

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 Brunswick Housing Opportunities, Inc., a not-for-profit corporation (hereinafter referred to as “Agency”).

WITNESSETH:

WHEREAS, Agency provides affordable housing, foreclosure prevention, reverse mortgage, veteran housing, senior housing and other housing-related counseling and repair services to eligible Brunswick County residents pursuant to related grant and funding agreements (hereinafter referred to as the “Program”); and

WHEREAS, the Program addresses an important community human services need, as identified by the Brunswick County Board of Commissioners, and County has agreed to provide limited financial support to Agency in support of the Program.

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 coincide 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 (hereinafter referred to as the “Services”). The Scope of Services 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.

- 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. County agrees to pay Agency for the Services satisfactorily performed in accordance with this Agreement, as more fully set forth on Exhibit "A." Unless otherwise specified, Agency shall submit monthly invoices and reports, including a Funding Allocation Report, to County, which shall include detail of all Services delivered or performed under the terms of this Agreement as well as any and all receipts for same. Invoices must contain an itemized description of all costs related to specific Services performed as well as a calculation of the County's proportionate share of costs associated with same.
- b. County shall pay all undisputed and properly completed invoices within two (2) weeks of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Agency, County shall inform Agency in writing of the disputed charges. Once the dispute has been resolved, Agency shall re-invoice County for the previously disputed charges, and, per any resolution between County and Agency, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Agency under this Agreement.
- c. The County is not obligated to provide any other support to Agency in the current or in succeeding fiscal years.

5. Agency Records. 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 satisfy the reporting requirements in Section 4 and Exhibit "A"; 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 Services hereunder 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 Agency, County may elect to terminate this Agreement, in whole or in part, and/or require Agency to repay funds within ten (10) business days from written notice of such Default. The County may (but shall not be required to) grant Agency an opportunity to cure the Default without termination of this Agreement. This clause shall not be interpreted to limit 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.

In the event that the Internal Revenue Service should determine that the Agency is, according to IRS. guidelines, an employee subject to withholding and social security contributions, the parties acknowledge that all payments to the Agency are gross payments, and the Agency is responsible for all income taxes and social security payments thereon.

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: Resea Willis, Executive Director
Brunswick Housing Opportunities, Inc.
P. O. Box 351
Bolivia, NC 28422

With a copy to: David H. Harris, Jr., Registered Agent
Brunswick Housing Opportunities, Inc.
2530 Meridian Parkway, Suite 300
Durham, NC 27713

- 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 bringing 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

By: _____
Randy Thompson
Chairman

[SEAL]

BRUNSWICK HOUSING OPPORTUNITIES, INC.

By: Resea Willis

Printed Name: Resea Willis

Title: Executive Director

Date: 6/10/2021

“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"

Funding and Scope of Services

1. For Services rendered by Agency in connection with this Agreement, Agency will submit invoices and reports to the County on a monthly basis. Invoices must contain a description of Services as outlined in the Services Description that follows. Payment will not exceed a total of fifty thousand dollars (\$50,000.00) annually and will be allocated as follows:
 - a. County shall provide assistance with overhead for liability insurance, rent and utilities related to the Housing Counseling and Housing Preservation programs based on the HUD percentages allocated to those programs on a monthly basis of one thousand two-hundred and fifty dollars (\$1,250.00) per month and up to an annual maximum of fifteen thousand dollars (\$15,000.00). The liability insurance is approximately four thousand seven hundred dollars (\$4,700.00) annually and rent and utilities are estimated at one thousand five hundred dollars (\$1,500.00) per month. In no event shall County's assistance under this Section a. exceed fifteen thousand dollars (\$15,000.00) annually.
 - b. Affordable housing, foreclosure prevention, reverse mortgage, veteran housing, senior housing and other housing-related counseling services to Brunswick County residents at a rate of one hundred and thirty-five dollars (\$135.00) per unique clients served up to an annual maximum of ten thousand dollars (\$10,000.00).
 - c. Housing repair services to eligible Brunswick County residents with a reimbursement for expenses related to the materials used in conjunction with such repairs up to an annual maximum of twenty-five thousand dollars (\$25,000.00).
2. County shall consider assisting with grant matches on a case-by-case basis with the stipulation that grant applications shall first be submitted to the County for review at the time of application.
3. Agency shall assist County to the best of its ability with survey and data collection and any other additional County needs as requested.

Services Description

Brunswick Housing Opportunities, Inc. ("Agency") became a 501(c)3 nonprofit in 2008 and HUD Approved Housing Counseling Agency since 2010. Agency's mission is:

***Connecting people, preparation, and resources, with opportunities to achieve
Individual housing and economic security to build vibrant communities.***

Agency's role in providing housing services to very low and low income residents in Brunswick County is that of a trusted advisor, educating the public seeking affordable housing on the process, options, and resources available to assist them. Agency services reduce the home repair waiting list while meeting the goal of assisting very low income elderly residents who would otherwise be on a waiting list with no hope of receiving assistance. Agency also works to train clients that do receive repairs how to maintain their home moving forward, thereby reducing the need for future repair services. The partnership with Brunswick Family Assistance, Brunswick County Homeless Coalition and other nonprofits allows us to prevent duplication of services when offering housing options. The case services manager bridges the gap between the resident, available services and resources to achieve their goal. A housing case services manager will advise the client/customer on the best options available for resources, programs, and services for housing sustainability according to their individual situation. Each client/customer must play an active role in the process towards the stated housing goal. A housing case services manager may not make any decision or conduct work in this process on behalf of the client/customer without their prior consent.

Agency will complete the following tasks with each client/customer served by the Agency, and/or referred by the County:

- Educate client regarding housing services, programs, and resources available.
- Collect information and data relevant to complete requirements for programs and services, for Agency and its collaborative partners.
- Provide follow up case management to assist client in achieving their housing goal and ensure program/project compliance and close out.
- Housing rehabilitation materials and supplies when needed.
- Agency will complete Invoices and monthly reports including the following:

Agency will submit reports, receipts and invoices to County for services rendered by the 10th of each month to be paid by the County within two (2) weeks of receipt. Agency will bill for Services until the funds of the budgeted amount are exhausted.

Client ID	Date Service Provided	Type of Service	Result	Total Hours
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Agency will include a Funding Allocation Report with monthly invoices as indicated below.

Service Provide	Hours	Rate	Total	AG-NCHFA	HUD	Brunswick County	ZSRF	CDBG	Donation	Other Source	Total
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