



Orange County
Financial Services Department
ADDENDUM #1
March 2, 2017

RFP 5228 & 5229
2016 AFFORDABLE HOUSING BOND FUNDS & COUNTY OWNED LAND FOR AFFORDABLE HOUSING

To all Vendors:

Modifications to bid documents for the above-named Request for Proposal are made as follows and shall be included in the proposed amount.

See page 2

All other terms and conditions shall remain the same

By: David E. Cannell, Purchasing Agent; dcannell@co.orange.nc.us / (919) 245-2651

Acknowledgement of receipt of this addendum shall be included with your submittal

Company Name: _____

By: _____

Date Received: _____

P.O. Box 8181 200 South Cameron Street Hillsborough, North Carolina 27278
Telephones: Area Code 919-245-2651 Fax: 919-636-4913

1. The County has posted the fillable portions of both RFP 5228 & 5229 in word, as well as the MBE policy on its website http://www.orangecountync.gov/departments/purchasing_division/current_bids.php
2. Projects that will not be “substantially completed” by the time listed in the RFP’s should be submitted during Round 2 of the Bond funding
3. Orange County’s Long Term Affordable Housing Policy the BOCC passed on February 21, 2017 is attached
4. Submittals for each of the ten properties on RFP 5229 must be submitted individually
5. #5228 On page 13, “(b)” should read

**Properties Requested and Funding source for Development
List all FY17-18 Funding Being Provided – For Each Property and Specify the Proposed Use of Property**

6. #5228 On page 13, “(b)”. Please submit Funding Source(s) as an attachment
7. #5228 On page 21, Clarification of “Required for Area Benefit Activities (Infrastructure and Public Facilities)” Would include Availability of Water, Sewer, bus lines,
8. A copy of the LONG-TERM HOUSING AFFORDABILITY POLICY & Outside Agency performance agreement template are attached

9. At the February 7, 2017 meeting the Orange County BOCC passed a resolution that authorizes the County Manager to:

(1) Sell the properties by negotiated sale to either a public or private entity for the purpose of developing affordable housing for persons of low to moderate income (*the property could be offered for below market rates to serve as a subsidy for the affordable housing project*);

(2) Lease the property to a public or private entity for the purpose of developing affordable housing for persons of low to moderate income (*the lease rate could also be negotiated below market rate to serve as a subsidy for the affordable housing project*);
and

(3) In the event that there are no developers interested in option (1) or (2), sell the property on the private market with the proceeds of the sale dedicated to other affordable housing projects.

The Resolution would also authorize the County Manager to place terms, conditions and standards on the sale that would ensure that the properties are safe, convenient and remain affordable. If the Board approves the resolution, the contents of the resolution must be summarized and published once after its adoption. No sale can take place until 10 days after publication.

- 1.

LONG-TERM HOUSING AFFORDABILITY POLICY

PURPOSE: This policy establishes the acceptable strategies for ensuring long-term affordability in all affordable housing programs supported by County financial resources.

TARGET POPULATION:

- Homeownership programs are targeted to families with incomes at or below 80% of the HUD published area median income.
- Rental housing programs are targeted to families with incomes at or below 60% of the HUD published area median income.

DEFINITIONS:

1. Affordable Housing -is defined as:
 - a. Owner-occupied housing for families with incomes at or below 80% of the HUD published area median income and which the monthly housing costs (including PITI, HOA dues and required fees) do not exceed 30 percent of the gross monthly income of the purchaser(s), or
 - b. Rental housing for families with incomes at or below 60% of the HUD published area median income and which the occupant pays no more than 30% of gross income for all housing costs including utilities.
2. First-Time Homebuyer or Qualified Buyer - A First-Time Homebuyer for the purposes of this program is any low or moderate income household that has not owned a home within the past three (3) years including households living in manufactured housing not permanently affixed to a foundation, or owner-occupants of homes not feasible for renovation. The first-time homebuyer restriction may be waived after a home is available for sale for 90 days and the home may be sold to a Qualified Buyer, defined as a person who qualifies for affordable housing in accordance with this Policy.

I. Impact Fee Reimbursement Program (last revised March 4, 1998.)

A. Owner-Occupied Housing

Any organization requesting impact fee reimbursement must certify in writing, that, for owner occupied housing, it will remain affordable to the anticipated beneficiary or beneficiaries for a period of a minimum of ninety-nine (99) years or longer depending upon the funding source. This requirement will be secured by a Declaration of Restrictive Covenants.

B. Rental Housing

An organization requesting impact fee reimbursement for rental housing must certify that the property will remain affordable for ninety-nine (99) years. The rental housing certification must be secured by a Declaration of Restrictive Covenant requiring repayment to Orange County of the impact fee if the rental housing does not remain affordable during the period of affordability, which covenant will be further secured by a note and deed of trust. Evidence must be provided that agency and/or program guidelines are in place to assure affordability compliance.

II. Land Trust Model

The Land Trust model utilizes a non-profit, community based organization known as a Community Home Trust ("CHT") whose purpose is to acquire land and make it available to individual families and others, such as cooperatives, through a long-term lease for a term up to 99 years. The leaseholders or homebuyers do not hold title to the land - the title is retained by the CHT. The CHT conveys a leasehold interest in the land and improvements to the homebuyers (lessees). The benefits of this model include the ability of the CHT to retain the affordability of the home over successive generations of home buyers. The land lease gives the CHT the first option to purchase the home, when and if it is sold, at an affordable price set by a resale formula. The resale formula gives homeowners a fair return for their investment, while keeping the price of the housing affordable for future residents.

III. New and Existing First-Time Homebuyer Programs

A. Period of Affordability

All properties supported by County financial resources for the purpose of facilitating homeownership must be sold to households at or below 80% of area median income for a minimum of ninety-nine (99) years from the date of initial assistance. Subsequent resales are allowable to households earning up to 115% of area median income.

B. Right of First Refusal

A right of first refusal or right to purchase is accomplished by means of a Declaration of Restrictive Covenants on the property purchased by the first-time homebuyer. Any assignment, sale, transfer, conveyance, or other disposition of the Property or any part thereof whether voluntarily or involuntarily or by operation of law ("Transfer") shall not be effective unless and until the below-described procedure is followed.

If the original homebuyer or any subsequent qualified homebuyer ("Buyer") contemplates a Transfer to an unqualified buyer, Buyer shall send to Orange County and/or the sponsoring non-profit organization, not less than 90 days prior to the contemplated closing date of the Transfer, a "Notice of Intent to Sell." This Notice of Intent to Sell shall be accompanied by a copy of a completed, fully executed bona fide offer to purchase the Property on the then current North Carolina Bar Association "Offer to Purchase and Contract" form. If Orange County and/or the sponsoring non-profit organizations elects to exercise its said right of refusal, it shall notify the Buyer

of its election to purchase within 30 days of its receipt of the Notice and shall purchase the Property or portion thereof within 90 days of the receipt of the "Notice of Intent to Sell." As between the County and the sponsoring non-profit organization, if both wish to and have the means to exercise the right of first refusal, the sponsoring non-profit organization shall have priority.

If neither Orange County nor the sponsoring non-profit organization advises the Buyer in a timely fashion of its intent to purchase the Property, then the Buyer shall be free to transfer the property in accordance with the Equity Sharing subsection of this policy.

C. Equity Sharing

All financial contributions provided by the County will be provided as a deferred second loan secured by a forty (40) year Deed of Trust and Promissory Note, forgivable at the end of 40 years. This Deed of Trust and Promissory Note shall constitute a lien on the Property; subordinate only to private construction financing or permanent first mortgage financing.

The 99 year period of affordability for each individual housing unit will be secured by a declaration of restrictive covenants that will incorporate a right of first refusal that may be exercised by a sponsoring non-profit organization and/or Orange County. This declaration of restrictive covenants will be further secured by a deed of trust.

The non-profit organization and/or the County as applicable retains full responsibility for compliance with the affordability requirement for assisted units throughout the term of affordability, unless affordability restrictions are terminated due to the sale of the Property to a non-qualified buyer.

If the buyer no longer uses the Property as a principal residence or is unable to continue ownership, then the buyer must sell, transfer, or otherwise dispose of their interest in the Property only to a qualified homebuyer, i.e., a low-income household, one whose combined income does not exceed 80% of the area median household income by family size, as determined by the U.S. Department of Housing and Urban Development at the time of the transfer, to use as their principal residence.

However, if the property is sold during the term of affordability to a non-qualified homebuyer to be used as their principal residence, the net sales proceeds (sales price less: 1) selling cost, 2) the unpaid principal amount of the original first mortgage and 3) the unpaid principal amount of the initial County contribution and any other initial government contribution secured by a deferred payment promissory note and deed of trust) or "equity" will be divided 50/50 by the seller of the Property and the County. If the initial County contribution does not have to be repaid because the sale occurs more than forty years after the County contribution is made, then the seller of the Property and the County will divide the entire equity realized from the sale.

Any proceeds from the recapture of funds under this provision will be used to

facilitate the acquisition, construction, and/or rehabilitation of housing for the purposes of promoting affordable housing.

IV. Exceptions

- A. The Board of Commissioners may reduce the required ninety-nine (99) year affordability restriction to forty (40) years when:
 - i. The County's total financial contribution to the project is less than fifteen percent (15%) of the total project cost; or
 - ii. The developer agrees to and develops at least thirty-five percent (35%) of the project units as affordable units.

- B. The Board of Commissioners may authorize the cancellation of restrictive covenants upon a determination that:
 - i. A structure is in a state of disrepair such that the estimated cost to repair the structure exceeds one hundred percent (100%) of the value of the structure; and
 - ii. Redevelopment of the property is cost prohibitive; and
 - iii. Sale of the property is substantially unlikely to occur if the restrictive covenants are not cancelled.

- C. The Board of Commissioners authorizes the County Manager to approve removal of properties from the affordable housing inventory in accordance with the April 21, 2015 Interlocal Agreement for the Community Home Trust.

- D. In the event an application for exception does not meet all of the required elements to grant an exception pursuant to IV A – D above the Board of Commissioners may examine each application individually and ascertain whether the circumstances justify the granting of an exception. In such event the Board of Commissioners may grant an exception upon making findings of fact setting out all the relevant factors that reasonably and equitably justify such exception to this policy.

V. Policy Review

This policy will be reviewed by County staff and officials within two (2) years of the original approval date to ensure continued congruency with local affordable housing programs.

Effective Date: April 3, 2000

Revised: June 6, 2000

Revised: February 21, 2017

OUTSIDE AGENCY PERFORMANCE AGREEMENT

THIS AGREEMENT, made and entered into the first day of July 20 , (“Effective Date”) by and between the County of Orange, a political subdivision of the State of North Carolina, 200 South Cameron Street, Hillsborough, North Carolina, 27278, ("County") and «Agencys_Name», a not-for-profit corporation, located at «Agencys_Mailing_Address», «Agencys_City», NC «Agencys_Zip_Code» (“Provider”).

WITNESSETH:

WHEREAS, it is in the interests of the County that said program be assisted by the County and thereby enhance its availability to residents of the County, and said program addresses an important community human services need, as identified by the Board of Commissioners;

NOW, THEREFORE, in consideration of the above and the mutual covenants and conditions hereafter set forth, the County and «Agencys_Name» agree as follows:

- 1. Term of the Agreement.** The term of this Agreement shall be a program year beginning July 1, 20 to June 30, 20 .
- 2. Scope of Services.**
 - a. Provider will provide services, as outlined in the attached Outside Agency Funding Application and any amendments or revision thereto which is attached as Exhibit “A” and incorporated by reference, to the residents of Orange County. The Scope of Services and the Program Budget may be different from the original application based on County appropriation; however, any revisions or amendments to this Agreement must be approved in writing by the County and attached to this Agreement as Exhibit B.
 - b. The Provider shall be solely responsible for the means, methods, techniques, sequence, safety program and procedures necessary to properly and fully complete the work set forth in the Scope of Services.
- 3. Funding.**
 - a. The County agrees to appropriate for the provision of services described in Exhibit A, Scope of Services and more particularly described in the Revised Program Budget, the maximum sum of «M_1516_Appropriations».
 - b. All funds appropriated shall be used for purposes described in Exhibit A. Any funds not used for the purposes stated shall be returned to the County. Any changes in the use of funds must be authorized in writing by the County prior to any expenditure of the funds by the Provider. If the funds are expended not in accordance with the Scope of Services, at the discretion of the County the Provider may be required to repay the funds to the County.
 - c. The Provider shall be paid in four equal installments in the amount of «Quarterly_Appropriation». The first payment is contingent upon receipt of the agency’s performance agreement; the remaining payments are contingent upon receipt of the request for reimbursement and related supporting documentation.

- d. The County's obligation to make the quarterly payments is contingent upon receipt of Progress Reports, which show satisfactory progress toward completion of performance measures and an accounting of expenditures as detailed in the attached Scope of Services.
- e. Once Provider has satisfied its obligations as provided in (d) payment will be made 21 days after receipt of the Progress Report and Request for Reimbursement or 21 days after due date of Progress Report whichever is later.
- f. The County is not obligated to provide any other support to Provider in this or in succeeding fiscal years.

4. Agency Reporting.

- a. Provider will provide Orange County a Progress Report that includes a fiscal report and updates on performance measures as outlined in the Scope of Services. Progress Report dates are: July 1 – December 31; January 1 – March 31 and April 1 - June 30. Reports are due on January 11, April 15, and July 8 of the program fiscal year.
- b. Provider agrees to allow the County to inspect its financial books and records, which document costs of those services, upon reasonable notice during normal working hours.

5. Termination.

- a. In the event of any of the circumstances set forth below (hereinafter referred to as "default"), the County may immediately terminate this Agreement, in whole or in part, and from time to time. Notice of termination must be in writing, state the reason or reasons for the termination, and specify the effective date of the termination:
 - i. In the event that Provider shall cease to exist as an organization or shall enter bankruptcy proceedings, be declared insolvent, or liquidate all or substantially all of its assets, or significantly reduce its services or accessibility to Orange County residents during the term of this Agreement; or
 - ii. In the event that Provider shall fail to render a satisfactory accounting as provided section 4 above, the County may terminate this Agreement and Provider shall return all payments already made to it by the County for services which have not been provided or for which no satisfactory accounting has been rendered; or
 - iii. In the event of any fraudulent representation by the Provider in an invoice or other verification required to obtain payment under this Agreement or other dishonesty on a material matter relating to the performance of services under this Agreement.
 - iv. Nonperformance, incomplete service or performance, or failure to satisfactorily perform any part of the work identified in the Scope of Services or to comply with any provision of this Agreement, as determined by the County in its sole discretion.
 - v. Failure to adhere to the terms of applicable county, state or federal laws, regulations, or stated public policy.
- b. In the event of default by the Provider, the county may elect to terminate this Agreement, in whole or in part and/or require the Provider to repay the funds within ten (10) business days from written notice of default. The County may (but shall not be required to) grant the

Provider an opportunity to cure the default without termination of this Agreement. This clause shall not be interpreted to limit the County's remedies in law or in equity.

- c. Notwithstanding the foregoing, either party may terminate the agreement at any time without penalty; provided that written notice of such termination is furnished to the other party at least 30 days prior to termination. In the event of such termination, any payment due shall be prorated to the date of termination and any unused funds shall be returned to the County within 10 days of termination.
- d. Any termination of this Agreement for default under this section that is later deemed to be unjustified shall be deemed a termination for convenience.

6. Insurance.

- a. General Requirements. The Provider shall purchase and maintain, during the period of performance of this Agreement, insurance:
 - i. Worker's Compensation. For protection from claims under workers' or workmen's compensation acts;
 - ii. Comprehensive General Liability Insurance covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Consultant's employees or any other person and to real and personal property including loss of use resulting thereof;
 - iii. Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and
 - iv. Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising out of or related to the performance under this Agreement by the Consultant or his agents, consultants and employees.
- b. Limits of Coverage: Minimum limits of insurance coverage shall be as follows:

<u>INSURANCE DESCRIPTION</u>	<u>MINIMUM REQUIRED COVERAGE</u>
• Worker's Compensation	Limits for Coverage A - Statutory State NC & Coverage B - Employers Liability \$500,000 each accident, disease policy limit and disease each employee
• Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
• Automobile Liability	\$500,000 Combined Single Limit
• Professional Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate

- c. All insurance policies (with the exception of Worker's Compensation and Professional Liability) required under this Agreement shall name the County as an additional insured party and as a certificate holder. Evidence of such insurance and all correspondence shall be sent to:

Orange County Risk Manager
Post Office Box 8181
Hillsborough, NC 27278

- d. Nothing in this section is intended to affect or abrogate the County's sovereign immunity defenses.
- 7. Relationship of the Parties.** Provider is an independent contractor of the County. Provider represents that they have or will secure, at his own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized and permitted under federal, state and local law to perform such services.
- 8. Compliance with all Laws.** The Provider, at its sole expense, shall comply with all laws, ordinances, orders and regulations of the federal, state or local governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following execution of this agreement.
- 9. Subcontract.** The County and Provider deem the services provided under this Agreement to be personal in nature and Provider may not subcontract any rights or duties under this Agreement to any other party without prior written consent from the County.
- 10. Assignment.** The Provider shall not assign this Agreement, including the rights to payment, to any other party without the prior written consent of the County.
- 11. Indemnification.** Provider agrees to defend, indemnify, and hold harmless the County, for all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or willful misconduct of the Provider, except to the extent same are caused by the negligence or willful misconduct of the County. It is the intent of this section to require Provider to indemnify the County to the extent permitted under North Carolina law. Nothing in this section is intended to affect or abrogate the County's sovereign immunity defenses.
- 12. Non-Appropriation.** This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable.
- 13. Non-Discrimination.** Provider agrees as part of consideration of the granting of funds by Orange County the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner of these basis of race, color, gender, national origin, age, handicap, religion, sexual orientation, familial status or veterans status with reference to any activities carried out by the grantee, no matter how remote. The parties hereto further agree in all respects to conform to the provision and intent of Orange County Civil Rights Ordinance, as amended and the Orange County Anti-discrimination Policy. This provision is enforced by action for specific performance, injunctive relief, or other remedy as by law provided; this provision shall be binding on the grantees, the successors and assigns of the parties hereto with reference to the above subject manner.
- 14. Living Wage.** Orange County is committed to providing its employees with a living wage and encourages agencies if funds to pursue the same goal. The County's living wage is \$ _____ per hour. To the extent possible, Orange County recommends that «Agencys_Name» provide a living wage to its employees.
- 15. Notice.** The Parties hereto agree and understand that written notice, mailed or delivered, to the last known address shall constitute sufficient notice to the County and the Provider. All notices

required and/or made pursuant to this Agreement to be given to the County and the Provider shall be in writing and mailed to the party addressed as follows:

County: Finance & Administrative Services	Provider: «Agencys_Name»
Orange County	«Agencys_Mailing_Address»
Post Office Box 8181	«Agencys_City», NC
Hillsborough, NC 27278	«Agencys_Zip_Code»

16. Entire Agreement. This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties and shall supersede, replace or nullify any and all prior Agreements of understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement. The County and Provider have read this Agreement and agree to be bound by all of its terms, and further agree that this Agreement constitutes the complete and exclusive statement of the Agreement between the County and Provider.

17. Severability. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on the other provisions of this Agreement. It is understood by the parties hereto that if any part, term or provision of this Agreement is by the Courts held to be illegal or in conflict with any laws of the State of North Carolina or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

a. **Governing Law.** This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina. By executing this Agreement Provider affirms that Provider and any subcontractors of Provider are and shall remain in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. By executing this Agreement Provider certifies that Provider has not been identified, and has not utilized the services of any agent or subcontractor, on the list created by the State Treasurer pursuant to G.S. 147-86.58.

18. Signatures. This Agreement together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the intent of the Parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.

IN WITNESS WHEREOF, the Orange County and the Provider have signed this Agreement, effective on the last date this Agreement is signed by both parties as indicated by the dates set forth under signatures below.

For and on behalf of the Provider

,

Date

For and on behalf of Orange County Government

Bonnie Hammersley, County Manager

Date

ORANGE COUNTY—DEPARTMENT USE ONLY

Department

Party/Vendor Name: _____ Party/Vendor Contact Person: _____ Contact Phone: _____ Party/Vendor Address: _____ City _____ State: _____ Zip: _____ Department: _____ Amount: _____ Purpose: _____ Budget Code(s): _____ Vendor # _____ (N/A if new vendor) Vendor is a BOCC consultant? Yes No Contract Type: (Check one) New Renewal Amendment Effective Date _____ Approved by Board Yes No Agenda Date: _____

This agreement is approved as to technical form and content:

Department Director’s Signature _____ **Date:** _____

Information Technologies

(Applicable only to hardware/software purchases or related services) This agreement has been reviewed and is approved as to information technology content and specifications:

Office of the Chief Information Officer _____ **Date:** _____

Risk Management

This agreement is approved for sufficiency of insurance standards, specifications, and requirements:

Office of the Risk Management Officer _____ **Date:** _____

Financial Services

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

Office of the Chief Financial Officer _____ **Date:** _____

Legal Services

This agreement is approved as to legal form and sufficiency:

Office of the County Attorney _____ **Date:** _____

Clerk to the Board

Received for record retention:

All DocuSign contracts must be copied to Donna Lloyd upon completion @ Dolloyd@orangecountync.gov

The following signature block is for hard copies only and is not required for DocuSign contracts:

Office of the Clerk to the Board _____ **Date:** _____

Exhibit A
Provider's Outside Agency Application

Exhibit B
Provider's Revised Scope of Services and Program Budget

ATTACHMENT “A”

Orange County Certifications – FY 2015-16
Outside Agency Performance Agreement

Chief Contact, Administrators, Chief Executive Officer and Chief Financial Officer

I certify that I have provided a list of the chief contact, administrators, chief executive officer and chief financial officer for my agency with this Agreement and that I will keep it current to the County of Orange. The list should be in writing with the name, title, residential address; phone and email address and if possible, fax number.

Officers and Board of Directors

I certify that I have provided a current list of the Officers and Board of Directors with this Agreement and that we will continue to update the list as changes occur. The list should be in writing, with the name, physical address, mailing address and if possible, phone, fax and email address.

Budget Submission

I certify that I have provided a budget for the period to be covered by funding Orange County, and that any substantive changes made to this budget have been in advance authorized in writing by Orange County.

Annual Financial Review

I certify that I have provided a copy of the latest annual Financial Review for our agency and the budget adopted by the agency for the fiscal years encompassing this Agreement. If not, please explain on a separate sheet of paper.

Alignment with Organization’s Mission

I certify that the programs and services for which this funding is requested align with the mission of the organization.

Intended Purpose

I certify that the funds provided to the agency under the terms of this Agreement will be used for a public purpose and shall only be used for the purposes intended and any money not used for those purposes will be promptly returned to Orange County.

Certified by: _____ Title: _____ Date: _____
(Provider’s Signature)