

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

THIS AGREEMENT, made and entered into by and between CHATHAM COUNTY, a public body politic and corporate of the State of North Carolina, hereinafter referred to as "Chatham County" or the "County" and the CHATHAM COUNTY COUNCIL ON AGING, INC., a North Carolina non-profit corporation, hereinafter referred to as "the COA" or "COA";

WHEREAS, during the period June 27, 2022 to June 30, 2023 the personnel, operating and capital expenses, revenue and capital assets of the COA will be transferred to the ownership and purview of the County solely to establish the Chatham County Department on Aging.

WHEREAS, however, both parties acknowledge that the COA will remain a legal entity in its current form through June 30, 2023 and that the transition from the COA to the County Department on Aging will not be considered final until July 1, 2023, at which point the existing COA Board of Directors may become the "Friends of the County Department on Aging" but continue to exist as the Council on Aging for legal purposes at least until all business is concluded.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable considerations, the parties hereto agree as follows:

**SECTION 1. TERM OF AGREEMENT**

Subject to the terms and conditions hereinafter set forth, the term of this Agreement shall be June 27, 2022 to June 30, 2023.

**SECTION 2. AMOUNT PAYABLE**

Subject to the terms and conditions hereinafter set forth, Chatham County agrees to pay the COA for approved services in an amount of four hundred thirty-two thousand, and one dollar (\$432,001.00) during the term of this Agreement.

**SECTION 3. METHOD OF PAYMENT**

Payment for services will be made over the course of the fiscal year in twelve equal monthly installments of \$36,000.08.

**SECTION 4. SERVICES TO BE PROVIDED**

The COA agrees to meet the needs of the elderly in Chatham County by promoting independent living, supporting family caregiving, enhancing physical and mental wellness, and coordinating community, financial and volunteer resources so that the cost of remaining at home will generally be lower than the costs associated with institutional care for adults aged 60 and older.

The COA agrees to serve as the local Designated Lead Agency for the State's Home and Community Care Block Grant (HCCBG) and adhere to the requirements associated with this responsibility until such time as the County becomes the Designated Lead Agency. The COA agrees to administer services under the HCCBG, pursuant to the HCCBG funding plan recommended by a citizen advisory committee and approved by the County Commissioners. The HCCBG allows for the provision of a broad range of services designed to improve the quality of

life for older adults. These services are intended to provide home and community-based services in support of older adults and their unpaid primary caregivers. HCCBG funds shall be spent according to the County's approved funding plan.

Chatham County does not operate as a pass-through agent for HCCBG funds. The COA receives its designated allocation and reimbursement for HCCBG directly from the Triangle J Council of Governments and receives the requisite match for HCCBG from Chatham County.

The COA agrees to serve as the designee for the North Carolina Department of Transportation 5310 funds for fiscal year 2023 until June 30, 2023 or when a transfer of allocation to another provider is approved, whichever is sooner.

The COA also accepts and administers other public and private funds in a way that assures proper stewardship of these resources.

Services of the COA will include:

- Maintaining home-based services, including in-home aide personal care, Meals on-Wheels (home delivered meals), frozen and shelf-stable meals, the loaning of mobility and assistive equipment, and the provision of incontinence supplies, which enable older adults to continue living in their own homes and avoid premature and costly care in a facility until such time as service is transferred to the County.
- Health, wellness, nutrition, recreational, educational, and social programs, and activities at both senior centers, pending the reopening of the Eastern Senior Center following completion of the addition and renovation project, which are State-certified Centers of Excellence. The COA agrees to do what is necessary to maintain this State certification until such time as service is transferred to the County.
- Information and referral assistance, as well as options counseling to support older adults and caregivers in maintaining a high quality of life in the community and understanding what resources are available to help with this until such time as service is transferred to the County.
- Support of family caregivers of older adults and younger adults with dementia who are striving to continue living at home through respite, support groups, training, and other means until such time as service is transferred to the County.
- The COA is expected to collaborate with other health and human services agencies, educational institutions, volunteers, and professionals to extend health care access to underserved older adults throughout the County, including the provision of general and medical transportation.

The COA is expected to stay informed of relevant demographics and other statistics, raise awareness about the aging of Chatham's growing population and encourage efforts to assure that Chatham remains an age-friendly community where there are opportunities for social and civic engagement, continuous learning, fitness, and an appreciation for the life accomplishments of older adults and their continuing contributions to the community.

The COA will continue to advocate for older adults and their caregivers on a wide range of matters.

The COA must maintain satisfactory Home and Community Care Block Grant reviews conducted by the Triangle J Area Agency on Aging until such time as service is transferred to the County.

#### SECTION 5. TRANSFER OF EMPLOYEES/PERSONNEL

Effective June 27, 2022, the current employees of the COA will be transferred to the County as employees in good standing under the following terms and conditions:

1. The County shall cover the cost of compensation and benefits described in this section.
2. Employees of the COA will be credited for years of service to the COA for vacation accrual purposes.
3. The County shall accept a transfer of accrued sick leave earned as employees of the COA.
4. Employees shall be eligible for any pay increases approved by the Board of Commissioners for fiscal year, beginning July 1, 2022.
5. Employees of the COA shall be eligible for all group benefits as County employees in accordance with eligibility requirements, including but not limited to health, dental, and life insurance, 401(k) contribution from the County, membership in the North Carolina Local Government Retirement System, and other options for voluntary benefit coverages.
6. The County shall accept a maximum of forty (40) hours of vacation leave employees earned as employees of the COA. COA shall remit to the County, within 30 days of being invoiced by the County, funds equivalent to the compensation and benefits cost for accepting the 40-hour transfer of vacation.
7. The County agrees to waive waiting periods for health, dental and life insurance for existing COA employees that will be eligible to receive these County benefits in accordance with County policy.
8. The COA agrees to compensate employees for vacation time over the forty (40) hour transfer in accordance with the COA's established personnel policy.
9. Department on Aging employees will not be required to serve an additional probationary period provided they have successfully completed the probationary period of the COA.
10. Transferred employees will be loaned by the County to COA to assist COA in carrying out its obligations under this Agreement as well as for operations generally, pursuant to an agreement in substantially similar form to Appendix A, which is attached hereto.

#### SECTION 6: TRANSFER OF OPERATING EXPENSE AND REIMBURSEMENTS

Effective July 1, 2022, the County will assume expenses related to employees including compensation, insurance, and other benefits included above. worker's compensation insurance, training and development, as well as expenses for Triangle J Council of Government dues and expenses related to the minor home repair program, executed under contract with Rebuilding Together of the Triangle. During the period July 1, 2022 to June 30, 2023, the COA will transfer other operating expenses and the COA will reimburse the County for these associated expenses. Transfer of such expenses and reimbursement will occur on a mutually agreed upon timeline and requires consent of the COA Board of Directors. Any funds which are transferred from the COA to the County during this period must be accounted for separately and all restrictions COA is bound by for these funds shall transfer to the County.

#### SECTION 7: TRANSFER OF CAPITAL ASSETS

Subject to all necessary approvals, during the period July 1, 2022 to June 30, 2023, the COA will transfer capital assets, including but not limited to, the land lease for the Eastern Chatham Senior Center and its contents, the Western Chatham Senior Center and its contents, auxiliary buildings and structures owned and maintained by the COA, and vehicle inventory. Transfer of such assets

will occur on a mutually agreed upon timeline. Upon transfer of ownership of the asset, the County shall assume all insurance, maintenance and operating expenses related to that asset and may charge fees in accordance with the fee schedule adopted by the Board of Commissioners for fiscal year 2022-2023. The parties agree that the COA shall continue to occupy the buildings and use other capital assets at no cost through June 30, 2023.

#### SECTION 8. TRANSFER OF RESERVES

COA will maintain its current reserves, both operating and investments, through June 30, 2023 to provide sufficient cash flow for agency operations. Effective July 1, 2023, and subject to all necessary approvals, including the North Carolina Attorney General, as applicable, COA will transfer to the County its remaining balance in operating reserves, less the cost of the FY 2022-2023 audit and preparation of the 990 tax return, unless the County assumes responsibility for these items. The County shall use all funds transferred in accordance with funding restrictions imposed by grantors and other funders. Any unrestricted funds that are transferred will be used for the benefit of the County Department on Aging.

COA will retain the balance in its investments accounts. The parties agree that the investment funds will be used to cover the first year of operating expenses for the Friends of the County Department on Aging, as well as the following:

- Up to \$500,000 plus investment earnings to cover the cost of a future capital facility
- Up to \$300,000 for investment as an annuity to fund the cost of an annual scholarship/internship, mutually acceptable to both parties.

COA, through its Board of Directors oversight, will continue to manage and invest the balance in its investment accounts to maximize returns, but minimize risk to the principal.

#### SECTION 9: REPORTING OF PERFORMANCE AND ANNUAL BUDGET REQUEST

The Aging Services Director of the COA shall report performance on County goals and objectives in a frequency and manner acceptable to the County. Performance reporting will occur during monthly meetings with the County Manager, annually in the work plan published in the budget document, and also reported annually as requested in the State of the County report. In addition to reporting performance related to work plan goals, any progress or accomplishments made towards Commissioners' goals set at the annual retreat shall also be reported in the work plan.

The COA will adhere to the current County policies and procedures in regard to the annual budget process. This includes adhering to the budget calendar and submitting a copy of the COA's budget to the County.

#### SECTION 10. RELATIONSHIP OF PARTIES

The County and the COA agree that the COA is an independent contractor and shall not represent itself or be deemed as an officer, agent or employee of the County for any purpose. The COA agrees that it shall obey all State and Federal statutes, rules and regulations which are applicable to provisions of the services called for herein.

The Department on Aging employees are County employees "loaned" to the COA. The Department on Aging Director is directly supervised by the County Manager and serves as the department head. These loaned employees shall perform such duties, tasks, and undertakings as

shall be assigned to them by the COA's Board of Directors as well as by the County per the terms of the "Loaned Employee Agreement" [Appendix A].

The County shall retain the right to hire, discipline and discharge these "loaned employees" subject to the County's Personnel Policy. The County may invite the President of the COA's Board of Directors to provide input regarding the performance of the Department on Aging Director. The COA's Board of Directors may request that the County take disciplinary action with respect to any of the "loaned employees" regarding duties, tasks or undertakings performed or failed to be performed. The County shall investigate any such request received from the COA's Board of Directors but shall have no obligation to take any disciplinary action unless the County, as employer, deems such action is warranted.

The County agrees to make these "loaned employees" available to the COA at no cost or charge. The compensation to be paid to these employees and the benefits to be provided shall be established by the County.

#### SECTION 11. INSURANCE REQUIREMENTS

At its expense, the COA shall maintain insurance from an A+ or better rated company with minimum coverage limits at all times as follows:

- General Professional Liability: \$1,000,000/2,000,000
- Automobile Liability: \$1,000,000 Combined Single Limit
- Directors and Officers Liability: \$1,000,000/2,000,000
- Employment Practices Liability: \$1,000,000/2,000,000
- Physical Abuse, Sexual Misconduct/Sexual Abuse & Molestation: \$1,000,000/2,000,000
- Social Services Professional Liability: \$1,000,000/2,000,000
- Commercial Umbrella: \$2,000,000

#### SECTION 10. NO ASSIGNMENT OR SUBCONTRACTING

COA shall not assign or subcontract any portion of this Agreement, including any duties or obligations hereunder, including the right to receive payment from the County to any party without the prior written approval of the County.

#### SECTION 11. NON-APPROPRIATION

The COA recognizes that Chatham County is a governmental entity, and that the County's funding obligations under this Agreement are contingent upon the availability of funds.

In the event that funds are not available, or not appropriated, to pay for the Services specified in this Agreement, then COA ceases to be responsible for the services described in Section 4. All other provisions of this agreement shall continue in effect.

#### SECTION 12. NO THIRD-PARTY BENEFICIARIES

This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and this Agreement shall not confer any rights or remedies upon any person or entity other than the parties hereto.

### SECTION 13. NO WAIVER OF SOVEREIGN IMMUNITY

Chatham County and the COA agree that nothing in this Agreement shall be construed to mandate the purchase of insurance by the County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Chatham County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or in any other way waive the County's defense of sovereign or governmental immunity from any cause of action alleged or brought against the County for any reason if otherwise available as a matter of law.

### SECTION 14. GOVERNING LAW

The parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina.

### SECTION 15. ENTIRE AGREEMENT

The terms and provisions herein contained constitute the entire Agreement between the County and the COA and shall supersede all previous communications, representations, or agreements, either oral or written between the parties hereto with respect to the subject matter of this Agreement.

### SECTION 16. NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under the terms of this Agreement shall be sufficient in all respects and effective upon receipt if given in writing and delivered in person, transmitted by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

If to Chatham County: Chatham County, Attn: County Manager, Post Office 1809, Pittsboro, North Carolina 27312

If to COA: Chatham County Council on Aging, Attn: Director and COA Board President, PO Box 715, Pittsboro, North Carolina 27312.

### SECTION 17. SEVERABILITY

If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

### SECTION 18. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

### SECTION 19. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the date upon which it is executed by the County.

### SECTION 20. STATE AND FEDERAL REQUIREMENTS; COUNTY TERMS AND CONDITIONS

By signing this Agreement COA certifies that (if applicable) COA, and any of COA's subcontractor are in compliance with State and Federal laws, including any divestment list by the

NC State Treasurer, and Federal or State debarment or suspension lists. The County Terms and Conditions are incorporated herein, made an integral part of this Agreement, and may be found at the County's web site. <http://www.chathamcountync.gov/finance>. A hard copy of the Terms and Conditions is available upon request.

#### SECTION 21. MONITORING

The County may from time to time conduct fiscal, administrative, and/or programmatic monitoring to assure COA's compliance with applicable State and Federal regulations, applicable County policy and procedure, funding recipient requirements (if applicable), or the terms of the Agreement. The frequency and the intensity of the monitoring will be at the discretion of Chatham County, and nothing herein shall be construed to relieve the COA of the requirements of this Agreement in the absence of monitoring. The COA shall cooperate with Chatham County monitoring as follows.

1. The COA shall maintain and permit the County or its authorized representative to audit, examine, and make copies of or extracts from all records, in whatever form they exist, related to activities under this Agreement, including, original receipts, cancelled checks, a detailed general ledger, and an inventory of supplies/equipment purchased with funds under this Agreement, program expenditures, eligibility requirements, program data, revenue, billing records, receipts, records to substantiate programmatic outcomes and compliance with all applicable contract terms and laws and regulations, licensure, and insurance, and any other documents needed to substantiate invoices.
2. The COA shall make available to the County its annual audit report no later than December 1st of the current fiscal year.
3. The COA shall permit unannounced on-site visits or a pre-arranged request for access to records.
4. When requested by the County, the COA will make records available for duplication or supply copies.
5. The COA shall maintain all records related to activities under this Agreement for at least five (5) years after the conclusion of the Agreement.

The County will attempt in good faith to resolve any dispute with the COA related to the subject matter of this Agreement. To ensure accountability and future program success, the County may, but is not required, to present a list of suggested corrective actions to the COA. If presented, the COA will ensure that each issue is addressed within thirty (30) days from the time notice of the issue is received unless a different timeframe is agreed upon. Nothing in this clause shall be construed as prohibiting either party from immediately applying to a court of competent jurisdiction located in Chatham County for legal or equitable relief.

IN WITNESS WHEREOF, Chatham County and the Chatham County Council on Aging, Inc. have caused this Agreement to be signed and sealed on this day.

CHATHAM COUNTY

CHATHAM COUNTY COUNCIL ON AGING,  
INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



-APPENDIX A-  
LOANED EMPLOYEE AGREEMENT

CHATHAM COUNTY

THIS AGREEMENT (this "Agreement") made and entered into this 21 of June, 2022, by and between Chatham County, a body politic and corporate of the State of North Carolina (the "County"), and the Chatham County Council on Aging, Inc., a North Carolina nonprofit corporation located in Chatham County, North Carolina (the "COA").

WITNESSETH:

WHEREAS, the mission of the COA is to promote and encourage independent living and physical and mental wellness through agency activities among the Chatham County population age sixty (60) and older; and

WHEREAS, the County appropriates funds annually to support the mission of the COA; and

WHEREAS, the County wishes to continue to support the COA in the providing of its services to the senior citizens and residents of Chatham County; and

WHEREAS, the County and the COA wishes to transfer the personnel, operating and capital revenue, expenses and assets of the Council on Aging to the County over the period June 27, 2022 to June 30, 2023; and

WHEREAS, the Employees are employees of the County, but the County, COA, and the Employees have agreed that Employees shall be "loaned" employees to the COA and shall provide services and facilitate this transition to the COA as provided in this Agreement; and

WHEREAS, effective June 27, 2022, the County has agreed to loan the Employees to the COA, and the COA has agreed to borrow the Employees from the County, which is agreeable to the Employees, and all parties wish to memorialize their agreement in writing with respect to the Employees and their employment relationship to the County and the COA; and

NOW, THEREFORE, in consideration of the premises, the benefits flowing to the parties, and the agreements set forth herein, the County and the COA intending to be legally bound, agreed as follows:

1. Duties of Employees for COA. The Employees loaned by the County to the COA shall perform such duties, tasks, and undertakings as shall be assigned to them by the COA Board of Directors in coordination with the department on aging director. Such tasks include, but are not limited to, maintaining financial records and reporting for the COA, providing assistance with fundraising, grant writing and communications, preparing for the annual financial audit, assisting with events and programming and representation on local and regional committees and advisory boards.

2. Duties of Employees for County. The Employees shall perform such duties, tasks, or undertakings for the County as directed by the County. The COA shall have no responsibility or liability with respect to the duties, task, or undertakings performed by the Employees for the County.

3. Right to Hire and Fire. For the avoidance of doubt, the Employees shall remain employees of and supervised by the County, even while on loan to the COA, the County shall retain the right to evaluate, discipline and discharge the Employees notwithstanding the fact that Employees will be providing services to the COA, and the Employees shall be and remain subject to the County's Personnel Policy, including any amendments thereto, and including, without limitation, the discipline and termination procedures provided therein. The COA may request that the County take disciplinary action with respect to any of the Employees regarding duties, tasks, or undertakings performed, or failed to be performed for the COA. The County shall investigate any such requests received from the COA, but shall have no obligation to take any disciplinary action unless the County, as employer, in its sole discretion believes that such action or some other action is warranted. The County shall retain full authority to take disciplinary action with respect to the Employees regarding actions taken, or failed to be taken, with respect to task assigned the Employees by the County.

4. Cost to COA. The County shall make the Employees available to the COA at no cost or charge to the COA. The compensation to be paid to the Employees, and the benefits to be provided, shall be established and paid by the County. The Employees shall be entitled to participate in any group insurance, qualified pension, hospitalization, medical, and accident, disability, or similar plan or program of the County now existing or hereafter established to the extent that they are eligible under the general provisions thereof. Notwithstanding anything herein to the contrary, however, County shall have the right to amend or terminate any such plans or programs.

5. Term of Agreement. The term of this Agreement shall commence on June 27, 2022 and unless terminated as herein provided, shall exist and continue until June 30, 2023.

6. Insurance. The COA shall maintain minimum employee-related coverage limits at all times as follows:

- General Professional Liability: \$1,000,000/2,000,000
- Directors and Officers Liability: \$1,000,000/2,000,000

If any changes are made to insurance coverages, the COA will provide the County with full disclosure of the changes and any changed liability limits. The Coverage information shall be provided to the County clearly indicating that the COA has obtained insurance of the type and classification as required for strict compliance with this paragraph and that no material change or cancellation of the coverages shall be effective without thirty (30) days prior written notice to the County. Compliance with the foregoing requirements shall not relieve the COA from any liability or other obligations under this Agreement.

7. Assignment. No party may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other parties, which consent may be withheld in the sole and absolute discretion of a party. There are no third-party beneficiaries to this Agreement. The provisions of this Agreement shall not impart rights enforceable by any person, entity, or organization not a party to this Agreement.

8. Notices. All notices given or made pursuant to this Agreement shall be in writing, delivered in person, mailed by certified mail, return receipt requested, or delivered by a recognized overnight courier, postage or fees prepaid, addressed to a party at the address given below, and shall be deemed effective upon the date received, via personal delivery, certified mail or overnight delivery. The parties shall be responsible for notifying each other of any change of address. Addresses for notices to the parties are follows:

12. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements, and agreements heretofore entered into between the parties with respect to the matters contained herein are merged in this Agreement. This Agreement may not be changed orally, but only by a written document signed by all parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns to the extent such assignment has been consented to as provided in Paragraph 10 hereof. The provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina. The headings contained in this Agreement are solely for the convenience of the parties and do not constitute a part of this Agreement and shall not be used to construe or interpret any provisions hereof. This Agreement shall be considered for all purposes as having been prepared by the joint efforts of the parties and shall not be construed against one party or another as a result of preparation, substitution, submission, or other event negotiation. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and the parties hereto may execute this Agreement by signing any such counterpart.

IN WITNESS WHEREOF, Chatham County and the Chatham County Council on Aging, Inc. have caused this Agreement to be signed and sealed on this day.

CHATHAM COUNTY

CHATHAM COUNTY COUNCIL ON AGING,  
INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_