

**INTER-LOCAL AGREEMENT BETWEEN
DURHAM COUNTY AND THE CITY OF DURHAM**

THIS INTER-LOCAL AGREEMENT is entered into by the **COUNTY OF DURHAM**, a political subdivision of the State of North Carolina, (County) and the **CITY OF DURHAM**, a municipal corporation organized and existing under the laws of the State of North Carolina (City) and together collectively the COUNTY and the CITY may be referred to as the “Parties.” This Agreement shall be effective on the ____ day of _____, 2019 (Effective Date).

BACKGROUND

- A. The Board of County Commissioners and the Durham City Council have found that the support and encouragement of affordable housing throughout the County and City of Durham is both necessary and expedient.
- B. Pursuant to N.C.G.S. § 160A-274, the County is authorized to convey property to another governmental entity, which would include conveyances for housing affordable to persons of low or moderate income. Further, N.C.G.S. 153A-378(3) authorizes the County to convey property by private sale to non-profit organizations providing affordable housing to persons of low or moderate income.
- C. Also, N.C.G.S. § 105-376(c), provides that real property which the County acquires through tax foreclosure may be sold at such price as the governing body approves.
- D. This Agreement is made as an Interlocal Cooperation Agreement (ILCA) pursuant to the General Statutes of North Carolina at Chapter 160A, Article 20, Part 1.

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1
PURPOSE**

The purpose of this ILA is to establish uniform procedures and standards for the conveyance of real property, acquired by the County through tax foreclosure, deed-in-lieu, donation, or gift, to the City for creation or preservation of Affordable Housing (the “Conveyed Property”). The Parties intend that the City will make the Conveyed Property available for the development of Affordable Housing, which could include conveying the Conveyed Property or an interest in the Conveyed Property to third parties; provided, however, that the City’s transfer of any Conveyed Property is restricted by Article 4, Section D(i) and Article 5, Section (C)(i).

ARTICLE 2 DEFINITIONS

For purposes of this Agreement, the terms listed below shall have the following meaning:

- A. Suitable Parcels.** Parcels without existing environmental constraints that make construction of a dwelling so expensive as to render it infeasible for the purpose intended or are so environmentally sensitive as to render construction upon the parcel directly counter to established public policy. However, exceptions may be made for parcels that are adjacent to other City-owned parcels such that combining the parcels could make the new combined parcel Suitable under this definition.
- B. Affordable Housing.** Single- or multi-family rental or owner-occupied dwelling units developed for persons whose family income is equal to or less than 80% of the Housing and Urban Development (HUD) published Area Median Income (AMI) for the Durham, North Carolina Metropolitan Statistical Area (MSA).

ARTICLE 3 TERM AND TERMINATION

- A. Term.** The initial term of this Agreement shall be for ten (10) years from the Effective Date, unless terminated pursuant to this Article. At the end of the initial term, the Agreement shall renew automatically for an additional ten (10) year term and it shall continue to renew automatically thereafter for additional ten (10) year terms, unless terminated pursuant to this Article.
- B. Termination.** The Parties agree that each Party may, without cause and in its discretion, terminate this contract for convenience by giving the other Party written notice of the termination, which shall be effective at the time indicated in the notice.

ARTICLE 4 COUNTY AGREES

The County agrees:

- A.** To have the County Real Estate Officer identify all real property acquired through tax foreclosure, received as a gift or donation, or as a deed-in-lieu of foreclosure, and which no County department or Durham Public Schools seeks to retain for a public purpose.
- B.** To provide a list of all Suitable Parcels to the City of Durham Department of Community Development for evaluation and determination of utility of the parcel for creating or preserving Affordable Housing.
- C.** To further its adopted Affordable Housing Goals by prioritizing the conveyance of real property for affordable housing by offering all Suitable Parcels to the City of Durham for Ten Dollars (\$10.00) for creating or preserving affordable owner-occupied and rental

housing, excluding any parcels retained by the County for any public purpose.

- D.** To place on all conveyances accepted by the City for Affordable Housing the following restrictions:
- (i) City cannot sell a parcel to any other party for any amount that exceeds the City's actual cost to acquire and provide infrastructure for the purpose of creating or preserving affordable housing. If any such sale occurs, the City agrees to compensate the County the full amount of the County's investment in the parcel, or the proceeds of the sale, whichever is less.
 - (ii) City agrees to require that construction begin within 5 years of acquisition of a parcel.
 - (iii) Any parcel developed as rental property, whether single-family or multi-family, shall retain its category of affordability (i.e. for persons whose family income is at or below 80% AMI) in accordance with any requirements of local, state and federal agencies funding the project for a period mutually agreed upon by the City and Developer.
 - (iv) City agrees to provide to the County reports on the status of each conveyed parcel, at 3 and 5 years from the date of conveyance. If development of Affordable Housing has not occurred after 5 years from conveyance to an organization for this purpose, City agrees to provide written status updates no less than once per year.
- E.** To convey all property subject to this ILA to the City by Non-Warranty Deed.

ARTICLE 5 CITY AGREES

The City agrees:

- A.** To determine whether any parcel offered to the City is suitable for its affordable housing program.
- B.** To provide a written response to the County accepting or rejecting each parcel of County real property offered to the City. This written response will be made on a form provided by the County.
- C.** To accept the following restrictions on each parcel conveyed by the County for Affordable Housing:
 - (i) City cannot sell a parcel to any other party for any amount that exceeds its actual cost to acquire and provide infrastructure for the purpose of creating or preserving affordable housing. Should any such sale occur, the City agrees to compensate the County the full amount of the County's investment in the parcel or the proceeds of the sale, whichever is less.

- (ii) City agrees to require that construction begins within 5 years of the City's acquisition of a parcel from the County.
 - (iii) Any parcel developed as rental property, whether single-family or multi-family, shall retain its category of affordability (i.e. for persons whose family income is at or below 80% AMI) in accordance with any requirements of local, state and federal agencies funding the project for a period mutually agreed upon by the City and Developer.
 - (iv) City agrees to provide to the County reports on the status of each conveyed parcel, at 3 and 5 years from the date of conveyance. If development of Affordable Housing has not occurred after 5 years from conveyance to an organization for this purpose, City agrees to provide written status updates no less than once per year until such development is complete.
- D.** To pay County Ten Dollars (\$10) as consideration for each parcel conveyed in accordance with this ILA.

ARTICLE 6 MISCELLANEOUS

The Parties agree:

- A. Headings.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
- B. Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- C. Amendments.** No modification or amendments of this Agreement will be valid or binding upon any Party unless in writing and signed by the Party against whom the modification or amendment is asserted.
- D. Entire Agreement.** This Agreement, including any attachments shall constitute the entire understanding between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
- E. E-Verify.** The Parties agree that this Agreement is subject to the E-Verify requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and any contractor, subcontractor performing services because of this Agreement shall be required to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General

Statutes.

F. No Third Party Rights Created. This contract is intended for the benefit of the City and the County and not any other person.

G. Insurance. The City and County agree to each cover its own risks for liability through either obtaining insurance or by self-insuring itself against any risk. Each shall furnish the other with evidence of such insurance, if any, upon request.

H. Severability. In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties have approved this Agreement and have caused it to be signed by the County Manager by approval of the Board of County Commissioners and the City Manager by approval of the City Council duly attested, the year and day first written above.

COUNTY OF DURHAM

BY: Wendell M. Davis, County Manager

ATTEST: _____

CLERK

CITY OF DURHAM

BY: Thomas J. Bonfield, City Manager

ATTEST: _____

CLERK

