

NORTH CAROLINA

FUNDED AGENCY AGREEMENT

BRUNSWICK COUNTY

THIS FUNDED AGENCY AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina (hereinafter referred to as “County”) and Communities In Schools of Brunswick County, Inc., a not-for-profit corporation (hereinafter referred to as “Agency”).

WITNESSETH:

WHEREAS, the program as described herein addresses an important community human services need, as identified by the Brunswick County Board of Commissioners; and

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.

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

- 1. Term of the Agreement.** The term of this Agreement shall be a program year which coincides with the County’s fiscal year beginning on July 1 of the current fiscal year (the “Effective Date”) and ending on June 30 of the current fiscal year.
- 2. Non-Appropriation.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Agency of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.
- 3. Scope of Services.**
 - a. Agency will provide services, as outlined in the Scope of Services and any amendments or revisions thereto, which are attached hereto as Exhibit “A” and incorporated herein by reference, to the residents of Brunswick County. The Scope of Services may differ based on County appropriation; however, any revisions or amendments to this Agreement or the Scope of Services must be approved in writing by the County and attached to this Agreement.
 - b. The Agency shall be solely responsible for the means, methods, techniques, sequence, safety programs and procedures necessary to properly and fully complete the work set forth in the Scope of Services.

4. Funding.

- a. The County agrees to appropriate for the provision of services described in Exhibit “A” and more particularly described in the Program Budget, the maximum sum of \$40,000.00. Funds will be paid by County to Agency upon receipt of an invoice and an accounting of expenditures. All funds appropriated shall be used solely for the provision of Services. Agency shall use its best efforts to expend funds from other sources, including, without limitation, those from the Juvenile Crime Prevention Councils, for teen court services prior to utilizing County funds.
- b. All funds appropriated shall be used solely for the purposes described in Exhibit “A.” Any funds not used for the purposes stated shall be promptly 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 Agency. If the funds are expended not in accordance with the Scope of Services, at the discretion of the County, the Agency may be required to repay the funds to the County.
- c. Payment to Agency is contingent upon County’s receipt of the Agency’s Outside Agency Performance Agreement attached hereto as Exhibit “B” and incorporated herein by reference.
- d. The County is not obligated to provide any other support to Agency in the current or in succeeding fiscal years.

5. Agency Reporting.

- a. Agency will provide County with Progress Reports that include a fiscal report and updates on Agency’s 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. Progress Reports are due on January 11, April 15, and July 8 of the program fiscal year.
- b. Agency agrees to allow the County to inspect its financial books and records, which document costs of services, upon reasonable notice during normal working hours.

6. 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. Notice of termination must be in writing, state the reason or reasons for the termination and specify the effective date of termination:
 - i. In the event that Agency shall cease to exist as an organization or shall enter bankruptcy proceedings, be declared insolvent, liquidate all or substantially all of its assets, or significantly reduce its services or accessibility to County residents during the term of this Agreement; or

- ii. In the event that Agency shall fail to render a satisfactory accounting as provided in Section 5 above, the County may terminate this Agreement and Agency 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 Agency 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; or
 - 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; or
 - v. Failure to adhere to the terms of applicable federal, state or local laws, regulations or stated public policy.
- b. In the event of Default by the Agency, the County may elect to terminate this Agreement, in whole or in part, and/or require the Agency to repay the funds within ten (10) business days from written notice of such Default. The County may (but shall not be required to) grant the Agency an opportunity to cure the Default without termination of this Agreement. This clause shall not be interpreted to limit the County's remedies at law or in equity.
 - c. Notwithstanding the foregoing, either party may terminate this Agreement at any time without penalty; provided that written notice of such termination is furnished to the other party at least thirty (30) days prior to termination. In the event of such termination, any payment due shall be prorated to the effective date of termination and any unused funds shall be returned to the County within ten (10) days of the effective date 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.

7. Agency Representations.

- a. Agency must maintain its not-for-profit, tax-exempt status under the Internal Revenue Service Code Section 501(c)(3) of Title 26 and under applicable federal and state laws and will provide verification of same to County upon request;
- b. Agency has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Agency to enter into and perform its obligations under this Agreement;
 - d. Agency shall not violate any agreement with any third party by entering into or performing its obligations under this Agreement;
 - e. The services provided by Agency under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements); and
 - f. Agency acknowledges that if any specific licenses, certifications or related credentials are required to perform its obligations under this Agreement, it will ensure that such credentials remain current and active and not in a state of suspension or revocation.
- 8. Insurance.** Agency shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance and any additional insurance as may be required by the County with limits acceptable to the County. All insurance policies (with the exception of Workers' Compensation and Professional Liability) shall be endorsed, specifically or generally, to include the County as an additional insured and as a certificate holder. Agency shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by the County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Agency shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.
- 9. Workers' Compensation.** To the extent required by law, Agency shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Agency is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Agency shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Agency's obligations under this Agreement.

Agency agrees to furnish County proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

- 10. Divestment from Companies that Boycott Israel.** Agency hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

- 11. Debarment.** Agency hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Agency must notify the County within thirty (30) days if debarred by any governmental entity during this Agreement.
- 12. E-Verify.** Pursuant to N.C.G.S. § 143-133.3, Agency understands that it is a requirement of this Agreement that Agency and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Agency agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Agency shall require its subcontractors to do the same. Upon request, Agency agrees to provide County with an affidavit of compliance or exemption.
- 13. Relationship of the Parties.** The parties agree that Agency shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Agency represents that it has or will secure, at its own expense, all personnel required to perform the services under this Agreement. Agency shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.
- 14. Compliance with all Laws.** The Agency, at its sole expense, shall comply with all laws, ordinances, orders and regulations of 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.
- 15. Subcontract.** The County and Agency deem the services provided under this Agreement to be personal in nature and Agency may not subcontract any rights or duties under this Agreement to any other party without prior written consent from the County.
- 16. Assignment.** Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party shall be void. An assignee shall acquire no rights, and the County shall not recognize any assignment in violation of this provision.
- 17. Confidential Information.** For purposes of this Agreement, the party disclosing Confidential Information is the "Discloser," and the party receiving Confidential Information is the "Recipient." "Confidential Information" shall mean any nonpublic information concerning the parties' respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information,

including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related to that agreement. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as "Confidential." Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

18. Indemnification. Agency shall defend, indemnify and hold harmless the County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against the County or which the County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Agency, its employees or agents. Agency further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. This Section shall survive any expiration or termination of this Agreement.

19. Non-Discrimination. Agency agrees, as part of the consideration for the granting of funds by County, that for itself, its agents, officials, employees and servants, it will not discriminate in any manner on the basis of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Agency shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Agency is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by the County, and Agency may be declared ineligible for further County agreements.

20. Notices.

- a. **Delivery of Notices.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **Effective Date of Notices.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **Notice Address.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:
 - i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022
 - ii. For the Agency: Communities In Schools of Brunswick County, Inc.
3148 George II Hwy Unit 2
Southport, NC 28461

21. Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such

provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

- 22. Governing Law.** This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina, without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.
- 23. Dispute Resolution.** Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the brining of any suit or action.
- 24. Governmental Immunity.** County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provide by law with regard to any action based on this Agreement.
- 25. Non-Waiver.** Failure by the County at any time to require the performance by Agency of any of the provisions of this Agreement shall in no way affect the County's right hereunder to enforce the same, nor shall any waiver by the County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.
- 26. Entire Agreement.** This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties with respect to the subject matter herein and shall supersede, replace or nullify any and all prior agreements, negotiations, representations and proposals, written or oral.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

27. Signatures. This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

COMMUNITIES IN SCHOOLS OF BRUNSWICK COUNTY, INC.

By: Bonnie Jordan

Printed Name: Bonnie Jordan

Title: Executive Director

Date: 6/15/2021

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Julie A. Miller
Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton
Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

**EXHIBIT “A”
PROGRAM/SCOPE OF SERVICES**

Agency will provide peer and teen court services, more specifically an alternative justice system, which encourages youth to take responsibility for their actions and correct their mistakes, in partnership with the Brunswick County District Attorney’s Office (the “Services”). Any revisions or amendments to the Scope of Services must be approved in writing by the County and attached to this Agreement.

Agency shall be solely responsible for the means, methods, techniques, sequence, safety programs and procedures necessary to properly and fully complete the Services.

**EXHIBIT “B”
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 for the County. 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 from the County, and that any substantive changes made to this budget have been in authorized in writing in advance by the 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 Agency.

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 the County.

Certified by: Bonnie Jordan Title: Executive Director Date: 6/15/2021
(Agency’s Signature)