

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF JACKSON

THIS AGREEMENT, made and entered into this \_\_\_\_ day of May 2020, 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 BizCapital, Inc. dba Mountain BizWorks, a non-profit corporation organized under the laws of the State of North Carolina (hereinafter referred to as "CONTRACTOR").

W I T N E S S E T H :

Upon the terms and conditions hereinafter set forth, Jackson County has requested and CONTRACTOR has agreed 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 May 6, 2020 and shall terminate on May 5, 2021. Upon written agreement by both parties, this Agreement may be extended for another year.
- 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, Executive Director  
153 S Lexington Ave  
Asheville, NC 28801  
828-253-2834 x 15

Contract Administrator for the County:

Heather C. Baker – Attorney, Jackson County  
401 Grindstaff Cove Rd. – Suite A 212  
Sylva, NC 28779  
Office: (828) 631-2210

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 a maximum of \$750,000 and the initial funding shall be \$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. As additional funds are available and approved by the County, those funds will be made available to the Contractor. 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 BizCapital, Inc.

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

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

(Pre-Audit Below)

## Attachment A

### All IN JACKSON FUND – COVID-19 SMALL BUSINESS LOANS PROGRAM SCOPE OF WORK

#### OVERVIEW

In response to the unprecedented challenges being faced by local businesses throughout the County, the County of Jackson (the "County") is announcing the All In Jackson Fund. The mission of the All In Jackson Fund is to support the basic needs of individuals employed by small businesses by providing bridge funding to our small businesses during the COVID-19 crisis.

The County is engaging Mountain BizCapital, Inc. dba Mountain BizWorks ("MBW") to administer loans to small businesses impacted by COVID-19. 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.

Loans will be designed to provide low-cost "bridge funding" to help businesses stay open and limit job losses until businesses can qualify for longer term disaster funding from SBA or other sources.

#### FUND GOALS

- Provide immediate relief to help business stay open and limit job losses (be able to start making loans within 7 days of fund establishment)
- Be designed to provide low-cost "bridge funding" until businesses can qualify for longer term disaster funding from SBA or others
- Reach a diverse mix of area businesses in need

#### CORE ACTIVITIES & DELIVERABLES

*Mountain BizWorks will:*

- Quickly establish the Fund operations within one week of contract approval
- Create a dedicated Fund information and application page on the MBW website
- Accept applications via the online application
- Process applications, underwrite, and fund loans per the standardized guidelines herein in a consistent and expeditious fashion – towards a goal of deploying the Fund's capital within no more than a few weeks of launch
- In coordination with the County and its business partners create necessary communication materials to share this resource within the local business community, and will proactively market the Fund 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 through MBW's direct communications channels.

- Report Fund progress (# loans made, total 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) on a weekly basis until the County determines that less frequent reports are needed. Impacts will be estimated at time of the loan and subsequently reassessed at loan close out.
- 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**

It's expected that most acute period of the COVID-19 crisis will be in the next 3 months, and principally in the next 30 days. Given the loan terms, the total Fund life is expected to be between 3-5 years.

#### **BUDGET / COMPENSATION**

- To cover staffing, underwriting, documentation, and other fund administrative costs, Mountain BizWorks will assess a 2% fee (based on the loan amount) at time of loan origination and then another 1% fee when a loan is closed out. These will be paid by the Fund and no fees will be assessed to the borrowers under this program.

#### **THE LOANS**

##### **Terms:**

- Up to \$10,000 and a minimum loan size of \$2,500
- Initial 6-month period of no payments of any kind. Interest accrues at 4.0% interest during the 6 month period but is not paid and rolls up into the loan at the end of the 6 month period.
- After 6 months, any principal that has not been refinanced by an SBA Disaster Loan or otherwise repaid, will convert to a second phase of 36 months (3 yrs.) principal and interest payments at 5.5% interest. There is no penalty for early repayment.
- Eligible uses include payroll, accounts payable, fixed debts, or other bills the business is unable to pay due to COVID impact;
- Funds may not be used to refinance existing debt

##### **Eligibility:**

- Less than 50 (full and part time) employees
- Must have a physical location and be principally based within the County
- For-profit
- Demonstrated loss of revenue of 25% or more due to COVID-19
- Agree to provide impact data

## **Underwriting:**

- Is designed to be i) standardized and streamlined to be able to expedite the emergency funds, ii) responsible to ensure clear COVID-19 impacts and to prevent fraud, iii) ensure the borrower's ability to repay and likelihood of meeting the business and job retention goals of the Fund
- Will require most recent tax return and recent financial statements to validate loss of revenue due to COVID-19 and calculate the eligible loan amount
- Borrowers must not have a recent bankruptcy or substantial charge off per their credit report
- For borrowers with credit scores 640 or higher, loans will be secured with a simple UCC filing; Borrowers with less than a 640 score will have a UCC filing plus an additional collateral lien where possible
- All borrowers will be excluded from credit reporting for these loans

## **THE FUND**

### **Financial Structure & Operations:**

- The County will be the recipient of contributions to support the All In Jackson Fund including economic development appropriations of the County and its municipal partners, and community donations.
- The Foundation will provide funding to MBW, initially \$324,000 and up to a maximum of \$750,000 (as funding is available), 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 the Loan Guidelines outlined herein.
- MBW will package the loans and hold all loans. MBW will be the servicing agent for the life of the loans. MBW will charge a 1% annual servicing fee on the average outstanding loan balance of the fund.
- 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.
- All principal and interest payments on the Fund's loans will be returned to the Fund. During the Fund's "active phase" (the COVID crisis and immediate recovery phase), MBW will aim to redeploy these funds to aid additional businesses in need.
- Once COVID impacts and demand for the emergency disaster loans have sufficiently waned, the County will instruct MBW to close the Fund to new loans, starting the "closed phase." During this phase principal and interest payments will be returned to the Fund, and then on a monthly basis MBW will return such monies to the County minus any administrative fees outlined herein.