

**CITY AND COUNTY OF DENVER, COLORADO
METRO MORTGAGE ASSISTANCE PLUS PROGRAM
PROGRAM MONITORING AGREEMENT**

THIS PROGRAM MONITORING AGREEMENT (this “Agreement”) is entered into as of January 1, 2019, by and between the **CITY AND COUNTY OF DENVER, COLORADO** (the “City”) and **CSG ADVISORS** or its successor in interest (the “Program Monitor”) in connection with the City’s Metro Mortgage Assistance Plus Program (the “Program”).

W I T N E S S E T H :

WHEREAS, capitalized terms used but not otherwise defined in these preambles shall have the meanings set forth in Section 1 hereof; and

WHEREAS, in connection with the Program, the City has entered into the Program Administration Agreement, Purchase Agreement, Custody Agreement, Lender Agreement and Servicing Agreement pursuant to which the Program is being administered and the City has undertaken to perform certain responsibilities; and

WHEREAS, the City desires to have the Program and the Program Documents monitored and the Program Monitor agrees to monitor the Program and the Program Documents on behalf of the City pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the undertakings, terms and conditions set forth herein, the parties mutually agree as follows:

Section 1. Definitions. All words and phrases defined in this Section 1 (except as expressly provided otherwise herein or unless the context otherwise requires) shall have the respective meanings specified in this Section 1 for all purposes of this Agreement. All terms used but not otherwise defined in this Agreement shall have the meanings set forth in the Purchase Agreement.

“*Administrator*” means Housing and Development Services, Inc. d/b/a eHousingPlus or its successor in interest.

“*Bank*” means U.S. Bank National Association or its successor in interest.

“*Custody Agreement*” means the Custody Agreement, dated as of January 1, 2019, by and between the City and the Bank, as custodian thereunder

“*Lender Agreement*” means the Lender Agreement, by and between the City and each lender under the Program.

“*Program Administration Agreement*” means the Program Administration Agreement, dated as of February 1, 2013, as amended by the First Amendment to Program Administration Agreement, dated as of January 1, 2019, by and between the City and Administrator.

“*Program Administrator’s Guidelines*” means the Administrator’s Guidelines established in connection with the Program and the Program Administration Agreement.

“*Program Documents*” means the Program Administration Agreement, Program Administrator’s Guidelines, Purchase Agreement, Custody Agreement, Lender Agreement and Servicing Agreement.

“*Purchase Agreement*” means the Master Mortgage-Backed Security Purchase Agreement, dated as of January 1, 2019, by and between the City and the Purchaser.

“*Purchaser*” means George K. Baum & Company or its successors in interest.

“*Servicing Agreement*” means the Servicing Agreement, dated as of January 1, 2019, by and between the City and the Bank, as servicer thereunder.

Section 2. Duties of Program Monitor. The Program Monitor hereby acknowledges its receipt of the Program Documents. The Program Monitor hereby covenants and agrees to perform the following duties with respect to monitoring the Program:

(a) Prior to execution of Program Documents, perform such actions and duties as specified in Exhibit A attached hereto.

(b) Subsequent to execution of Program Documents:

(i) review mortgage rates published and provided by the Purchaser to the Program Monitor and notify the City of out-of-market mortgage rates, or mortgage rates that fail to conform with the Program Documents, and to the extent possible, the failure of the Purchaser to adjust mortgage rates on a timely basis following significant movements in the mortgage backed securities market; and

(ii) match deliveries of mortgage backed securities from the Purchaser to Mortgage Loans purchased from the Servicer and confirm appropriate flow of funds per the terms of the Program Documents, and review closing letter/schedule of Mortgage Loans to be purchased.

(iii) The Program Monitor agrees to provide the City notification of items (b)(i) and (b)(ii) above by the fifteenth (15th) of each month, or the next business day if the 15th is not a business day, following the end of each month.

(c) The duties of the Program Monitor set forth in this Section and the fees therefor may be revised at any time upon written agreement of the Chief Financial Officer of the City or in the absence of the Chief Financial Officer of the City by the Executive Director of the Office of Economic Development of the City and the Program Monitor.

Section 3. Fees of Program Monitor. The City agrees to pay the fees of the Program Monitor, which fees are an ongoing fee of \$300.00 per Mortgage Loan pool under the Program purchased by Purchaser.

Section 4. Annual Appropriation. The obligations of the City under this Agreement are subject to annual appropriation by the City therefor.

Section 5. 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 email to the email address, respectively, 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:

If to the City: City and County of Denver, Colorado
Attn: Chief Financial Officer
Department of Finance
201 West Colfax Avenue
Department 1010
Denver, CO 80202

with copies to: Office of Economic Development
Attn: Executive Director
201 West Colfax Avenue
Department 1011
Denver, CO 80202

Denver City Attorney's Office
Attn: City Attorney
457 Bannock Street
Room 353
Denver, CO 80202

If to the Program Monitor:

CSG Advisors, as Program Monitor
Attn: David Jones
41 Perimeter Center East
Suite 615
Atlanta, Georgia 30346
Email: djones@csgadvisors.com

Section 6. Termination. Each of the parties hereto may terminate this Agreement by providing 30 days' written notice to the other party.

Section 7. Amendment. This Agreement shall not be amended or otherwise modified except with the written consent of the parties hereto executed by an authorized representative of the Program Monitor and the Chief Financial Officer of the City or in the absence of the Chief

Financial Officer of the City by the Executive Director of the Office of Economic Development of the City.

Section 8. Venue and Governing Law. Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

Section 9. Waiver. No rights may be waived except by an instrument of writing signed by the party charged with such waiver. No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

Section 10. Professional Liability (Errors And Omissions). Program Monitor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a sever ability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

Section 11. No Discrimination in Employment. In connection with the performance of all work under this Agreement, the Program Monitor agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in furtherance of this Agreement.

Section 12. Records, Reports, and Inspection.

(a) **Reports and Information.** The Program Monitor shall furnish to the City, or the City's designee, such statements, records, reports, data and information as the City, or the City's designee, may request pertaining to matters covered by this Agreement.

(b) **Audits.** The Program Monitor shall, during normal business hours and as often as the City may deem reasonably necessary, make available to the City, including its auditor, for examination all of its records and data with respect to all matters covered by this Agreement and shall permit the City or its designated or authorized representative to audit and inspect all invoices, materials, payrolls, records of personal conditions of employment and other data relating to all matters covered by this Agreement. Such records shall be maintained for a minimum period of three (3) years following payment or services hereunder.

Section 13. Severability. If one or more provisions of this Agreement, or the applicability of any such provisions for any set of circumstances shall be determined to be invalid or ineffective for any reason, such determination shall not affect the validity and enforceability of the remaining

provisions of this Agreement or the applicability of the provisions found to be invalid or ineffective for a specific set of circumstances to other circumstances.

Section 14. Counterparts. This Agreement may be executed in counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the Program Monitor have caused this Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

CITY:

CITY AND COUNTY OF DENVER, COLORADO

By: _____
Deputy Mayor and Chief Financial Officer

PROGRAM MONITOR:

CSG ADVISORS

By _____
Name _____
Title _____

[Signature Page to Program Monitoring Agreement]

EXHIBIT A

PROGRAM MONITORING RESPONSIBILITIES

1. Review of the Program Documents, including Program Administration Agreement, Purchase Agreement, Lender Agreement, Custody Agreement, Servicing Agreement and Program Summary to ensure fiscal implications are and risks are identified, and risks associated with the program are minimized through written agreement, to the extent possible, and the City's best interests are maintained.
2. Assistance in preparation of presentations regarding the Program to stakeholders and interested parties.
3. Review reasonableness of projected fiscal success of the Program.
4. Perform analysis of fees, costs, and appropriate fiscal structure of the Program, make recommendations, and ensure agreements reflect appropriate structure.
5. Perform comparative analysis of fiscal aspects of the Program to other down payment assistance programs nationally and make recommendations for "best practices."
6. Recommend optimum fiscal structure to maximize client usage and fiscal implications to the clients utilizing the program, while providing reasonable and appropriate compensation to Program participants.
7. Identify fiscal implications relevant to the City with regard to meeting HUD and FHA guidelines for the Program, and recommend structure to best assist in meeting Federal requirements.
8. Perform analysis of the City's fiscal risks associated with the Program, and recommend prudent safe guards to protect the City's fiscal interests.
9. Identify any other financial matter or inherent risk in the implementation of the Program to the City that should be considered or rectified.