

AGREEMENT FOR HOUSING REHABILITATION PROGRAM ADMINISTRATION SERVICES

This Agreement for Housing Rehabilitation Program Administration Services (“Agreement”), made as of the 1st day of January, 202~~2~~³ by and between the Town of Apex (hereafter, “Town”) and Rebuilding Together of the Triangle, Inc., a North Carolina non-profit corporation (hereafter, “Agency”).

RECITALS

WHEREAS, Town funds a Housing Rehabilitation Program (“Program”) with the goal of assisting low-income homeowners of single-family detached dwellings, condominiums, and townhomes in preserving safe and sanitary housing and correcting hazardous structural conditions to prevent and eliminate blight for the benefit of the public at large;

WHEREAS, Agency is a non-profit organization whose mission includes preserving affordable homeownership;

WHEREAS, Town chose Agency to assist with administering Program and Agency desires to provide such services under the terms and conditions contained herein; and

WHEREAS, this Agreement is authorized by NCGS 160A-20.1.

NOW THEREFORE, in consideration of the premises 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. Services. This Agreement is for Program administration services to be provided by Agency with respect to the Town’s Program, and generally consisting of administering Town funds (“Program Funds”) in a manner that ensures Program Funds are given to eligible, low-income, owner-occupied homeowners of single-family detached dwellings, condominiums and townhomes within Town corporate limits to cover the cost of Program-eligible housing repairs (“Services”). Agency shall provide all Services in compliance with this Agreement and all requirements of the Program Guidelines (“Guidelines”) attached hereto as Attachment A and incorporated herein by reference.
3. Program Funds. The total amount of Program Funds to be disbursed to Agency to provide Services is two-hundred and fifty thousand dollars (\$250,000.00). In no event shall the Agency’s expenditures of Program Funds exceed this amount. Program Funds shall only be used to reimburse Program participants for the actual cost of Program-eligible housing repairs and developer fees. Agency shall not use Program Funds to pay for overhead, administration, or any other costs related to Services.

4. Agency Fee. The Agency shall calculate and collect from the Town its Fee as follows:
 - a. A sum of \$500.00 to process each application for the Program Funds.
 - b. The remainder of the Fee shall include an ~~an~~ 158% markup of Project Hard Costs, which shall include, but not be limited to, invoices received from subcontractors for the Services; invoices received from suppliers for supplies necessary to provide Services; and labor costs in providing Services. Project Hard Costs shall not include staff time for activities including, but not limited to, organizing volunteers, processing paperwork, filing for and obtaining permits, and hiring subcontractors. ~~The portion of the Fee consisting of Project Hard Costs markup shall not exceed \$1,850.00.~~
 - c. The Town will pay the Agency the amounts due under this section within 30 days from receipt of invoice. Town has the right to require the Agency to produce for inspection all of Agency's records and charges to verify the accuracy of all invoices. Town shall pay Agency's invoices at times set forth above unless a bona fide dispute exists between Town and Agency concerning the accuracy of said invoice or the services covered thereby.
5. Term. The term of this Agreement shall be for a period beginning on Effective Date and ending one (1) year from Effective Date. If Agency commits Program Funds to one or more individual rehabilitation projects ("Project(s)") and any one or more of Projects are not completed prior to the termination of this Agreement, then and in that event this Agreement shall continue as to incomplete Projects until such time as the last of Projects undertaken hereunder is satisfactorily completed.
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 Program 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 NON-PROFIT

1. Compliance with Guidelines. Agency shall comply with Program Guidelines at all times. All defined terms used in this Agreement shall have the same meanings as used in Program Guidelines. Failure of the Agency to comply with Program Guidelines shall be an event of default under this Agreement.

2. Taxes, Permits and Licenses. Agency is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

ARTICLE 3
RESPONSIBILITIES OF TOWN

1. Cooperation and Coordination. In addition to being responsible for the duties set forth as duties or responsibilities of Town in Program Guidelines, Town may designate, in writing, a person to act as project manager who shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

ARTICLE 4
INSURANCE

1. Insurance. Agency and Agency’s permitted subcontractors shall purchase and maintain during the term of this Agreement insurance for protection from claims under workers' or workmen's compensation acts; Commercial General Liability Insurance (including contractual liability and completed operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of Agency’s employees or subcontractors or any other person and to real and personal property; Commercial Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering bodily injury or death, and property damage; Professional Liability Insurance (if applicable) covering personal injury, bodily injury and property damage and claims arising out of or related to Agency’s performance under this Agreement; and Agency shall acquire a fidelity bond or crime insurance covering at a minimum employee theft, computer crime, funds transfer fraud and social engineering. The fidelity bond or crime insurance should cover employees, volunteers, board members, officers, and all other personnel with access to the Agency’s funds. The coverage limit should be in an amount equal to or greater than the amount the Town provides to the Agency.

Minimum limits of insurance coverage are:

General Liability	\$1,000,000 per Occurrence/\$2,000,000 aggregate
Commercial Automobile Liability	\$1,000,000 CSL
Commercial Excess Liability / Umbrella Policy	\$1,000,000 per occurrence
Workers Comp	Statutory Limits
Employers Liability	\$500,000 per occurrence
Professional Liability	\$1,000,000 per claim

The Agency may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to the Town.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Insurers

The minimum insurance ratings for any company insuring the Agency shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, the Town may, at its option, require the Agency to purchase insurance from a company whose rating meets the minimum standard. Agency's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If Agency is unable to find an authorized carrier for any line of insurance coverage, Agency shall notify Town in writing.

Additional Insured Status

All insurance policies (except Workers Compensation and Professional Liability) shall name the Town of Apex as an additional insured.

Notice of Cancellation

Each policy shall provide that the Town shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, Agency shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

Agency's insurance coverage shall be primary and non-contributory for any claims related to this agreement.

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Town, its agents, or agencies, it being the intention of the parties that the insurance policies shall protect Town and be primary coverage for any and all losses covered by the policies.

Verification of Coverage

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement. The Town's review or acceptance of certificates of insurance shall neither relieve Agency of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Agreement.

Certificate Holder address should read:
Town of Apex
PO Box 250
Apex, NC 27502

Special Risks or Circumstances

The Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 5
DAMAGES AND REMEDIES

1. Services, Reimbursement, and Deductions. Agency shall reimburse Town for costs, damages, and expenses, including reasonable attorney's fees and expert's fees incurred by Town if such costs, damages, and expenses are the result of any error, omission, or delay of, or failure by Agency to perform as required by Agreement. Agency shall repay to Town any Program Funds disbursed by Agency in violation of Guidelines.
2. 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.
3. 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.
4. 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 (10) days written notice to Agency.
2. Other Termination. After ten (10) 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. Return of Uncommitted Funds. Should this Agreement be terminated for any reason, Agency shall, within thirty (30) days of the date of termination, return all Program Funds in its possession that have not been previously committed to eligible Projects.
4. 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.
5. 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:

Planning Department
Town of Apex
Attn: Housing Program Manager
PO Box 250 / 73 Hunter Street
Apex, NC 27502

The notice address for the Agency shall be:

Rebuilding Together of the Triangle
Attn: Executive Director
~~200 Trans Air Drive, Suite 200~~ 2201 Brentwood Road, Suite 109
Morrisville Raleigh, NC 27560604

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.
9. Anti-Human Trafficking. 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.
10. No Third-Party Beneficiaries. There are no third-party beneficiaries to Agreement.
11. 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.
12. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Agency hereby warrants and agrees that Agency will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement “protected class” includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status. Neither party shall discriminate on any prohibited basis. Agency must comply with the Americans with Disabilities Act of 1990 (“ADA”).
13. Pre-Audit Requirement; Non-Appropriation. 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. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town are from appropriations and monies from the Town Council

and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

~~13.~~

14. 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.
15. 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.
16. 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.
17. 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.
18. 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

Rebuilding Together of the Triangle, Inc.

Town of Apex

By: _____
(signature)

By: _____
(signature)

Name: Dan Sargent

Name: Catherine Crosby

Title: Executive Director

Title: Town Manager

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

Finance Director