

EXAMPLE

If you are a lender for a participant in the City of Baytown's Homebuyers' Assistance Program, please call 281-420-5396 to execute a Lender Participation Agreement.

**HOMEBUYERS' ASSISTANCE PROGRAM
(CDBG-FUNDED)
LENDER PARTICIPATION AGREEMENT**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This CONTRACT AND AGREEMENT (this "Agreement") is made and entered into on this ____ day of _____, 200_, by and between the CITY OF BAYTOWN, a municipal corporation located in Harris and Chambers Counties, Texas, hereinafter called "City", and _____, a bank, savings institution or mortgage company that offers home loans, completes the application process within the City of Baytown, and signs a Homebuyers' Assistance Program Lender Participation Agreement with the City, hereinafter called "Lender".

**I.
DEFINITIONS**

- 1.1 For the purpose of this Agreement, the definitions set forth in the Homebuyers' Assistance Program Guidelines (CDBG-funded) most recently adopted by the City Council of the City of Baytown, which are attached hereto as Exhibit "A" and incorporated herein for all intents and purposes, shall govern, unless it is apparent from the context that it has a different meaning or unless such word is specifically defined herein. Additionally, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them herein. When not inconsistent with the context, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
- 1.2 As used in this Agreement, the following words and phrases are defined to mean:
 - 1.2.1 Assistance Loan: means and refers to the amount of money which the City of Baytown supplies to the Homebuyer pursuant to the Program to supplement the closing costs incurred.
 - 1.2.2 City: means and refers to the City of Baytown, Texas, and all attendant boards, agencies, commissions and related bodies, along with their respective officers, agents and employees.
 - 1.2.3 City Manager: means the City Manager of the City of Baytown or his designated representative.

- 1.2.4 Eligible Home: means those properties meeting the criteria enumerated in Article IX of the Homebuyers' Assistance Program Guidelines.
- 1.2.5 Homebuyer: means _____ who is applying for a home mortgage from the Lender and are participants of the Program.
- 1.2.6 Lender: means _____, a bank, savings institution or mortgage company that offers home loans, completes the application process within the City of Baytown.
- 1.2.7 Program: means the Homebuyers' Assistance Program, which is designed to stabilize neighborhoods by assisting households to purchase affordable housing within the city limits.
- 1.2.8 Property: means that property together with all improvements thereon which the Homebuyer desires to purchase pursuant to the Program.

II. LENDER'S OBLIGATIONS

The Lender covenants and agrees to abide by the Program's guidelines and to comply with the following:

1. The Lender, using its own guidelines, will determine the Homebuyer's creditworthiness with regard to loan approval.
2. The Lender agrees to release to the City Manager that information for which Lender has received a consent to release from the Homebuyer and shall cooperate with the City to ensure that the purposes of the Program are accomplished.
3. The Lender shall notify the Homebuyer of the maximum loan amount for which the Homebuyer is eligible.
4. The Lender shall process the loan for the purchase of the Property using the Lender's established procedure.
5. The Lender shall advise the City Manager of all closing costs associated with the purchase of the Property.
6. The Lender understands and hereby consents to a subordinate lien being attached to the Property to secure the Assistance Loan.
7. Lender shall complete application process within the City of Baytown.

III. CITY'S OBLIGATION

- 3.1 In connection with the Program, the City covenants and agrees as follows:
- 3.1.1 The City shall provide a five (5) year forgivable Assistance Loan in conformity with Article VII of the Program's guidelines for closing costs associated with the purchase of the Property up to a limit of four thousand five hundred dollars (\$4,500).
 - 3.1.2 The City shall subordinate a five (5) year lien against the Property to that of the Lender.
 - 3.1.3 At the expiration of the five (5) year lien, the City shall release the lien.
- 3.2 It is expressly understood and agreed that the City makes no representation as to the creditworthiness of the Homebuyer and shall not in any way be liable to the Lender for any amount of monies afforded to the Homebuyer for participation in the Program or the acquisition of the Property, for the Lender hereby releases the City from any such liability.

IV. TERM

Unless sooner terminated in accordance with the applicable provisions hereof, or extended by mutual agreement approved by the City, the term of this Contract shall be from the date hereof until the time the Property transfers to the Homebuyer.

V. INDEMNIFICATION

THE LENDER AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE LENDER PURSUANT TO THIS AGREEMENT, THE CONDUCT OR MANAGEMENT OF THE LENDER'S BUSINESS OR ACTIVITIES, OR FROM ANY ACT OR OMISSION BY THE LENDER, WHERE SUCH MATTERS ARE CAUSED BY (I) THE JOINT NEGLIGENCE OF THE CITY AND ANY OTHER PERSON OR ENTITY AND/OR THE (II) JOINT OR SOLE NEGLIGENCE OF THE LENDER. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH THE LENDER AND THE CITY, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY THE LENDER TO

INDEMNIFY, PROTECT AND DEFEND THE CITY FROM THE CONSEQUENCES OF (I) THE CITY'S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE RESULTING CLAIM, LOSS, OR DAMAGE AND/OR (II) THE LENDER'S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE RESULTING CLAIM, LOSS, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT AND LIABILITY WHERE THE SAME RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE CITY BY REASON OF ANY OF THE ABOVE, THE LENDER FURTHER AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY LEGAL COUNSEL ACCEPTABLE TO THE CITY. THE INDEMNITY PROVIDED FOR IN THIS ARTICLE V SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

VI. CONTINGENCY OF CONTRACT

The City has no City funds for the services to be rendered under this Agreement. It is expressly agreed and understood that this Agreement is predicated and conditioned upon the City receiving funds for the purpose of paying the entire obligation of the City under this Agreement from funds to be received from the United States Department of Housing and Urban Development ("HUD"), by virtue of a Community Development Block Grant. As such, the Lender understands and agrees that the City may terminate this contract at any time should the funds (i) be expended, (ii) no longer be available, or (iii) decline to such a level that the City Manager, in his sole discretion, determines that this Agreement must be terminated by giving the Lender written notice of the termination from the City Manager. Upon delivery of any notice of termination required herein, the Lender shall discontinue any calculations which take into account any assistance to be provided by the City. Upon delivery of such notice, the Lender agrees that the City will not be responsible for any payments which may be required herein if the federal funds referenced hereinabove are no longer available for the payment of the same.

VII. TERMINATION

The City, besides all other rights or remedies it may have, shall have the right to terminate this Agreement upon breach of this Agreement and shall notify the Lender of the City's election to do so. A breach of this Agreement shall include, but not be limited to, the following:

1. the dissolution of the Lender;

2. the violation of any provision of this Agreement;
3. the failure of the Homebuyer to provide accurate information;
4. the Homebuyer's disqualification from the Program; and/or
5. the abandonment of the Agreement or any portion thereof and discontinuance of the Lender's services or any portion thereof.

**VIII.
NOTICE**

All notices required to be given hereunder shall be given in writing either by telecopier, overnight, or facsimile transmission, certified or registered mail at the respective addresses of the parties set forth herein or at such other address as may be designated in writing by either party. Notice given by mail shall be deemed given three (3) days after the date of mailing thereof to the following addresses:

LENDER

 Fax: _____

CITY

City of Baytown
Attn: City Manager
P.O. Box 424
Baytown, TX 77522
Fax: (281) 420-6586

**IX.
TIME OF THE ESSENCE**

Both the Lender and the City acknowledge that time is of the essence in this Agreement.

**X.
INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of partners, co-partners, or joint venturers between the parties hereto, or as constituting the Lender as an agent, employee or representative of the City for any purposes or in any manner whatsoever. The relationship of the Lender to the City shall be that of an independent contractor.

XI.
COMPLIANCE WITH RULES AND REGULATIONS

The Lender shall comply with all rules, regulations, and laws of the United States of America, the State of Texas, and all laws, regulations, and ordinances of the City of Baytown as they now exist or may hereafter be enacted or amended.

XII.
SALE OF INTEREST

The Lender may not sell, transfer or assign all or part interest in its rights or obligations under this Agreement to another party or parties without the prior express written approval of the City Manager of such sale or assignment. However, nothing contained herein shall be construed so as to require the prior written approval of the City Manager for the Lender to sell, transfer or assign its lien on the property.

XIII.
NON-WAIVER

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by an appropriate remedy, strict compliance with any other obligation hereunder to exercise any right or remedy occurring as a result of any future default or failure of performance. Nothing contained in this Agreement shall be deemed to limit or waive the sovereign immunity of the Owner.

XIV.
GOVERNING LAW

This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Texas and the City, regardless of the place of its execution or performance. The place of making and the place of performance for all purposes shall be Baytown, Harris County, Texas.

XV.
SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

**XVI.
VENUE**

This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Texas and the City, regardless of the place of its execution or performance. The place of making and the place of performance for all purposes shall be Baytown, Harris County, Texas.

**XVII.
NO RIGHT TO ARBITRATION**

Notwithstanding anything to the contrary contained in this Agreement, the City and the Lender hereby agree that no claim or dispute between the City and the Lender arising out of or relating to this Agreement shall be decided by any arbitration proceeding, including, without limitation, any proceeding under the Federal Arbitration Act (9 U.S.C. Sections 1-14), or any applicable State arbitration statute, including, but not limited to, the Texas General Arbitration Act, provided that in the event that the City is subjected to an arbitration proceeding notwithstanding this provision, the Lender consents to be joined in the arbitration proceeding if the Lender's presence is required or requested by the City of complete relief to be recorded in the arbitration proceeding.

**XVIII.
NO THIRD PARTY BENEFICIARIES**

This Agreement shall not bestow any rights upon any third party, but rather, shall bind and benefit the Lender and the City only.

**XIX.
ENTIRE AGREEMENT**

This agreement and the attached exhibits represent the entire agreement between the City and the Lender and there are no other effective agreements, representations, or warranties between the City and the Lender that are not contained herein. This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties. This Agreement shall not be amended or modified without the express written consent of both parties hereto.

XX.
AUTHORITY

The officers executing this Agreement on behalf of the parties hereby represent that such officers have full authority to execute this Agreement and to bind the party he/she represents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, but all of which shall constitute but one and the same Agreement on the ___ day of _____, 200__, the date of execution by the City Manager of the City of Baytown.

Lender's Name

Signature

Printed Name

Title

CITY OF BAYTOWN:

GARRISON C. BRUMBACK, City Manager

ATTEST:

KAYTHIE DARNELL, City Clerk

APPROVED AS TO FORM:

IGNACIO RAMIREZ, SR., City Attorney

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me on this day personally appeared _____, in his/her capacity as _____ of _____, on behalf of such corporation or other business entity,

_____ known to me;

_____ proved to me on the oath of _____; or

_____ proved to me through his/her current _____

{description of identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person}(check one) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this ___ day of _____, 200__.

Notary Public in and for the State of Texas

My commission expires: _____