

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF JACKSON

THIS AGREEMENT, made and entered into this 16th day of November 2021, by and between the County of Jackson, a body politic and subdivision of the State of North Carolina (hereinafter referred to as "the COUNTY"), and Mountain Biz Works, Inc., a non-profit corporation organized under the laws of the State of North Carolina (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

Upon the terms and conditions hereinafter set forth, Jackson County has requested and CONTRACTOR has agreed to continue to furnish the COUNTY with grant management services as set forth in this contract. The COUNTY and CONTRACTOR agree as follows:

1. **Effective Period.** This Contract shall be effective on November 16, 2021 and shall terminate on November 15, 2026.
2. **Independent Contractor.** The Contractor is an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the County. Upon request, the Contractor must provide the names of all owners, managers, and management entities, including those of any subcontractor, which are used in the performance of and compliance with the terms and conditions of this contract.
3. **Subcontracting.** The Contractor shall not subcontract any of the work contemplated under this Contract without prior written approval from the County. Only the subcontractor specified in the written approval documents are permitted upon award of the subcontract. The County shall not be obligated to pay for any work performed by any unapproved subcontractor. Any approved subcontractor shall also be subject to all terms and conditions of this Contract. The Contractor is ultimately responsible for providing the services of this Contract and shall be responsible for the performance of all of its subcontractors, agents, and employees.
4. **Contract Administrators.** All notices permitted or required to be given by one party to the other and all questions about the Contract from one party to the other shall be addressed and delivered to the other party's Contract Administrator. The name, post office address, street address, telephone number, and email address (if available) of the parties' respective initial Contract Administrators are set out below. Either party may change its Contract Administrator and contact details by giving timely written notice to the other party.

Contract Administrator for the Contractor:

Matt Raker  
153 S Lexington Ave  
Asheville, NC 28801  
828-253-2834 x 15

Contract Administrator for the County:

Don Adams – County Manager, Jackson County  
401 Grindstaff Cove Rd. – Suite A 207  
Sylva, NC 28779  
Office: (828) 631-2207

5. **Amendment.** This Contract may not be amended orally or by performance. Any amendment or modification shall be made in written form and executed by duly authorized representatives of the County and the Contractor.
6. **Confidentiality.** Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information, including but not limited to confidential personnel information, it will safeguard and not further disclose the information except as provided by law.
7. **Indemnification.** The Contractor agrees to indemnify, hold harmless, and defend the County and any of its officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contractor in connection with the performance of this contract. Contractor agrees to indemnify and hold harmless Jackson County, its officers, agents, and employees from any and all claims, demands, costs and expenses, including reasonable attorney's fees, arising from this Contract or from any breach or default on the part of Contractor in the performance of any part of this Contract, or from any act or negligence of Contractor, its officers, agents, servants, employees, or subcontractors unless caused by the negligence of the County or its agents. In case of any action, suit, or proceeding brought against the County, its officers, agents, or employees by reason of any such claim, upon notice from the County, Contractor agrees and covenants to defend such action, suit, or proceeding by counsel reasonably satisfactorily to the County. Contractor's obligation and responsibility under this section shall survive the termination of this Contract.
8. **Insurance.** Contractor agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Contractor shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

**Commercial General Liability.** Insurance covering all operations performed by the Contractor with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Jackson County, NC shall be named as an additional insured under the policy.

9. **Additional Insurance Provisions.** If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Jackson County. The Contractor shall provide the County with certificates of insurance on an approved form, evidencing the above amounts. Jackson County, North Carolina shall be named as additional insured under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A.M. Best Company and shall be in a form acceptable to the County. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that the County is additional insured on insurance required from subcontractors. Waiver of Subrogation: Contractor hereby grants to the County a waiver of any right to subrogation that any insurer of said Contractor may acquire against the County by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement.

10. **Termination.** Either party may terminate this Contract for any reason, or for no reason, by giving the other party thirty (30) days written notice.

11. **Scope of Work.**

**Jackson County shall:** Make payment to the Contractor for services purchased as described in this Contract.

**Contractor shall:** Provide the following services as outlined in "Attachment A" to this Contract. If there are conflicting terms in the Attachment, this Contract shall control. Contractor shall also report to the County for each loan, (1) the name of the business; (2) the amount loaned; (3) the number of jobs the business has; and (4) whether the business is a minority/women owned businesses.

12. **Payment.** Payment from the County to the Contractor under the terms of this Contract will be up to an initial amount of \$324,000. Fiscal management of the direct provision of service will be the responsibility of the Contractor. The Contractor will be paid an initial \$0.00 upon execution of this contract. The Contractor will deposit all funds in a separate bank account to be used only for All In Jackson Fund loans. The Contractor will provide the County with monthly bank statements showing the transactions and ending balance. Contract will serve as invoice. Contractor shall be solely responsible for any travel or other costs or expenses incurred by Contractor in connection with the performance of this Agreement and in no event shall the County reimburse Contractor for any such costs or expenses except as set forth in Attachment A.

13. **Compliance with Laws.** Contractor shall comply with all state, federal, and local laws, ordinances, codes, rules, and regulations governing performance of this Contract.

14. **Legal Proceedings.** Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Sylva, Jackson County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this contract. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Jackson County, North Carolina. This Contract and any claims, disputes, or other matter arising thereunder shall be governed by the laws of the State of North Carolina.

15. **Non-Waiver.** The waiver by either party of a breach or violation of any provision or paragraph of this Contract shall not operate as, or be considered to be, a waiver of any subsequent breach of the same or other provision or paragraph herein.

NOW THEREFORE, the parties hereby make, agree, and execute this Contract by the below signatures by duly authorized agents.

County of Jackson

\_\_\_\_\_  
Brian Thomas McMahan, Chairman  
Jackson County Board of Commissioners

Mountain Biz Works, Inc.

\_\_\_\_\_  
Executive Director

Attest:\_\_\_\_\_  
Angela M. Winchester, Clerk to the Board

(Pre-Audit Below)

## Attachment A

### All IN JACKSON FUND –SMALL BUSINESS LOANS PROGRAM SCOPE OF WORK

#### **OVERVIEW**

The All in Jackson Fund was launched in April 2020 by Jackson County in response to the unprecedented challenges resulting from the COVID-19 pandemic being faced by local businesses throughout the county. All in Jackson, administered by Mountain BizWorks, provided vital emergency funding that helped small businesses weather the pandemic.

All in Jackson Fund is now being repositioned to help small businesses to drive economic recovery from the pandemic, to improve ongoing small business access-to-capital, and ultimately to expand County economic opportunities.

Many small businesses fail to reach their potential not due to a weakness in their business plan or management abilities, but because the owners lack suitable owner cash resources, collateral, or other means to qualify for the optimal level of financing to realize their potential.

All in Jackson Fund, in its new form, aims to address these gaps by serving as a leverage fund multiplying a small business owner's cash or collateral contribution and enabling Mountain BizWorks to increase funding for Jackson County small businesses unable to obtain funding from conventional bank sources.

The County is engaging Mountain BizWorks ("MBW") to administer loans to small businesses throughout Jackson County. Mountain BizWorks is a non-profit, US Treasury-certified community development financial institution (CDFI) based in Asheville and with 30 years of small business lending and training experience. Mountain BizWorks will leverage its current capacities to operate the fund, maximize impacts, and minimize operating expenses.

All loans will be designed to provide reasonable cost funding options matched with loan terms consistent with the capacity of the business to repay the loan over a reasonable (standard financing) timeline.

#### **FUND GOALS**

- To enhance the businesses ability of starting and growing their business in Jackson County.
- To create jobs that are sustainable to both the livelihood of the business and the employee.
- To reach a diverse mix of Jackson County based businesses, reflecting the tapestry of the community.
- To serve as a "revolving" fund to support the long-term vitality of new and expanding Jackson County businesses.

## **CORE ACTIVITIES & DELIVERABLES**

*Mountain BizWorks will:*

- Within two weeks of County approval have the fund available to Jackson County businesses.
- Create a dedicated Fund information and application page on the MBW website.
- Accept applications via an online application.
- Process applications, underwrite, and fund loans per MBW's Loan Policy with the goal of deploying the Fund's capital expeditiously.
- Proactively market the Fund in conjunction with the County via partners (Jackson County Economic Development, Southwestern Community College Small Business Center, Jackson County and Cashiers Area Chambers of Commerce, Western Carolina University SBTDC, etc.) and via MBW's direct communication channels.
- Report Fund progress (# loan participations made, total dollar amount of loans made, loans per business size (1-5 employees, 6-10 employees, 11-20 employees, 21-30 employees, greater than 30 employees), # of minority/women-owned businesses, # of jobs retained, # of jobs created) on a quarterly basis.
- Will support Spanish-language requests where needed using bi-lingual staff as well as comply with Title VI and/or utilizing other language resources to provide equal opportunity in other languages.

## **TIMELINE / PERIOD OF PERFORMANCE**

MBW will administer the Fund as outlined herein for an initial period of five years, after which MBW and the County will review lessons learned, performance metrics, outcomes, and changing local business needs with a view towards implementing any necessary refinements for ongoing fund success.

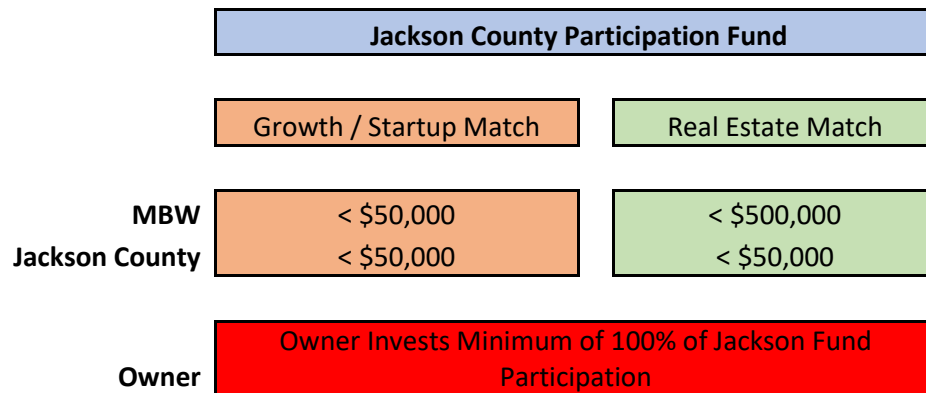
Loans made via the Fund will carry terms ranging from 1 year up to a maximum of 10 years depending on the nature of the project funded. The Fund is designed so that it can be operated as an enduring revolving fund, however should the County and/or MBW decide to suspend new Fund lending, the Fund servicing operations will continue for the duration of the loan participations originated by the Fund.

## **THE LOANS**

**Terms:**

- Fund loan participations shall not be less than \$5,000 nor greater than \$50,000. Further, the maximum participation will not exceed 50% of the total borrower loan amount (including the participation).
- Loan interest rate and loan repayment timeline and terms will match MBW's loan and will comply with MBW Loan Policy.
  - Loan maturity may range from 12 to 120 months depending on the loan purpose.
  - Loan interest rates will range from 7% to 9% based on current loan rates provided by MBW to all borrowers regardless of geography and/or credit history. Rates may rise or fall based on market conditions outside the control of MBW.

- The Fund must, at a minimum, be matched by the borrower’s investment (whether collateral pledged or cash invested) on a 1:1 basis (i.e., if the Fund invests \$30,000, the borrower must invest a minimum of \$30,000 in cash or documented collateral value).
  - Possible Fund Participation Examples:
    - The following two (2) scenarios represent a substantial loan enhancement as a result of a loan participation by Jackson County:



Small Business Expansion:

Project Cost:	\$100,000
MBW Loan Amount:	\$50,000
Owner’s Minimum Investment:	\$25,000
Jackson County Participation:	\$25,000

Small Business Real Estate Purchase & Upfit:

Project Cost:	\$300,000
MBW Loan Amount:	\$240,000
Owner Minimum Investment:	\$30,000
Jackson County Participation:	\$30,000

**Eligibility:**

- Meet the credit approval requirements of MBW’s Loan Policy.
- Small business with less than fifty (50) full and part-time employees.
- Unable to secure credit elsewhere on acceptable terms.
- Physical and primary business location in Jackson County.

- Established for-profit to include proprietorship, partnership or other for-profit entity.
- Agree to provide business performance data on a forward-looking basis.
- Agree to provide impact data on a retroactive looking basis (if applicable).
- Borrower must invest, either cash or collateral, an amount equal to the Fund's participation (1:1 match).

#### **Underwriting:**

- All Loans must be repaid.
- All loans will be underwritten and decisioned based on MBW's Loan Policy and in accordance with prudent lending standards common to Community Development Financial Institutions (CDFI's).
- Key Underwriting factors:
  - Credit/Character: All loans will be predicated on a review of the borrower's personal credit history and will require the personal guaranty of the business owner.
  - Capacity: All loans will be based on the cash flow of the business and its ability to repay the loan in a reasonable time. Secondary sources of repayment may also be considered as additional basis for loan repayment.
  - Capital: All loans must include participation ("skin in the game") on the part of the borrower that is meaningful.
  - Conditions: All loans will involve a review of the local economic and competitive market situation.
  - Collateral: By default, generally required on all loans.
    - Many loans will not be fully secured even when the borrower pledges business assets and/or personal assets.
    - Many loans, when secured by collateral, will be secured in a subordinate position to an existing lender (i.e., residential mortgage lender, commercial mortgage lender).
    - All loans will be secured by a blanket lien on business assets that is filed with North Carolina Secretary of State via a UCC-1 statement.
    - The Fund will be subordinate to MBW on all collateral secured by the loan.

#### **BUDGET / COMPENSATION**

To cover staffing, underwriting, documentation, servicing, borrower technical assistance, marketing, and other fund administrative costs, Mountain BizWorks will retain 65% of interest income. The remaining 35% of interest income will be reinvested in the Fund to support ongoing lending and fund sustainability.

MBW may also assess borrowers a loan origination fee not-to-exceed 2% of the loan amount. This fee is standard to all MBW loans and is not an extraordinary expense to Jackson County business owners.



## THE FUND

### Financial Structure & Operations:

- The County will provide funding to MBW, in the initial amount of \$324,000 for the purposes of the All In Jackson Fund small business loans program.
- MBW will manage the Fund with a distinct account both in its accounting system and with its own bank account.
- The County will be providing regular communication to MBW regarding any additional amount of funds available to be deployed.
- MBW will process applications, underwrite, and fund eligible loans per MBW's Loan Policy.
- MBW will package the loans and hold all loans. MBW will be the servicing agent for the life of the loans.
- As loans mature, are paid off, or otherwise terminated, MBW will complete all necessary loan close-out procedures and submit a close out report to the County.
- In situations where the borrower is unable to repay, MBW will be responsible for any collections processing or other actions.
- 100% of principal and 35% of interest payments on the Fund's loans will be returned to the Fund.
- MBW will retain 65% of the interest income from all loans in which the Fund participates with MBW.
- MBW may redeploy principal and interest returned to the Fund until otherwise directed by the County.
- The County understands that loans made from the Fund may be made in conjunction with other MBW programs such as the SBA Community Advantage Program. This program provides a federal loan guaranty that can support repayment of a meaningful percentage of existing loan principal in the event of default by the borrower.
- The Fund will be subordinate from a collateral lien position to MBW and any other financial partners (i.e., SBA) on all loans. Owing to this, MBW, in the event a borrower's assets are liquidated, will have its loan principal repaid prior to any Fund loan principal.