CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 2/12/2015

Action Requested By:
Community Development

Agenda Item Type

Resolution

Subject Matter:

Agreement between the City of Huntsville and National Commerce Corporation, as a Participating Lender for the Down Payment Assistance Program.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with National Commerce Corporation, as a Participating Lender for the Down Payment Assistance Program.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Resolution will allow for approval of the Originator Participation Agreement with National Commerce Corporation, for the Down Payment Assistance Program. No additional funds involved.

Associated Cost: 0

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____

Date: 1/26/15

revised 4/13/2011

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Community Development** Council Meeting Date: **2/12/2015**

Department Contact: **Scott Erwin** Phone # **256-427-5423**

Contract or Agreement: **Agreement**

Document Name: **Originator Participation Agreement for National Commerce Corporation**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Select...	**Select...**

Grant-Funded Agreements

Federal HUD	**Grant Name:** HOME Investment Partnership Grant

Department	Signature	Date
1) Originating		1/26/15
2) Legal	Mary Cates	1/26/15
3) Finance		1/29/15
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

Revised 04/15/2011

RESOLUTION NO. 15-_____

WHEREAS, the City of Huntsville, Alabama, received a grant under Title I of the Housing and Community Development Act of 1974, as amended, from the U.S. Department of Housing and Urban Development (HUD),

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to enter into an Agreement between the City of Huntsville, Alabama and National Commerce Corporation, for The Downpayment Assistance Program as a Participating Lender, said agreement being substantially similar in words and figures to that document identified as "City of Huntsville Downpayment Assistance Program (DAP) Originator Participation Agreement". consisting of Seven(7) pages, and the date of February 12, 2015, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville.

ADOPTED this the 12th day of February, 2015.

_____
President of the City Council of
The City of Huntsville, Alabama

APPROVED this the 12th day of February, 2015.

_____
Mayor of the City of Huntsville,
Alabama

City of Huntsville
Downpayment Assistance Program (DAP)

ORIGINATOR PARTICIPATION AGREEMENT

THIS AGREEMENT DATED 12th day of February, 2015 is between the City of Huntsville, Alabama and

National Commerce Corporation
Hereinafter referred to as the Originator.

The Downpayment Assistance Program (DAP) is a federally funded housing program established as an offspring of the Cranston-Gonzalez National Affordable Housing Act (the "Act"). Under guidelines from the United States Department of Housing and Urban Development (HUD), DAP is designed for the purpose of making downpayment assistance available to low-income families who are first-time homebuyers for the purchase of single family housing that will serve as the family's principal residence. The City of Huntsville, Alabama (hereinafter City) will administer this funding initiative for the City of Huntsville, AL These DAP guidelines were developed under HUD's Interim Rule (25 C.F.R. Parts 91 and 92).

ARTICLE I
DEFINITIONS

The following words and phrases shall have the following meanings:

Act: The Cranston-Gonzalez National Affordable Housing Act passed in November 1990. This Act contains the provisions for the HOME Program and subsequently the DAP components and is further defined in 25 C.F.R. Part 92.

DAP: The Downpayment Assistance Program is an offspring of the American Dream Downpayment Initiative made possible by the American Dream Downpayment Act signed by the President on December 16, 2003.

DAP Assistance: Term given to the forgivable mortgage of $5,000 made available to first-time homebuyers who decide to purchase within the City limits of Huntsville, AL.

DAP Regulations: U.S. Department of Housing and Urban Development (HUD) requirements for the DAP program, defined in HUD's Interim Rule 25 C.F.R. Parts 91 and 92.

Affordability Period: A period of five years from the acquisition of the Principal Residence during which time the property must remain owner-occupied. During this period, the mortgagor would be subject to Recapture.

_____
President of the City Council of the
City of Huntsville, Alabama
Date: February 12, 2015

Annual Family Income: The current annualized family income as determined in accordance with the DAP Regulations, Community Development guidelines and HUD's Part 5 definition of annual income. Part 5 definition of annual income is the gross amount of income of all adult household members anticipated to be received during the coming twelve (12) month period. Annual income contains income "inclusion" (types of income to be counted) and "exclusions" (types of income that are not considered).

Commitment Period: A period not to exceed *six months* from the date that Community Development extends a commitment to the Originator as a DAP-eligible mortgagor.

Eligible Mortgagor: An individual who: (1) meets the income requirements of "low-income families; and (2) is a first-time homebuyer.

First-Time Homebuyer: An individual and his or her spouse who have not owned a home during the three-year period prior to purchase. Also includes an individual who is a Displaced Homemaker or Single Parent and who, even if while a homemaker or married, owned a home with his or her spouse or resided in a home owned by the spouse.

Homebuyer Agreement: The document signed by the homebuyer(s) and Originator indicating compliance with program guidelines.

Low Income: Families whose annual incomes do not exceed 80 percent of the median income for the area as determined by HUD, with adjustments for family size.

Maximum Sales Price: The loan limit for the City of Huntsville's DAP program is $150,000.

Originator: The lending institutions executing this agreement and accepted by the Department of Community Development to participate as a preferred Originator in the DAP Program.

Originator Participation Agreement: The Origination Agreement is between the Originator(s) and the City of Huntsville.

Participating Jurisdiction: A state or local unit of government, which has met the requirements set forth by HUD. This unit of government will receive an appropriation of funds to be used within its jurisdictional boundary.

Principal Residence: A residence which, in accordance with federal law, in view of all the facts and circumstances of each case, including good faith of the proposed Mortgagor **(i)** has not been used by the Mortgagor or is not primarily intended by the preferred Mortgagor to be used in a trade or business; or **(ii)** has not been or is not to be used by the Mortgagor as an investment property or as a recreational home. If more than ten percent (10%) of the total area of a residence has been used by the proposed Mortgagor or is reasonably expected to be used primarily in a trade or business, then such a residence shall be deemed to be used in a trade or business.

Recapture: Repayment of the DAP Assistance required if the Principal Residence is sold, foreclosed, or transferred by deed-in-lieu or if the property is rented or found to be in non-compliance during the affordability period.

Recapture Mortgage: The instrument securing a mortgage loan which creates a lien on a residence subject only to permitted encumbrances.

Recapture Mortgage Note: The promissory note evidencing the obligation to repay a mortgage loan with recapture provisions and an affordability period.

Single-Family Housing: A one to four-family residence, condominium unit or townhomes.

ARTICLE II
REPRESENTATIONS

Section 2.00. *Representations, Warranties and Covenants by Community Development.* The City of Huntsville represents and warrants to, and covenants with the Originator that:

a. The City of Huntsville is a public body, corporate and political and is duly authorized to promulgate and execute this Agreement.

b. The City of Huntsville has complied with all of the provisions of the Constitution and laws of City and State, and has full power and authority to consummate all transactions contemplated by this Agreement and any and all other agreements, documents and instruments relating thereto.

Section 2.01. *Representations, Warranties, and Covenants of Originators.* The Originator represents and warrants to, and covenants with The City of Huntsville that:

a. The Originator is a corporation duly organized and existing under the laws of City and State of incorporation, or is duly chartered or incorporated under federal law, is duly authorized to transact business in the State of Alabama, and customarily provides service or otherwise aids in financing loans on Principal Residences located in the State of Alabama.

b. During the term of this Agreement, the Preferred Originator will remain subject to supervision and examination by the City of Huntsville through its Department of Community Development. The preferred Originator shall remain in good standing and qualified to do business under the laws of the United States of America, the State of Alabama and the City of Huntsville

c. The Preferred Originator will indemnify and hold harmless the City of Huntsville, its officers, employees agents and specified volunteers against liability from all claims, causes of action, costs and expenses (including attorneys fees), judgments or appeals thereof and fines and penalties that may be related to or arise out of any act or omission of the Preferred Originator contained in this Agreement or any violation of the law resulting from an act or omission of the Preferred Originator hereunder.

Section 2.02. *Survival of Representations and Warranties.* It is understood and agreed that the representations, warranties and covenants set forth in this Agreement shall survive the origination of loans by the Preferred Originator, and that such representations, warranties and covenants shall insure the transferees and assignees of the City. Upon discovery by the Preferred Originator of the breach of any of such representations, warranties and covenants which materially and adversely affects the validity of any DAP-assisted loan, the Preferred Originator shall give prompt written notice to the City and take such other action as may be required hereunder.

ARTICLE III
DISTRIBUTION OF FUNDS

SECTION 3.00. *Commitment to Distribute Funds.* The City hereby agrees to distribute the DAP funds Assistance in accordance with this Agreement and the terms of the DAP regulations and program guidelines.

SECTION 3.01. *Loan Terms.* DAP Assistance may be issued only with respect to loans made to eligible borrower(s) and families for the purpose of providing assistance for the purchase of a Single-Family Residence, and NOT for the purpose of refinancing any existing loan.

SECTION 3.02. *Independent Verifications by Originator.* The Originator must undertake the certification procedures described in this Section to determine with respect to each loan that:

a. The residence is a Principal Residence and that the Borrower occupies or will occupy the Principal Residence within sixty (60) days from the date of closing and thereafter intends to maintain the property as his or her Principal Residence. The Preferred Originator must require the Borrower to examine and execute the Homebuyer Agreement.

b. Each Borrower must be a First-Time Home Buyer. The Preferred Originator must obtain from each Borrower the Homebuyer Agreement and Certifications, and, in addition, copies of the Borrower's dated and signed tax returns/income verification which were filed with the Internal Revenue Service for the prior year and/or valid check stubs.

c. The Maximum Sales Price Limit stated in the Homebuyer Agreement is not to exceed $150,000. The Preferred Originator must examine such documents and must review a copy of the contract of sale to ascertain that the purchase price is within those limits.

d. No part of the loan proceeds are used to acquire or replace an existing loan under which the Borrower is the debtor, and the loan must be made to persons who did not have a loan (whether or not paid off) with respect to the residence securing the Note at any time prior to the execution of the Note.

e. The Borrower has successfully completed an HUD-approved homeownership counseling program.

SECTION 3.03. *Origination Fees and Closing Costs.* In connection with each Loan, the Preferred Originator may charge and collect from the Borrower and the Seller of a Principal Residence only the following fees provided they are reasonable:

a. Points, origination fees, servicing fees, and other fees in amounts that are customarily charged with respect to the first mortgage loan.

b. Application fees, survey fees, credit report fees, insurance fees or similar settlement or financing costs.

c. Amounts charged for FHA, VA, Conventional or similar private mortgage insurance on an individual's first mortgage are permissible so long as such amounts do not exceed the amounts charged in the area.

d. In the case of a DAP assisted loan, half of the allocated assistance can be used to cover prepaids and closing cost.

SECTION 3.04. *Purchase Price of a Residence.* The Purchase Price of a residence cannot exceed the applicable Maximum Sales Price Limit of $150,000. The Purchase Price of a residence is the cost of acquiring the residence from the seller as a completed residence.

SECTION 3.05. *First-Time Home Buyer.* All Borrowers and Co-Borrowers must occupy the property as their primary residence and meet the first-time homebuyer requirements of the DAP regulations.

SECTION 3.06. *Income Limits.* To qualify as Eligible Borrowers and Families, such person or persons must have an aggregate Annual Family Income, determined in accordance with the DAP regulations, Community Development guidelines and HUD's Part 5 definition of Annual Income and procedures provided by the Department of Housing and Urban Development.

SECTION 3.07. *Assumptions.* DAP mortgages MAY NOT be assumed, reissued, transferred or assigned.

SECTION 3.08. *Inspection.* Once the City has issued a Conditional Commitment and the Preferred Originator has issued its final loan approval, an inspection will be administered by the Code Enforcement Division of the City's Community Development Department to ensure the property has met all local codes. In the case of a new construction there will be no inspection required.

SECTION 3.09. *Procedure for Requesting DAP Assistance.* Once the property passes final inspection and the DAP Assistance is approved by the City, the Preferred Originator will request a check for the DAP Assistance fourteen (28) days prior to the scheduled closing by faxing the DAP Check Request Form. Community Development will issue the check in accordance with DAP Regulations. The loan must close within ten (10) days of the issuance date of the check, or the check will become null and void.

SECTION 3.10. *Loan Reservation System/Allocation of DAP Assistance.* The City will issue DAP Assistance on a first-come, first-served basis in the following manner.

a. The City will process applications in the order that they are received. If the application package is complete and in compliance with the provisions of DAP regulations, the City will issue DAP Assistance as requested. An incomplete application will not be considered or processed until it is completed.

b. A reservation of funds can only occur after the property passes final inspection. Prior to making a reservation of funds, the Originator must have taken a mortgage loan application from a potential eligible mortgagor. The mortgagor furnishes the Preferred Originator an earnest money sales agreement or construction contract entered into by the seller/builder of a residence and the Eligible Mortgagor.

   The Preferred Originators are responsible for making a preliminary determination to see if the potential Eligible Mortgagor will qualify for the mortgage loan and the DAP Assistance. The program processing is designed to complement the Preferred Originator's regular credit and underwriting procedures.

   Since the City is not part of the credit approval process, no formal notice of rejection of the DAP Assistance is required by the City under the Equal Credit Opportunity Act. The City recognizes the procedural variations among participating Preferred Originators.

The following steps are for the loan processing process:

1. The eligible mortgagor applies for mortgage financing from a participating Preferred Originator.

2. The Preferred Originator determines if a loan applicant is eligible for the DAP program based on preliminary information obtained on annual income, prior home ownership, and other factors.

3. All first mortgage loans must be originated in compliance with, and must conform to the provisions of all applicable rules, regulations and limitations of FHA, VA, RD, GNMA, and Fannie Mae, as appropriate.

SECTION 3.11. *Representations, Warranties and Covenants of Originator Concerning Loans.* The Preferred Originator hereby represents and warrants to and covenants with the City that:

a. The information set forth in each document submitted will be true and correct before the closing date thereof and each loan satisfies all applicable requirements set forth herein;

b. Each loan, at the time it was made, shall have conformed to all disclosures required to be made by the Real Estate Settlement Procedures Act, the Truth-in-Lending Act, and the Consumer Credit Protection Act and all other applicable State and federal laws and regulations;

c. The Preferred Originator shall use its best efforts to secure DAP Assistance on behalf of Eligible Borrowers.

SECTION 3.12. *Prohibition of Discrimination.* The Preferred Originator must consider all applications in the order in which they are received or in any other manner designated or approved by the City on a fair and equal basis. The Preferred Originator must not arbitrarily reject a loan application because of the location, and/or age of the property, and may not, in the case of a proposed Borrower, arbitrarily vary the terms of a loan or the application procedures therefore or reject a loan applicant because of the race, color, religion, national origin, sex or marital status of such applicant. The Preferred Originator shall not directly or indirectly attempt to prohibit a Borrower from seeking financing from any particular Originator.

SECTION 3.13. *Necessary Action and Remedies.* In the event that a loan is not performed in a timely manner or is handled incorrectly by the Preferred Originator, and in the continuance of any such non-action, is deemed not in the best interests of the City of Huntsville; the City shall promptly undertake the proper and necessary measurements to terminate this Agreement. If such termination results from any failure of the Preferred Originator to comply with the conditions and terms hereof, the Originator will become ineligible for subsequent participation in any housing program of the City of Huntsville.

ARTICLE IV
MISCELLANEOUS PROVISIONS

SECTION 4.00. *Access to Certain Documents and Certain Information Regarding the Loans.* The Preferred Originator shall provide to the representatives of the City, the Secretary of the U.S. Department of Housing and Urban Development and/or the Comptroller General of the United States access to the documentation regarding the loans as it relates to Eligible Borrowers participating in the DAP program. Such access should be afforded without charge but only

upon reasonable request and during normal business hours at the offices of the Preferred Originators.

SECTION 4.01. *Discretion of Community Development.* With respect to any disputes between the City and the Preferred Originator which arise concerning the terms and provisions of this agreement, the judgment of the City shall govern.

SECTION 4.02. *Changes in Organization.* The Preferred Originator shall immediately notify the City of any contemplated material change in its organization including but not limited to, mergers or consolidations, change of name, or corporate charter. The Preferred Originator shall immediately notify the City of any voluntary or involuntary preceding which might result in bankruptcy, reorganization, dissolution, liquidation or the Preferred Originator having its activities restricted in any manner related to its performance of material obligations.

SECTION 4.03. *Amendments.* Amendments to this Agreement may be made upon the written agreement of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this DAP Preferred Originator Participation Agreement to be duly executed by their duly authorized officers or representatives as of

_____
(DATE)

CITY OF HUNTSVILLE

By: _____
Mayor

National Commerce Corporation

Originator

_____
Preferred Originator Representative