgage Credit Certificate Program)**

THIS AGREEMENT is entered into as of _____, 20__, by and between the City and County of San Francisco, a municipal corporation ("City"), acting through the Mayor's Office of Housing and Community Development ("MOHCD"), and _____ ("Lender").

WITNESSETH:

WHEREAS, the Tax Reform Act of 1984 established the Mortgage Credit Certificate (hereinafter referred to as "MCC") Program as a means of assisting qualified individuals with the acquisition of new and existing single-family housing; and

WHEREAS, pursuant to Chapter 1399, Statutes of 1985 Section 50197, et seq. of the Health and Safety Code, the City is authorized to issue MCCs and administer MCC Programs; and

WHEREAS, the Lender wishes to participate in the MCC Program administered by the City in connection with mortgage loans it will make available for the acquisition of new and existing single-family housing.

NOW, THEREFORE, in consideration of the promises set forth herein, the parties agree as follows:

1. The City hereby designates the Lender as its agent for receipt and processing of applications for MCCs under the City MCC Program.
2. The Lender will make information regarding the MCC Program available to potential applicants. The Lender will process and review the application for any potential applicant in order to determine eligibility for the Program.
3. The Lender will obtain from the applicant all documents and information required for the application for and receipt of an MCC as directed by the City.
4. The Lender will perform all investigation and verification that it would normally perform for underwriting a mortgage not provided in connection with an MCC.
5. The Lender will conduct such reasonable investigation as is necessary to certify that the applicant has satisfied all requirements of the MCC Program, including those imposed by temporary and permanent regulations issued pursuant to the Internal Revenue Code and City eligibility requirements.
6. The Lender covenants that it is familiar with the provisions of the Internal Revenue Code applicable to the MCC Program and all temporary and permanent regulations issued

pursuant thereto and with the guidelines established by the City as set forth in the MCC Program Manual. The Lender hereby agrees to comply with all provisions of applicable federal and state law, and program regulations and guidelines. The Lender agrees to attend and participate in all training and orientation sessions for the MCC Program as required by the City.

7. The Lender shall take the financial benefit of MCC to the Applicant into account in underwriting mortgage loans by following the applicable underwriting guidelines for this propose.
8. The Lender will charge a potential applicant applying for a MCC only those reasonable fees as would be charged to a potential applicant applying for mortgages not provided in connection with a MCC.
9. The Lender must charge each applicant an application fee as published in the MOHCD website for processing each initial MCC application or each Reissue MCC application (RMCC) in the form of cashier check or money order, payable to City and County of San Francisco.
10. The Lender hereby agrees that it will immediately report to the City all information which it may receive during the life of the mortgage loan which indicates that a misrepresentation may have been made in applying for a MCC, or that may affect the applicant's continued eligibility for a MCC.
11. The Lender will provide each applicant the Recapture Notice and Computation Worksheet, MCC-8, explain its contents and require each applicant to acknowledge its receipt by signing the Certificate of Initial Receipt of Recapture Notice, MCC-8.
12. This Agreement shall remain in full force and effect until terminated. The Lender may terminate this agreement, without cause, upon sixty (60) days written notice to the City. Further, the City may immediately terminate this Agreement and prohibit the Lender from participation in the MCC Program upon the Lender's failure to comply with the terms and conditions of this Agreement upon written notice by the City. No amendment to this Agreement shall be effective unless in writing and signed by both parties hereto.
13. The Lender agrees to pay an initial participating fee as published in the MOHCD website. For each subsequent year the Lender agrees to pay a renewal fee as published in the MOHCD website, and attend a Lender training session annually. All fees paid by the Lender shall be non-refundable.

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Homeownership Programs - List of Authorized MLOs of Lender:

<u>Printed Name of MLO</u>	<u>Phone #</u>	<u>Email Address</u>	<u>Signature</u>

THIS AGREEMENT is entered into as of the day and year written above.

Lender's Name _____

Lender's Address: _____

 Signature of Authorized Signer

 Printed Name of Authorized Signer

 Title of Authorized Signer

 Email Address

 Telephone #

 Fax#:

CITY:

Mayor's Office of Housing and Community Development
 Of the City and County of San Francisco

By: _____

Maria Benjamin
 Director of Homeownership & Below Market Rate Programs

**The CITY AND COUNTY OF SAN FRANCISCO
MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT
HOMEOWNERSHIP PROGRAMS**

**Authorized MLOs Update Form
(Please disregard if no applicable)**

MLOs Authorized to Participate in the Program
Note: Changes made using this form will update current MLO lists and **MUST** be made by the authorized signer of Lender. Please allow 3-5 business days for MOHCD to be updated.

<u>Printed Name of MLO</u>	<u>Add or Remove</u>	<u>Phone #</u>	<u>Email Address</u>	<u>Signature</u>

Signature of Authorized Signer

Printed Name of Authorized Signer

Title of Authorized Signer

Email Address

Telephone # _____

Fax#: _____