

**CITY AND COUNTY OF DENVER, COLORADO
2013 METRO MORTGAGE ASSISTANCE PLUS PROGRAM
DPA GRANT ESCROW AGREEMENT**

THIS DPA GRANT ESCROW AGREEMENT (this "Agreement"), dated as of February 1, 2013, is made by and between the **CITY AND COUNTY OF DENVER, COLORADO** (the "City") and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as escrow agent (the "Bank" or "Escrow Agent"), in connection with down payment and closing cost assistance for the City's 2013 Metro Mortgage Assistance Plus Program (the "Program").

WITNESSETH:

WHEREAS, the City desires to engage the services of the Bank to act as Escrow Agent in connection with the down payment and closing cost assistance directly provided from the City for the Program and other costs associated with the Program; and

WHEREAS, the Bank is willing to act as Escrow Agent upon the terms and conditions set forth herein; and

WHEREAS, capitalized terms used but not otherwise defined herein shall have the meanings set forth in the GNMA Custody Agreement, dated as of February 1, 2013 (the "Custody Agreement"), by and between the City and U.S. Bank National Association, as custodian thereunder;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Services To Be Provided by the Escrow Agent. The Escrow Agent shall:

(a) open, maintain and hold a fund in the name of the City (the "City and County of Denver Escrow Fund" or "Escrow Fund") where it will hold all cash, cash equivalents and securities deposited with, or otherwise delivered to, the Escrow Agent, and all interest, dividend, investment income, cash and other proceeds from time to time received in respect of any or all of the foregoing. Within the Escrow Fund, the Escrow Agent shall establish the "City and County of Denver Down Payment Assistance Account" or "DPA Account" and the "City and County of Denver Expense Account" or "Expense Account" and such other accounts as directed by the City. The initial deposit from the City shall be \$220,000, of which \$150,000 shall initially be deposited to the DPA Account and of which \$70,000 shall initially be deposited to the Expense Account. The City may make additional deposits to the Escrow Fund in its sole discretion upon notice to the Escrow Agent, specifying the accounts of the Escrow Fund into which such deposit is to be made, no less than one day in advance of such deposit;

(b) invest all cash, if any, held in the Escrow Fund as directed by the City in writing. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Agreement. The Escrow Agent shall be authorized to make or dispose of any investment upon the

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written direction of the City. The City acknowledges that the Escrow Agent is not providing investment supervision, recommendations or advice to the City;

(c) disburse from the DPA Account those monies requisitioned by each lending institution participating in the Program as specified in writing from time to time (each a "Lender" or collectively, the "Lenders") upon (i) receipt of the completed and executed requisition attached hereto as Exhibit A (the "Requisition"); and (ii) receipt of an email confirmation by the City that the Mortgage Loan number and amount specified in the Requisition are correct. The amount of such disbursement shall be equal to 4% of the initial principal balance of the Mortgage Loan, and disbursed as specified in the Requisition (the "DPA Grant") using the wire instructions provided in the Requisition. The amount of the DPA Grant may be changed by the City pursuant to the terms of the GNMA Purchase Agreement, dated the date hereof, by and between the City and Raymond James & Associates, Inc. The Escrow Agent agrees to act on behalf of the City in connection with its disbursement of the DPA Grant directly to each Mortgagor under the Program as requisitioned by the respective Lender;

(d) disburse from the Expense Account those monies to be used for Program expenses, including, but not limited to those fees of the program monitor, special counsel to the City, Servicer, and the Escrow Agent, at the written request of the City, specifying the payee, amount and payment instructions therefor. The Escrow Agent agrees to act on behalf of the City in connection with its disbursement of Program expenses directly to the payee therefor as specified in this subsection; and

(e) disburse from the Escrow Fund any monies to replenish the City's funds and accounts on December 31 of any year at the written direction of the City received by the Escrow Agent no later than two business days prior to December 31 of such year.

Section 2. Powers of the Escrow Agent. The Escrow Agent is authorized and empowered to:

(a) hold assets in the City's name;

(b) employ agents other than its employees and delegate to them such ministerial and other nondiscretionary duties as it sees fit and to rely upon information furnished by such agents; and

(c) make, execute, acknowledge and deliver any and all documents of transfer and conveyance and other instruments that may be necessary or appropriate to carry out its duties and powers hereunder.

Section 3. Obligations of the City. The City shall:

(a) initially deposit with the Escrow Agent \$220,000 as of the date hereof for deposit to the DPA Account in the amount of \$150,000 and to the Expense Account in the amount of \$70,000; and

(b) make additional deposits to the DPA Account as may be required from time to time under the Program in the amount of the DPA Grant for any Mortgage Loan for which a Requisition has been made. It is anticipated that regular amounts will be re-deposited into the Escrow Fund pursuant to the terms of the GNMA Custody Agreement in connection with the regular purchase of GNMA Certificates under the Program, and the City may direct the Escrow Agent as to which account such deposits are to be made.

Section 4. Reports.

(a) The Escrow Agent shall furnish to the City a monthly statement of the Escrow Fund reflecting all account activity during the month, and an inventory of assets including their market value as of month end. The Escrow Agent will furnish such other reports as the City may reasonably request, including reports to the City's accountants or examiners, but no more frequently than monthly.

(b) The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions relating to the funds held pursuant to this Agreement, the City waives receipt of such confirmations, to the extent permitted by law. The Escrow Agent shall furnish a statement of security transactions on its regular monthly reports.

Section 5. Fees. The Escrow Agent shall receive compensation from the City as set forth in Exhibit B attached to this Agreement, as may be amended from time to time by the parties. The Escrow Agent shall also be reimbursed by the City for its reasonable out-of pocket expenses during the performance of the Escrow Agent's duties under this Agreement. The Escrow Agent is authorized and permitted to set off, recoup and/or otherwise deduct any unpaid fees, and/or non-reimbursed expenses from cash and other assets on deposit in the Escrow Fund if not paid by the City within 30 days of the due date specified in the invoice submitted to the City by the Escrow Agent.

Section 6. Authorized Persons. The City's Manager of Finance, Director of Cash Risk and Capital Funding, or Debt Administrator of housing or such person as otherwise specified in writing by the City is authorized for the purpose of transmitting instructions to the Escrow Agent concerning the assets in the Escrow Fund.

Section 7. Amendment and Termination. This Agreement may be amended by written agreement of the City and the Escrow Agent, at any time, executed by an authorized representative of the Escrow Agent and the Manager of Finance of the City or in the absence of the Manager of Finance of the City by the Executive Director of the Office of Economic Development of the City. This Agreement shall continue in effect until terminated by either party upon 30 days' prior written notice to the other party. Upon termination, all cash and other assets held in the Escrow Fund shall be delivered by the Escrow Agent to the City or to any other person in accordance with the City's written instruction. Any outstanding and unpaid fees and expenses owed to the Escrow Agent may be deducted by the Escrow Agent from the cash and other assets held in the Escrow Fund prior to delivery to the City or as the City directs.

Section 8. Notices. All notices, instructions, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if delivered personally to the party to whom notice is to be given; (b) on the day of transmission if sent by facsimile transmission to the facsimile number given below, and written confirmation of receipt is obtained promptly after completion of transmission; (c) on the day after delivery via Federal Express or similar overnight courier service or the Express Mail service maintained by the United States Postal Service; or (d) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed, return receipt requested, to the party as follows:

Notices to the City shall be directed and mailed as follows:

City and County of Denver, Colorado
Attn: Deputy Director
Office of Economic Development
201 West Colfax Avenue
Second Floor
Denver, CO 80202

with copies to:

Department of Finance
201 West Colfax Avenue
Department 1010
Denver, CO 80202

City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, CO 80202

Mike Newman
First Southwest Company, as program monitor
325 North St. Paul Street, Suite 800
Dallas, TX 75201-3852

Notices to the Escrow Agent shall be directed and mailed as follows:

U.S. Bank National Association, as escrow agent
950 17th Street, 12th Floor
DN-CO-T12CT
Denver, CO 80202
Facsimile: (303) 585-6865
Attention: Kathleen A Connelly, Corporate Trust Department
Email: Kathleen.connelly@usbank.com

Any party may change its address for purposes of the paragraph by giving the other parties written notice of the new address in the manner set forth above.

Section 9. Inspection Privileges. The books, records, documents, accounting procedures and practices of the Escrow Agent relevant to this Agreement are subject to examination by the City, or its designated independent public accountants or consultants, during normal business hours and at the requesting party's expense.

Section 10. Regarding the Escrow Agent.

(a) The Escrow Agent shall not be liable for any action taken or not taken under this Agreement so long as it shall have acted without negligence or willful misconduct.

(b) The rights and obligations of the City may not be assigned or delegated to any other person without the written consent of the Escrow Agent. Subject to the foregoing, the terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No other persons shall have any rights under this Agreement.

(c) The Escrow Agent is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Agreement. The Escrow Agent shall have no implied duties, fiduciary or otherwise, beyond the express duties set forth herein.

(d) The Escrow Agent shall not be required to expend or risk its own funds or otherwise incur financial liability (other than expenses or liabilities otherwise required to be incurred by the express terms of this Agreement) in the performance of its duties hereunder if it believes that repayment of such funds, or adequate indemnity, is not assured to it.

(e) The Escrow Agent shall have the right, but not the obligation, to consult with counsel or other such professionals of the Escrow Agent's choice and shall not be liable for action taken or omitted to be taken by the Escrow Agent in accordance with the advice or counsel of such professionals absent negligence or willful misconduct.

(f) Any authority or association into which the Escrow Agent is converted or merged, or with which it is consolidated, or to which it sells or transfers all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any authority or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor to the Escrow Agent under this Agreement and shall have and succeed to all of the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any other act.

(g) The Escrow Agent may resign as such following the giving of 30 calendar days' prior written notice to the City. The City may remove the Escrow Agent upon 30 calendar days' prior written notice to the Escrow Agent. The duties of the Escrow Agent shall terminate 30 days after recipient's receipt of such notice (or as of such earlier date as may be mutually agreed by the Escrow Agent and the City). The Escrow Agent shall deliver the cash and other assets then in the Escrow Fund to a successor Escrow Agent in accordance with the City's written direction. If the City fails to appoint a successor prior to the expiration of a 30 calendar day notice period, the Escrow Agent may, in its sole discretion, deliver the cash and other assets in the Escrow Fund to the City, or may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent.

(h) The Escrow Agent may assume the genuineness of, and may rely on, any written notice or communication from any person, without further verification, that the Escrow Agent believes is from the proper party and shall be protected in doing so by the City.

(i) The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(j) In the event that the Escrow Fund, or any cash or assets contained therein, shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree, shall be made or entered by any court order affecting the property deposited or held under this Agreement, the Escrow Agent is hereby authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to the City or any other person, firm or authority, by reason of such compliance notwithstanding that such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 11. Facsimile Transmissions.

(a) The Escrow Agent is authorized to accept, assume the genuineness of, and may rely on, any notice delivered through facsimile transmission by authorized representatives, including duly appointed third parties.

(b) The Escrow Agent is authorized to act on written instructions conveyed by facsimile transmission, notwithstanding the fact that such instructions do not bear an original authorized signature, provided the instructions acted upon appear to be signed by a person(s) entitled to give binding instructions to the Escrow Agent.

(c) The City understands the risks associated with communicating time sensitive matters, such as trade directions, by facsimile and acknowledges that, if it elects to do so, the Escrow Agent will act within a reasonable time of receipt of the facsimile. The City further acknowledges that information or instructions provided by facsimile may be less confidential than information transmitted by other methods.

Section 12. Tax Matters.

(a) **Reporting of Income.** The Escrow Agent shall report to the Internal Revenue Service (the "IRS"), as of each calendar year-end, and to the City, all income

earned from the investment of any sum held in the Escrow Fund, as and to the extent required under the provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"). The City shall furnish the Escrow Agent with a completed Form W-8 or Form W-9, as applicable.

(b) ***Preparations and Filing of Tax Returns.*** The City assumes the obligation to prepare and file, to the extent applicable, any and all income or other tax returns applicable to the Escrow Fund with the IRS and any state or local taxing authorities.

(c) ***Payment of Taxes.*** Any taxes payable on income earned from the investment of any sums held in the Escrow Fund shall be paid by the City, whether or not the income was distributed by the Escrow Agent during any particular year, to the extent required under the provisions of the Code or otherwise.

Section 13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

Section 14. Governing Law. This Agreement and all transactions hereunder shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Colorado.

Section 15. Entire Agreement. This Agreement is the final integration of the agreement of the parties with respect to the matters covered by it and supersedes any prior understanding or agreement, oral or written, with respect thereto.

Section 16. Severability. The invalidity of any portion of this Agreement shall not affect the validity of the remainder hereof.

IN WITNESS WHEREOF, authorized officers of the parties have duly executed this Agreement as of the day and year first written above.

ATTEST:

CITY AND COUNTY OF DENVER,
COLORADO

By: _____
DEBRA JOHNSON, Clerk and
Recorder, Ex-officio Clerk of the City
and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED

By: _____
DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By: _____
Manager of Finance

By: _____
Auditor

U.S. BANK NATIONAL ASSOCIATION, as
escrow agent

By _____
Kathleen Connelly, Vice President

**EXHIBIT A
CITY AND COUNTY OF DENVER, COLORADO
2013 METRO MORTGAGE ASSISTANCE PLUS PROGRAM
REQUISITION**

REQUISITION

Lender Name: _____.

Lender Contact Email & Phone Number: _____.

Mortgagor(s) Name(s): _____.

US Bank Mortgage Loan Number (generated by eHousingPlus system): _____.

Full Principal Mortgage Loan Amount: \$_____.

Down Payment and Closing Cost Assistance (DPA Grant) Amount: \$_____ (4% of Mortgage Loan Amount, as shown in the eHousingPlus system).

Date DPA Grant is to be wired: _____.

Wire Instructions: _____.

ABA#: _____.

For: _____.

Acct #: _____.

Attn: _____.

REF: _____.

The undersigned hereby represents that [he/she] is authorized to execute this Requisition on behalf of the Lender and that the above information is true and correct.

Date: _____

(Lender Name)

(Signature)

(Printed Name & Title of Authorized Officer)

Lender: Please complete, sign, scan, and email this Requisition to the Escrow Agent and City listed below. The Mortgage Loan must receive Underwriter Certification prior to the request of 4.00% DPA Grant Funds provided by the City. A \$25 transaction/wire fee payable by the Mortgagor to the Escrow Agent shall be netted from the amount of the DPA Grant wired to the Mortgage Loan closing. Please email the Requisition at least two business days prior to the Mortgage Loan closing to:

Mary.Day@usbank.com

With a copy to: Kathleen.Connelly@usbank.com

[richard.sheehan@denvergov.org]

[Andrew.Johnston@denvergov.org]

If the Mortgage Loan closing does not occur, or if the DPA Grant funds otherwise must be returned to the City, please have such funds returned using the following wire instructions:

For: U.S. Bank National Association
ABA number: 091000022
BNF: TFM
Account number: #
OBI: (SEI Account#) City and County of Denver, Colorado 2013 Metro Mortgage Assistance Plus Program

EXHIBIT B

ESCROW AGENT'S FEE SCHEDULE

Acceptance Fee and 1st Year Annual Fee **\$500**

The acceptance fee and 1st year annual fee includes review of all related documents and accepting the appointment of Escrow Agent on behalf of U.S. Bank National Association. The fee also includes setting up the required account(s) and accounting records, document filing, and coordinating the receipt of funds/assets for deposit to the Escrow Fund. Payable in advance, with the first installment due at the time of Agreement execution.

Annual Administration Fee **\$500**

Payable annually in advance beginning with the first anniversary date of this Agreement as long as it shall remain in effect.

Per Requisition Fee **\$25**

Netted from the DPA Grant amount sent pursuant to each completed Requisition as contemplated by this DPA Grant Escrow Agreement and Exhibit A hereto.

Extraordinary Expenses

For any services other than those covered by the aforementioned, a special per hour charge will be made to commensurate with the character of the service, time required and responsibility involved. Such services include but are not limited to excessive administrative time, specialized reports or audits, etc.