

**CITY AND COUNTY OF SAN FRANCISCO  
MAYOR'S OFFICE OF HOUSING  
DOWNPAYMENT ASSISTANCE LOAN PROGRAM ("DALP")**

**LENDER PARTICIPATION AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_ 20\_\_\_\_, by and between the City and County of San Francisco, a municipal corporation ("City") 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 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 desires 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.

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. 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. Agent. The City hereby designates the Lender as one of the City's agents for receipt and processing of applications for DALP loans in accordance with this Agreement and the DALP 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 any orientation and/or training programs provided by the City in connection with the DALP.

4. Marketing. The Lender will make information regarding the DALP available to potential Eligible Borrowers pursuant to a marketing plan prepared by the Lender and approved by the City. Within thirty (30) days from the date of this Agreement, the Lender shall present a proposed marketing plan to the City for review and approval. As a condition to the City's approval of the marketing plan, the Lender agrees to make any revisions reasonably requested by the City to ensure that information regarding the DALP is disseminated throughout San Francisco in a manner accessible to various ethnic groups within San Francisco.

5. Education of Potential Eligible Borrowers. The Lender will provide access to and ensure compliance with the requirements in the Program Manual for the education of DALP applicants. The Lender must include evidence that an applicant has completed such education with the application information the Lender submits to MOH under Section 10(a).

6. Eligibility Criteria. The Lender will screen prospective Eligible Borrowers for compliance with the DALP eligibility criteria as described in the DALP Documents.

7. 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.

8. 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 receiving a DALP Loan.

(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 Program.

9. DALP Loan Fees. The Lender shall charge each applicant for a DALP application fee of \$300.00 (non-refundable). The DALP Loan fees shall be paid to the City, as provided in Section 10. 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 8(b)) in connection with its obligations under this Agreement.

10. 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.

(c) 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.

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: 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 available to Eligible Borrowers including for the City's Below Market Rate Units and marketing of DALP and other services to Eligible Borrowers, including homebuyer education provided 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 sixty (60) days of the City's notice, the City may automatically terminate this Agreement by written notice to the Lender.

14. 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.

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

16. Nondiscrimination. In the performance of this Agreement, the Lender covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Lender or against any person seeking services from Lender in accordance with this Agreement.

17. Americans with Disabilities Act. The 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. The 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. The Lender agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees 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.

18. 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  
One South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: DALP Program

To the Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

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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.

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

Lender's Name \_\_\_\_\_

Lender's Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Lender's Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

Telephone # \_\_\_\_\_

Fax#: \_\_\_\_\_