

AGREEMENT FOR UTILITY CUSTOMER ASSISTANCE PROGRAM ADMINISTRATION SERVICES

This Agreement for Utility Customer Assistance Program Administration Services (“Agreement”), made as of the ____ day of _____, 20__, by and between the Town of Apex, a North Carolina municipal corporation (hereafter, “Town”) and Western Wake Crisis Ministry, Inc., a North Carolina non-profit corporation (hereafter, “Agency”).

RECITALS

WHEREAS, Town provides electric, water, sanitary sewer, and solid waste services to approximately 27,000 metered customers in the Apex area;

WHEREAS, many of these customers have suffered financial hardships as a result of the impact of COVID 19 upon the economy and their daily lives:

WHEREAS, Agency is a non-profit organization whose mission includes providing financial assistance to certain members of the public living in the community located within the service area of the Town of Apex;

WHEREAS, the Parties hereby agree to collaborate in the administration of the Town of Apex’s Utility Customer Assistance Program (UCAP) that is intended to provide utility assistance funds to help approximately 800 eligible households in the Town of Apex pay their water, electric, and/or solid waste utility bill in fiscal year 2021-22;

WHEREAS, Agency will coordinate eligibility determination for the UCAP;

WHEREAS, Town shall be responsible for providing and administering all client assistance funds and credits to approved customer accounts; and

WHEREAS, this Agreement is authorized by NCGS 160A-20.1 and 160D-1311(a)(2).

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

ARTICLE 1
EFFECTIVE DATE AND SCOPE OF SERVICES

1. Recitals. The Recitals are incorporated into Agreement. This Agreement shall be effective upon execution by both parties (“Effective Date”).
2. Purpose. The Town Utility Customer Assistance Program (“UCAP”) is a Town of Apex funded program that provides for a one time utility assistance payment to help eligible households pay their water, sewer, electric and/or solid waste utility bills. Eligible households will receive up to a \$603.00 credit, or a credit for the total amount past due, whichever is less, on their utility bill with the Town of Apex. It is expected that approximately 800 customers will receive utility assistance from the UCAP. This

Agreement is for UCAP administration services to be provided by Agency generally consisting of determining eligibility of utility customer applicants under the UCAP Guidelines provided by the Town ("Services"). Agency shall provide all Services in compliance with this Agreement and all requirements of the Utility Customer Assistance Program Guidelines ("Guidelines") attached hereto as Attachment A and incorporated herein by reference.

3. Program Funds. The initial amount of Town funds ("Program Funds") to be disbursed by Town to eligible customers is four hundred eighty-three thousand dollars (\$509,000.00). The Town may authorize additional funds for the UCAP. Program Funds shall only be used as payments for utility assistance to eligible households.
4. Agency Fee. The Agency shall collect from the Town its Fee as follows:
 - a. Town shall provide compensation for the Agency UCAP Administrator position at \$25/hour. The planning and program development is expected to take 10-15 hours. The ongoing program management is not expected to exceed 2 hours per week.
 - b. Town shall provide compensation for the UCAP contractor(s), not to exceed two contractors, at \$15/hour for 15-20 hours per week.
 - c. Agency shall invoice Town every two weeks for the duration of the program.
 - d. Terms of invoice are net 30 days.
5. Term. The term of this Agreement shall be for a period beginning on Effective Date and ending one (1) year from Effective Date.
6. Agency Representations. Agency represents and agrees that now and continuing for the term of Agreement, Agency:
 - a. Is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
 - b. Shall exercise reasonable care and diligence, and shall act in the best interest of Town;
 - c. Shall act in accordance with Guidelines;
 - d. Shall act in accordance with generally accepted standards of Agency's practice applicable to the locality; and shall comply with this Agreement and with all applicable federal, state and local laws, ordinances, codes, rules and regulations (collectively 'Laws and Regulations');
 - e. Possesses all necessary qualifications, licenses and certifications;
 - f. Shall assure that the individual(s) signing Agreement have the right and power to do so and bind Agency to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

ARTICLE 2 RESPONSIBILITIES OF AGENCY

1. Compliance with Guidelines. Agency shall comply with Guidelines at all times. All defined terms used in this Agreement shall have the same meanings as used in

Guidelines. Failure of the Agency to comply with Guidelines shall be an event of default under this Agreement.

2. Agency Responsibilities.

- a. Agency shall assign appropriate Agency staff as UCAP Administrator to oversee the program and all UCAP contractor(s).
 - i. UCAP Administrator will collaborate with Town to finalize the job description for newly hired UCAP contractor(s) specifically for the purpose of administering the UCAP. The number of UCAP contractor(s) shall be determined by call volume and required turnaround times.
 - ii. UCAP Administrator will post the job description and screen applicants for the contractor position(s) and complete the hiring process. At least one UCAP contractor shall be bilingual.
 - iii. UCAP Administrator will onboard and train the UCAP contractor(s) as soon as possible after hiring. Contractor(s) shall work remotely, estimated at 15-20 hours per week.
- b. Agency shall collaborate with Town to finalize all policies and procedures for the operation of the UCAP, including the process for customers to make appointments, determine criteria to qualify for financial assistance, required customer documentation, and all related actions necessary to complete the process efficiently.
 - i. UCAP Administrator will act as liaison with an assigned Town representative as necessary to provide oversight of agreed upon UCAP policies and procedures.
- c. Agency shall create a web-based (e.g. Google Drive) tracking system for 24/7 access by Agency and Town for all documentation required for administration of the program.
- d. Agency and Town will collaborate to determine desired reporting frequency for reports from Agency to Town and reports from Town to Agency.
- e. Agency shall inform Town when feedback or direction is needed for troubleshooting specific cases or situations for which Agency cannot reach a resolution with the utility customer applicant.
- f. Agency shall provide appropriate referral guidance if and when a customer identifies another need for which Agency may be able to provide additional assistance (e.g. food instability, rent issues, etc.).

ARTICLE 3
RESPONSIBILITIES OF TOWN

1. Town's Responsibilities.

- a. Town shall collaborate with Agency to finalize all policies and procedures for the operation of the UCAP including the process for customers to make appointments, specific criteria to qualify for financial assistance, required customer documentation, and all related actions necessary to complete the process efficiently.

- b. Town shall promote the UCAP through communications with utility customers via various channels, as available, including general information about Agency mission and services.
- c. Town shall make referrals to utility customers who may qualify for financial assistance. Town shall assist utility customers in obtaining information and documentation required to complete the application process with the Agency.
- d. Town shall assign a liaison to work directly with the Agency CAP Administrator to serve as an advisor and troubleshooting resource when necessary.
- e. Town shall verify account balances prior to approval of UCAP applications.
- f. Town shall process the appropriate financial transaction for all utility customers who have met the criteria and are qualified for financial assistance. Town shall communicate payment application and outstanding balance/account credit to customer after payment application.
- g. Town shall assist customers with past due balances by establishing payment plans when appropriate.

ARTICLE 4 INSURANCE

1. Insurance. The Agency shall maintain valid general liability insurance in the minimum amount of \$1,000,000 and provide certificate of such insurance naming the Town as an additional insured by endorsement to the policy. Additionally, Agency shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000. All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached as Exhibit 2.

ARTICLE 5 DAMAGES AND REMEDIES

1. Indemnity. To the fullest extent permitted by Laws and Regulations, Agency shall indemnify and hold Town, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities, and damages (including but not limited to reasonable professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Agency of any term or condition of this Agreement or written amendment, (b) any breach or violation by Agency of any applicable Law or Regulation, or (c) any other cause resulting from any act or failure to act by Agency under this Agreement or written amendment, but only to the extent caused by any negligence or omission of Agency. This indemnification shall survive the termination of this Agreement.
2. Non-Exclusivity of Remedies/No Waiver of Remedies. The selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power, or remedy accruing to a party shall impair any such right, power, or remedy or shall be construed to be a waiver of any breach

hereof or default hereunder. Every such right, power, or remedy may be exercised from time-to-time and as often as deemed expedient.

3. Waiver of Damages. Agency shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead, or any consequential damages.

ARTICLE 6 AMENDMENTS TO AGREEMENT

1. Changes in the Services. Changes in the Services or a change in duration or any other term of this Agreement shall be made only by a written amendment executed by both parties.

ARTICLE 7 TERMINATION AND SUSPENSION

1. Termination for Convenience of Town. This Agreement may be terminated without cause by Town and for its convenience upon ten (30) days written notice to Agency.
2. Other Termination. After ten (30) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.
3. Survival. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity or records retention required hereunder or under Guidelines.
4. Suspension.
 - a. Town may order Agency in writing to suspend, delay, or interrupt all or any part of the Services for the convenience of Town.
 - b. A suspension, delay, or interruption of the Services shall not terminate this Agreement.

ARTICLE 8 ADDITIONAL PROVISIONS

1. Limited Assignment/Delegation. This Agreement shall bind Agency and its successors and permitted assigns. Agency shall not assign or transfer its rights or interest in this Agreement (including the right to payment), nor shall Agency delegate its duties under this Agreement, without the Town's written consent, which the Town may grant or withhold in its sole discretion. The Town's consent shall not release Agency of any obligation under this Agreement and Agency and permitted assigns shall be subject

to all of Town's defenses. Any attempt to assign this Agreement without the prior written approval of Town shall be void. If Agency utilizes approved subcontractors, Agency shall be responsible for the scheduling, completeness, quality, accuracy, and timeliness of all their work. Town has the right to request that any subcontractor be replaced due to unsatisfactory performance.

2. Governing Law. The parties acknowledge this Agreement is a "business contract" subject to the provisions of N.C.G.S. Chapter 1G and agree that this Agreement and the rights and duties of the Parties shall be governed by the laws of the State of North Carolina, without regards to conflict of law's provisions. The Parties further agree that any dispute arising from this Agreement shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to this Agreement shall be brought exclusively in Wake County, North Carolina. Service of process may be effected by delivery by any method permitted under the N.C. Rules of Civil Procedure.
3. Entire Agreement; Amendments. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). This Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.
4. Severability. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
5. Notice. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the Town, or to the Project Manager, or equivalent position, or officer/member of the entity that is the Agency, if to the Agency, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the Town's or Agency's address. The date of said notice shall be the date of such delivery, in the case of delivery in person, or mailing when sent by courier or mail.

The notice address for the Town shall be:

Town Manager
Town of Apex
PO Box 250
Apex, NC 27502

The notice address for the Agency shall be:

6. Gifts and Favors. Agency shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
7. Public Records; Confidential Records and Information. Agency acknowledges that records made or received in connection with the transaction of public business, including records related to this Agreement in the possession of Agency, are public records and subject to public records requests. Agency must provide such records to Town upon request. Town may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Agency. Agency shall make Town aware of any public records requests made in regard to Services or this Agreement. If Agency, its employees or subcontractors, during provision of Services, becomes aware of or has access to confidential records or information or information otherwise protected from disclosure by Federal or State law ("Confidential Information"), Agency, its employees and subcontractors, shall not disclose any such Confidential Information.
8. Verification of Work Authorization; Anti-Human Trafficking. Agency, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. Agency warrants and agrees that no labor supplied by the Agency or the Agency's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation, or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.
9. No Third-Party Beneficiaries. There are no third-party beneficiaries to Agreement.
10. Independent Contractor. Agency is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by Agency to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of Agency only. Agency shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. If Town notifies Agency in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Town, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of Town.
11. Nondiscrimination. Neither party shall discriminate on any prohibited basis. Agency must comply with the Americans with Disabilities Act of 1990 ("ADA").
12. Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. § 159-28) has been affixed and signed by the Town of Apex Finance Director.

13. Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Town's police powers or regulatory authority.
14. No Waiver of Sovereign or Qualified Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by Town pursuant to N.C.G.S. 160A-485 or to in any way waive Town's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent, or employee of Town shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
15. Further Assurances. Agency agrees that it will cooperate with Town and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as Town may reasonably request from time to time in order to effectuate the provisions and purposes of Agreement.
16. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. (2) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (3) References to a "Section" or "section" or "paragraph" shall mean a section or paragraph of this Agreement. (4) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (5) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (6) "Duties" includes obligations. (7) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (8) The word "shall" is mandatory. (9) The word "day" means calendar day. (10) Normal business hours means Monday through Friday from 8:00 a.m. until 5:00 p.m. Eastern Standard Time.
17. Electronic Signature. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. Agency and Town hereby consent to use electronic or digitized signatures in accordance with the Town's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used, the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

IN WITNESS WHEREOF, Agency and Town, being duly authorized, have caused these presents to be signed in their names as of the day and year first above written, on the following pages.

AGENCY

TOWN

Western Wake Crisis Ministry, Inc.

Town of Apex

By: _____
(signature)

By: _____
(signature)

Name: _____
(typed or printed name)

Name: _____
(typed or printed name)

Title: _____

Title: _____

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

Finance Director

Attachment A
Town of Apex Housing Rehabilitation Program Guidelines

**Attachment B
Insurance Certificate**

[Attach Insurance Certificate Provided by NON-PROFIT prior to executing agreement.]