

**CITY AND COUNTY OF DENVER, COLORADO
2013 METRO MORTGAGE ASSISTANCE PLUS PROGRAM
PROGRAM MONITORING AGREEMENT**

2013-0045-G

THIS PROGRAM MONITORING AGREEMENT (this "Agreement") is entered into as of February 1, 2013, by and between the **CITY AND COUNTY OF DENVER, COLORADO** (the "City") and **FIRST SOUTHWEST COMPANY** or its successor in interest (the "Program Monitor") in connection with the City's 2013 Metro Mortgage Assistance Plus Program (the "Program").

WITNESSETH:

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, Servicing Agreement, and Escrow 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 GNMA Custody Agreement, dated as of February 1, 2013, by and between the City and the Bank, as custodian thereunder

"*Escrow Agreement*" means the Escrow Agreement, dated as of February 1, 2013, by and between the City and the Bank, as escrow agent thereunder.

"*Lender Agreement*" means the Lender Agreement, dated as of February 1, 2013, 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, 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, Servicing Agreement, and Escrow Agreement.

“*Purchase Agreement*” means the GNMA Purchase Agreement, dated as of February 1, 2013, by and between the City and the Purchaser.

“*Purchaser*” means Raymond James & Associates, Inc. or its successors in interest.

“*Servicing Agreement*” means the Servicing Agreement, dated as of February 1, 2013, 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 GNMA 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.

(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 parties hereto.

Section 3. Fees of Program Monitor. The City agrees to pay the fees of the Program Monitor, which fees are a one-time fee of \$25,000.00 and an additional ongoing fee of \$350.00 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. Any notices or reports required to be delivered to either party hereto under the terms of this Agreement shall be delivered to the following addresses:

If to the City: 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
Telephone: (720) 865-8600

If to the Program Monitor:

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

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 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.

Section 8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles.

Section 9. 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 10. 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:

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

PROGRAM MONITOR:

FIRSTSOUTHWEST

By _____
Name _____
Title _____

EXHIBIT A

PROGRAM MONITORING RESPONSIBILITIES

1. Review of the Program Documents, including Program Administration Agreement, GNMA Purchase Agreement, Lender Agreement, Notice of DPA Grant, Custody Agreement and 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 for the 2013 - 2015 period.
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.