



MEMORANDUM

TO: Debra Campbell, City Manager
FROM: Rachel Taylor, Economic Development Division Manager
DATE: 11/1/2024
SUBJECT: Request for Signature of the revised MCCF Services and Duties Agreement

Summary Statement

The Mountain Community Capital Fund (MCCF) agreement has not been revised since the fund was created in 2018 and no longer accurately represents the MCCF Operating Committee. This agreement has been updated to reflect the current state and practices of the committee. Additionally, this agreement was scheduled to expire in February of 2025, the new agreement will extend the operation of MCCF to June 30, 2029.

The agreement has updated language that will allow more funders to join in the future and would allow a different organization to assume the role of “custodian,” whereas previously, the custodian was named specifically. There are now five funding sources included in the Agreement-City ARPA Funds, County ARPA Funds, and Dogwood Trust Funds are now included compared to the original two City Collateral Funds (\$250,000) and County Collateral Fund (\$200,000). These additional sources required revisions to Article IX – Allocation of Eligible Losses:

- Losses between the Collateral Accounts will be based on the ratio of the participating entities’ financial contributions to the fund at the time of loss.
- The original agreement based the losses on a percentage between the original two collateral accounts.
- Additionally, the description of the funding sources has been moved to “Exhibit C” to allow for the exhibit to be updated as needed without revising the agreement in its entirety.

Action Requested

I am requesting your signature on this agreement, and I will be requesting ratification of this agreement at the December Council meeting.

MOUNTAIN COMMUNITY CAPITAL FUND AND MANAGEMENT &
TECHNICAL ASSISTANCE PROGRAM
ALLOCATION OF SERVICES AND DUTIES AGREEMENT

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AMENDED AND RESTATED MOUNTAIN COMMUNITY CAPITAL FUND AND
MANAGEMENT & TECHNICAL ASSISTANCE PROGRAM (THE "PROGRAM")
ALLOCATION OF SERVICES AND DUTIES AGREEMENT

This Allocation of Services and Duties Agreement (the "Agreement") is related to the creation and operation of the Mountain Community Capital Fund, (the "Fund"). The City of Asheville ("City"), a North Carolina [municipal corporation] as Fund Sponsor/Note Holder, Buncombe County ("County"), body politic and corporate organized under the laws of the state of North Carolina as Note Holder, Self-Help Ventures Fund, or other Custodian that may be selected by the Operating Committee ("Custodian"), and Carolina Small Business Development Fund ("CSB"), and Mountain BizWorks ("MBW"), all three North Carolina nonprofit corporations, or other lenders as may be agreed to by the Operating Committee (each a "Participating Lender" and collectively with Custodian, City and County, the "Parties"), enter into this agreement as of July 1, 2024.

PRELIMINARY STATEMENTS

WHEREAS, the Parties are committed to supporting the growth and development of small business enterprises located within the City of Asheville;

WHEREAS, Participating Lenders have experience in providing financing to small businesses in underserved areas and markets, and are committed to assisting the growth and development of small business enterprises, especially minority-owned enterprises, located within Buncombe County;

WHEREAS, the Parties desire to work together to continue a small business enterprise revolving loan fund to provide debt financing to small business enterprises within Buncombe County (the "Program"), as more fully described in this Agreement; and

WHEREAS, North Carolina General Statute 160A-456 Community Development Programs and Activities allows local governments to expend funds for community development programs and related activities;

WHEREAS, the City has made a loan to the Custodian in the amount of \$250,000 (the "City Loan") and the County has made a loan to the Custodian in the amount of \$200,000 (the "County Loan" and, together with the City Loan, the "Fund Loans"); the proceeds of the Fund Loans will be used by the Participating Lenders to provide additional collateral for loans to small businesses as part of the Program, which will enable the Participating Lenders to make loans that they would otherwise not have made, and which will be used solely for the purposes described in this Agreement;

WHEREAS, Asheville City Council passed Resolution No. 18-241 authorizing the City Manager to execute this Allocation of Services and Duties Agreement and release funds for the associated Deposit Note;

WHEREAS, the Board of Buncombe County Commissioners passed Resolution No. [18-10-11] authorizing the County Manager to execute this Allocation of Services and Duties Agreement and release funds for the associated Deposit Note;

WHEREAS, on February 24, 2024, the City granted Mountain BizWorks, on behalf of the Mountain Community Capital Fund, 1,293,000 in American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds to expand this vital loan guarantee program per Resolution 22-92 on May 10, 2022;

WHEREAS, on March 15, 2022, the County granted Mountain BizWorks, on behalf of the Mountain Community Capital Fund, 1,250,000 in ARPA SLFRF to expand this vital loan guarantee program on November 16, 2021;

WHEREAS, on March 18, 2022, Dogwood Health Trust, in its capacity as the Custodian, granted \$450,000 to Self-Help Ventures Fund in support of the Mountain Community Capital Fund.

WHEREAS, on October 23, 2024, the Parties signed this revised Agreement, including moving the Description of Funding Sources to Exhibit C and authorizing the Operating Committee to update the Description of Funding Sources as necessary.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Parties agree as follows:

ARTICLE I

THE PROGRAM PARTICIPANTS

Section 1.01 The Custodian. Self-Help, or other Custodian that may be selected by the Operating Committee, in its role as Custodian shall maintain the Collateral Accounts (as herein defined) and shall use the Fund Loans solely for the purposes described in this Agreement.

Section 1.02 The Fund Sponsor. City in its role as Fund Sponsor shall work with the Participating Lenders to market the availability of the Program, which shall include but not be limited to, the activities outlined in Article III. *Marketing of the Fund*.

Section 1.03 The Note Holders. The City and County serve as holders of the 0% Interest Notes shall be referred to collectively as "Note Holders."

Section 1.04 Fund Grantors. The City and County serve as fund grantors of ARPA funds, and Dogwood Health Trust serves as fund grantor of its funds and shall be referred to collectively as "Fund Grantors." One or more additional grantors may participate in the Fund as Fund Grantors if approved by the Operating Committee.

Section 1.05 Participating Lenders. Self-Help, MBW, and CSB, in their capacity as the initial Participating Lenders, shall make loans to Borrowers under the Program in accordance with provisions contained in this Agreement. Each Participating Lender shall be the owner of all title, rights and interests in and to any Loans made by that Participating Lender, except as otherwise provided in this Agreement. One or more additional lenders ("Additional Participating Lenders") may participate in Fund as Participating Lenders, if approved by the Operating Committee. All Additional Participating Lenders may make Loans to borrowers subject to approval by the Operating Committee, as described in this Agreement.

Section 1.06 The Loans. The Loans mean any and all loans made by any Participating Lender to a small business as part of the Fund and made in accordance with this Agreement.

Section 1.07 The Loan Servicer. With respect to each Participating Lender Loan, the Loan Servicer shall be such Participating Lender, or a third party designated by the Participating Lender with the consent of the Operating Committee and in accordance with this Agreement. Loan Servicer shall document and service the Loans made under the Program in accordance with this Agreement.

Section 1.08 The Operating Committee. The Operating Committee shall be comprised of Note Holders, Fund Grantors, the Participating Lenders, and other stakeholders designated by the Fund Sponsor and shall govern and monitor the Fund in accordance with the *MCCF Operating Committee Rules of Procedure* (the "Rules of Procedure"), attached hereto as Exhibit A, and Article VII. *Operating Committee*.

Section 1.09 MCCF Webpage Administrator. Program transparency will be supported via an MCCF webpage (to include a social media component) for access to funding applications, housing of technical assistance data and information, reporting of success metrics, and sharing of ideas and success stories. The City's Community and Public Engagement Department shall administer and manage the webpage.

Section 1.10 MCCF Program Metrics Data Collection. Each participating lender collects impact data on their borrowers including items related to demographic status, businesses and jobs created, etc. MCCF lenders will collect and maintain this same data on MCCF borrowers and will make such data available to the City and County to ensure expectations and metrics are being met.

Section 1.11 Description of Funding Sources. Summarizes the funding sources for MCCF and provides details on each source. The Description of Notes is located in Exhibit C. Article II of this Agreement outlines the terms of use for the sources of funding. The Operating Committee may update the Description of Funding Sources by vote as necessary.

ARTICLE II

DEPOSIT NOTES

Section 2.01 Description of Funding Sources. The Description of Funding Sources is located in Exhibit C. The Operating Committee may update the Description of Funding Sources as new funds are accepted.

Section 2.02 Use of Proceeds. Custodian shall use the proceeds of the 0% Interest Notes and Grant Funds solely for the purposes described in this Agreement.

Section 2.03 Leverage of Proceeds. Participating Lenders agree to use commercially reasonable efforts to attempt to lend under the Program guidelines to businesses (“Borrowers”) located in the Asheville and Buncombe County area as defined and approved by the Operating Committee; provided, however, that this shall be a non-binding target, and the actual amount lent by Participating Lenders to Borrowers under the Program may be more or less than the Target Funding Amount. The actual amount of funds lent by Participating Lenders under the Program may differ substantially from the Target Funding Amount due to local and national economic trends and conditions, the availability of creditworthy Borrowers, and other conditions.

Section 2.04 The Collateral Accounts.

- a. The Collateral Accounts shall serve as a loan loss reserve fund for the Loans to be made under the Program, subject to section 9.03 and the other terms of this Agreement.
- b. Allocation of Proceeds. All proceeds shall be allocated between the Collateral Accounts based upon the ratio of the participating entities' financial contributions to the fund at the time of receipt.

ARTICLE III

MARKETING AND TECHNICAL ASSISTANCE

Section 3.01 Marketing Program. The Fund Sponsor shall actively market the availability of the Program. Marketing shall include, but not be limited to, the following activities:

- Compiling a list of potential Borrowers;
- Developing a list of Borrower referral sources;
- Preparing brochures, application materials and other marketing-related publications that describe information about the Program, application procedures and requirements, and related information;
- Distributing information about the Program to referral sources and other interested parties;
- Creating and advertising public workshops designed to inform potential borrowers about the program; and
- Engaging in other activities as the Fund Sponsor may determine from time to time.

Section 3.02 Technical Assistance. Each Lender will promote the Program and will coordinate business training and capital access logistics for those Program participants with whom it is working. Participants will be able to leverage the Program's resources to accelerate the growth of their business. The Lender will provide one-on-one assistance targeted to the individual business needs and may use or refer to a local classroom environment to (i) sponsor forums and peer group sessions that cover general subjects such as finance/accounting, marketing, human resources, and operations management, as well as other specific topics and (ii) provide coaching, guest speakers, and online training.

ARTICLE IV

LOAN UNDERWRITING

Section 4.01 Underwriting Guidelines. The Operating Committee shall adopt the Underwriting Guidelines attached hereto as Exhibit B. The Operating Committee shall review Loan underwriting parameters on an ongoing basis and shall modify the Underwriting Guidelines when necessary to better meet market demands. Said Underwriting Guidelines shall include a provision that loans shall only be awarded to recipients that would not be able to take on an undertaking that will contribute to the City and/or County's economic development but for the availability of the loan.

The parties agree and acknowledge that the Underwriting Guidelines are generally less stringent than the loan underwriting guidelines Participating Lenders currently apply to loans they make in their regular course of business outside of this Agreement and other agreements that provide for credit enhancement. Although Participating Lenders intend to make Loans under the Program that would not meet its regular underwriting guidelines, nothing in this Agreement prohibits any Participating Lender from making Loans to Borrowers that would qualify for loans under such Participating Lender's regular loan underwriting guidelines.

Section 4.02 Underwriting Procedures. Participating Lenders shall underwrite Loans to be made under the Program, pursuant to policies and procedures as each lender may determine in its discretion. Underwriting activities may include, but are not limited to, evaluating credit applications, conducting credit checks on applicants, analyzing applicants' financial history and prospects, evaluating applicants' management abilities, and other tasks reasonably related to loan underwriting.

ARTICLE V

ADMINISTRATION AND SERVICING OF THE FUND

Section 5.01 Administration of the Loans. Each Participating Lender shall document, close and service the Loans made under the Program, following substantially the same procedures that they use to service loans made outside of the Program, and in accordance with the Servicing Standard (defined below), including, without limitation, documenting, or hiring an attorney(s) to document (at Borrower's expense), all Loans on the terms approved by the Committee; maintaining Loan files; mailing bills or payment coupons to Borrowers; receiving payments from Borrowers and accounting for allocation of principal and interest on loans; maintaining appropriate fiscal controls for cash and checks received in connection with Loans; filing (including magnetic tape filing) of required reports to the Internal Revenue Service and state and local tax authorities as applicable; reporting relevant tax information to Borrowers, as applicable; responding to Borrower inquiries regarding account status; working to collect delinquent payments (pursuant to Section 8.03); reporting Borrowers to credit bureaus; and responding to reasonable City, County, and/or Note Holder inquiries regarding Borrowers' accounts, subject to all applicable laws, rules and regulations.

Section 5.02 Closing Loans. Each Participating Lender shall close, or hire an attorney to close, all Loans and file all deeds of trust and security instruments; draft all documents to evidence the Loans that it believes to be reasonable or necessary; disburse funds to Borrowers; retain copies of all relevant application materials and originals of Loan documentation needed by such Participating Lender so that it can properly

service the Loans; and conduct periodic site visits and monitor the existence and condition of Loan collateral, as necessary. Each Participating Lender may charge Borrowers for any or all costs and expenses they incur related to closing Loans, including, but not limited to, attorneys' fees and costs.

Section 5.03 Servicing Standard. The Loan Servicer shall service and administer the Loans for which it is responsible hereunder (a) in the same manner in which, and with the same care, skill, prudence, and due diligence with which, the Loan Servicer generally services and administers similar loans held in its own portfolio, and (b) with a view to maximum recovery on such Loans.

Section 5.04 Collection of Loan Payments. Each Loan Servicer shall undertake reasonable efforts to collect all payments required under the terms and provisions of the Loans it is obligated to service hereunder and shall, to the extent such procedures shall be consistent with this Agreement, follow such collection procedures in accordance with the Servicing Standard.

Section 5.05 Sale of Loans. Subject to the approval of the Operating Committee, which shall not be unreasonably withheld, conditioned, or delayed, Participating Lender may sell or otherwise transfer any or all Loans, or parts thereof, to any third party and subject to terms and conditions determined by Participating Lender in its discretion from time to time.

Section 5.06 Sub-Servicing Agreements. Subject to the prior consent of the Operating Committee, Loan Servicer may enter into one or more agreements with third parties to provide for the performance of any or all of its Loan servicing obligations hereunder; provided, however, that such consent of the Operating Committee shall not be required for Participating Lender to enter into any such agreement with one or more of its affiliates. For purposes of this Agreement, "affiliate" shall mean any entity that controls, is controlled by, or is under common control with, Participating Lender.

Section 5.07 Resignation of Loan Servicer. Upon the resignation of a Loan Servicer, this Agreement shall continue in full force and effect, and each remaining Loan Servicer shall maintain its rights and obligations pursuant to this Agreement.

Section 5.08 Events of Default; Removal of Loan Servicer.

- a. Any failure on the part of Loan Servicer duly to observe or perform in any material respect any covenants or agreements on the part of the Loan Servicer contained in this Agreement which continues uncured for a period of 30 days after written notice thereof, shall be deemed an Event of Default.
- b. If any Event of Default described in subsection (a) above shall occur with respect to the Loan Servicer (for purposes of this Section 5.08(b), the "Defaulting Party") and shall be continuing after any applicable cure period, then, and in each and every such case, so long as such Event of Default shall not have been remedied, the Operating Committee may upon written consent of at least 50% of the Note Holders and by notice in writing to the Defaulting Party terminate all of the rights and obligations (but not the liabilities for actions and omissions occurring prior thereto) of the Defaulting Party under this Agreement.

ARTICLE VI

REPORTING

Section 6.01 Periodic Reports. Within one month after the end of each calendar quarter following the effective date of this Agreement, each Participating Lender shall provide to MBW, in its capacity as the MCCF Financial and Program Metrics Data Manager, a report describing the balance of the funds, financial performance, and Program Metrics of that Participating Lender's Loans outstanding, in substance and in a consistent form to be agreed upon by the Parties. MBW shall then prepare a similar report for the Fund Sponsor and members of the Operating Committee, including data for all of the Participating Lenders.

Section 6.02 Reports by Independent Public Accountants.

- a. Upon ten days prior written notice from City, the County, or any member of the Operating Committee, Participating Lenders shall make available its most recently audited financial statements and annual report to the requesting party.
- b. The City, the County, or any Member of the Operating Committee, may at its own expense, request an audit of the Program by an independent public accountant and/or the City and/or the County's internal and/or external auditor(s). Each Participating Lender shall make reasonable effort to comply within a reasonable amount of time with requests for information and other items pertinent to performing such audit(s).

Section 6.03 Access to Certain Information. Upon ten days prior written notice from City, the County, or any Member of the Operating Committee, each Participating Lender shall make available, at its office primarily responsible for administration of the Loans, originals or copies of the following items: (a) this Agreement and any amendments thereto, (b) any reports prepared pursuant to Section 6.01, and (c) any materials and documents on file related to Loans made under the Program.

ARTICLE VII

OPERATING COMMITTEE

Section 7.01 Composition of Operating Committee. The Operating Committee shall be comprised of (i) two (2) members of City staff to be appointed by the City of Asheville, (ii) two (2) members of County staff to be appointed by Buncombe County, (iii) two (2) community stakeholders to be appointed by the City of Asheville and two (2) community stakeholder to be appointed by Buncombe County, and (iv) representatives of Participating Lenders. The Operating Committee shall include the above in its Rules of Procedure.

Section 7.02 Designation and Replacement of Members. The Members of the Operating Committee shall serve two (2) year terms. Members may be replaced at any time at the sole discretion of the respective institution or organization referred to in Section 7.01.

Section 7.03 Duties of Operating Committee. The Operating Committee shall govern and monitor the Fund in accordance with the Rules of Procedure.

ARTICLE VIII

IMPAIRED ASSET MANAGEMENT

Section 8.01 Loan Defaults. Each Loan Servicer shall use its customary and commercially reasonable standards to determine whether or not a Loan is delinquent or is in default of its respective loan agreement.

Section 8.02 Notice of Defaults. Each Loan Servicer shall provide to Members of the Operating Committee notices of defaults no less than once per quarter.

Section 8.03 Collections. In the event that any Loan made pursuant to this Program becomes delinquent or in default under its respective loan agreement, such Loan shall be known as an "Impaired Asset," and each Loan Servicer shall apply to such Loan the collection practices in accordance with the Servicing Standard.

Section 8.04 Participating Lender Losses. If a Participating Lender incurs a loss due to a Borrower Default on a Loan under the Program (a "Participating Lender Loss") after following the terms and conditions of this Agreement, then such Participating Lender may apply to the Operating Committee for reimbursement of such Participating Lender Loss. The Participating Lender shall submit to the Operating Committee all documents and materials reasonably requested by the Operating Committee to demonstrate

the amount of the Participating Lender Loss. Upon approval of such documents and materials, the Operating Committee shall notify Custodian, and Custodian shall pay to such Participating Lender the amount of the Participating Lender Loss that is an Eligible Loss, as set forth in Section 9 below.

ARTICLE IX

ALLOCATION OF ELIGIBLE LOSSES

Section 9.01 Participating Lender Losses. Participating Lender Losses shall include the following:

- The amount of all principal, interest, fees and other amounts due to Participating Lender under an Impaired Asset, less the net recovery from the liquidation of any available collateral;
- Any and all reasonable costs and expenses, including but not limited to attorney's fees and costs, incurred by the Participating Lender during the collection process.

Section 9.02 Eligible Losses.

- As approved by the Operating Committee, that portion of a Participating Lender Loss that is up to and including 85% of the Participating Lender Loss for that Loan shall be an Eligible Loss. The remaining 15% of the Participating Lender Loss for such Loan shall be charged to the Participating Lender.
- Custodian may debit the Collateral Accounts as set forth in Section 9.03 below, for an amount equal to any Eligible Losses, and Custodian shall then pay those amounts to the Participating Lender who has experienced such Eligible Loss.

Section 9.03 Allocation of Debits for Eligible Losses. Eligible Losses shall be allocated between the Collateral Accounts based upon the ratio of the participating entities' financial contributions to the fund at the time of loss. A funding entity may waive its right to future allocations of eligible losses in writing to the fund.

Upon receiving notice of the amount of the Eligible Loss for a Loan, Custodian may withdraw Debit A from Collateral Account A, Debit B from Collateral Account B, Debit C from Collateral Account C, Debit D from Collateral Account D, Debit E from Collateral Account E, thereby reducing the principal due under the 0% Interest Notes and reducing the total funds available under the Grants. In no event shall the total of all Debits in respect to the Custodian or any Participating Lender Loan exceed 85% of the Participating Lender Loss for that Loan.

Section 9.04 Operating Expenses. For the purposes of this Program, operating expenses and administrative costs associated with the administration of the Fund shall not be included in calculating Eligible Losses.

Section 9.05 Eligible Losses after Termination. For the purposes of this program, Article 9 shall survive the termination of this agreement.

ARTICLE X

PAYMENTS TO DEPOSIT NOTE HOLDERS

Section 10.01 Payments to Note Holders. No payments shall be due under the Notes prior to the Termination of this Agreement.

Section 10.02 Statements to Note Holders. Custodian shall provide a statement of account to Note Holders, in substance, form, and in a manner to be agreed upon by the Parties; such statement to be issued no more frequently than once per calendar quarter.

ARTICLE XI

MORATORIUM OF FUND ACTIVITIES

Section 11.01 Trigger Points. The Operating Committee shall define certain “Trigger Points” with respect to annual loan origination volume, portfolio-wide delinquencies as a percentage of principal outstanding, and credit loss defaults as a percentage of principal outstanding.

Section 11.02 Imposition of Moratoriums. In the event that any one or more of the “Trigger Point” parameters are exceeded at any time, the Operating Committee may impose a moratorium on the Program. The Operating Committee shall have the authority to lift the moratorium at any time prior to termination of the Fund. Notwithstanding any of the foregoing, in the event that portfolio-wide delinquencies exceed Twenty percent (20%) and average annual credit loss defaults exceed Five percent (5%) of principal outstanding, the Operating Committee may impose a moratorium on further lending activities under the Program.

ARTICLE XII

TERMINATION OF THE AGREEMENT

Section 12.01 Maturity of the Fund. This Agreement shall be effective on the date it is signed by all parties. This Agreement shall terminate after five years on June 30, 2029, with the option to renew for an additional five years, unless terminated by one of the participating parties as set forth below.

Section 12.02 Termination Prior to Maturity. This Agreement may be terminated, in addition to termination for cause as described in this Agreement, for convenience by:

- a. City, but only after a duly authorized, valid vote of the City Council, and by providing written notice of termination to the Custodian and the Participating Lenders at least 30 days in advance of termination;
- b. County, through its manager or the manager’s designee, by providing written notice of termination to the Custodian and the Participating Lenders at least 30 days in advance of termination;
- c. Any Participating Lender, as to that Participating Lender, by providing written notice of termination to City and Custodian at least 30 days in advance of termination; or
- d. The Operating Committee, by a valid vote of no less than two-thirds of the total eligible votes of the Operating Committee and by providing written notice of termination to the City, and the Participating Lenders at least 30 days in advance of termination.

Upon termination pursuant to Sections 12.02(a) and (c) above, Participating Lenders shall make no new Loans pursuant to this Agreement, but shall continue to perform its obligations (including as Loan Servicer) under this Agreement until the end of the term of each of the outstanding Loans. Termination by a Participating Lender pursuant to Section 12.02(b) shall not result in termination of this Agreement and each remaining Loan Servicer shall maintain its rights and obligations pursuant to this Agreement. The provisions of Article IX, *Allocation of Eligible Losses* shall remain in effect for all Loans outstanding under the Program. The sum of the Credit Loss Exposure for Loans made prior to this Agreement and outstanding at the time of termination, and the sum of no more than 85% of the outstanding principal balance of all Loans made subsequent to this Agreement and outstanding at the time of termination, shall remain in the Collateral Accounts.

Section 12.03 Redemption of Deposit Notes. Within 30 days of the termination of this Agreement and the termination or expiration of all outstanding Loans made pursuant to the Program, Custodian shall

redeem the Notes by returning to the Deposit Note Holders any and all funds remaining in the Collateral Account, after subtracting all Eligible Losses and any sums due to it pursuant to this Agreement.

ARTICLE XIII

MISCELLANEOUS

Section 13.01 Assignment. Custodian may assign any or all of its rights or obligations under this Agreement, including but not limited to funding Loans made pursuant to this Agreement and servicing any or all Loans made pursuant to this Agreement, to one or more of its affiliates. Any other assignment by any Party of all or part of this Agreement must be approved in advance by the other Parties, such approval not to be unreasonably withheld or delayed.

Section 13.02 Confidentiality. "Confidential Information" shall mean:

- a. Information about Borrowers' (and potential and applicant Borrowers') business plans and financial condition;
- b. Information about any Participating Lender's business goals, workplans, strategies, and initiatives;
- c. Any information marked by any Participating Lender as confidential or otherwise identified as confidential; and
- d. Any media used to store, communicate, transmit, record, embody, or otherwise memorialize such Confidential Information.

Provided, however, that "Confidential Information" shall not include any information that City and/or County is legally required to disclose pursuant to laws, rules and regulations pertaining to public information.

The Parties shall maintain the confidentiality of all Confidential Information in their possession and to which they have access, and shall not disclose to any third party any Confidential Information, except as is required for the performance of their obligations pursuant to this Agreement, and then such disclosure shall be limited in scope only to the extent such disclosure is required. Upon the termination of this Agreement for any reason, each party will return to the other Parties all Confidential Information related to the other Parties or Borrowers, including all files, documents, computer files, and any other media or forms containing Confidential Information.

Section 13.03 Limitation of Liability. No party shall be liable to any other party for any indirect, incidental, special, punitive or consequential damages of any kind.

Section 13.04 Notices. Any notices sent pursuant to this Agreement shall be in writing and shall be delivered by certified U.S. Mail, return receipt requested; by nationally recognized overnight courier service; or by other method that provides receipt of delivery. Notices shall be effective upon receipt and shall be addressed to:

If to City: City Manager
P.O. Box 7148
70 Court Plaza
Asheville, NC 28803

If to Self-Help: Self-Help Ventures Fund
With a copy to: General Counsel
Self-Help Ventures Fund
301 W. Main Street
Durham, NC 27701

If to MBW: Mountain BizWorks
153 S. Lexington Avenue
Asheville, NC 28801

If to CSB: Vice President, Strategic Initiatives
Carolina Small Business Development Fund
3128 Highwoods Boulevard, Suite 170
Raleigh, NC 27604

If to County: County Manager
200 College Street
Asheville, NC 28805


Section 13.05 Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any modification to this Agreement must be in writing and signed by all Parties in order to be effective. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party granting such waiver.

Section 13.06 Counterparts; Electronic Distribution of Executed Documents. This Agreement may be executed in any number of counterparts, by manual signatures, or facsimile copy of the signature of any party, which shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

[signatures on following page]

To show their assent to this Allocation of Services and Duties Agreement, the authorized representatives of the parties have signed below.

CITY OF ASHEVILLE

By: 
Name: Debra Campbell
Title: City Manager

BUNCOMBE COUNTY

By: _____
Name: _____
Title: _____

SELF-HELP VENTURES FUND

By: _____
Name: _____
Title: _____

MOUNTAIN BIZWORKS

By: _____
Name: _____
Title: _____

CAROLINA SMALL BUSINESS DEVELOPMENT FUND

By: _____
Name: _____
Title: _____

Exhibit A - MCCF Operating Committee Rules of Procedure

Exhibit B - Underwriting Guidelines

Exhibit C - Description of Funding Sources

Mountain Community Capital Fund Operating Committee
Rules of Procedure

PREAMBLE

The Mountain Community Capital Fund (the “Fund”), as sponsored by The City of Asheville, Buncombe County, Self-Help Ventures Fund (“Self-Help”), Carolina Small Business (“CSB”), and Mountain BizWorks (“MBW” and, together with Self-Help and CSB, “Participating Lenders”), is a fund aimed at providing debt financing to small business enterprises within the city of Asheville and surrounding areas. The Fund is governed by a separate Allocation of Services and Duties Agreement, dated October 18, 2018, and subsequent amendments (the “Agreement”), and these Rules of Procedure are designed to assist in the implementation of the Fund. In the event of any conflict between these Rules and Procedures and the Agreement, the terms of the Agreement shall prevail. Any terms used herein but not otherwise defined shall have the meanings ascribed to them in the Agreement.

ARTICLE I
MEMBERS

Section 1.1 Members

The Fund Operating Committee (the “Committee”) shall be comprised of an odd number of voting members, consisting of two (2) staff representatives from The City of Asheville, two (2) staff representatives from Buncombe County, and three (3) community stakeholders to be appointed by The City of Asheville in its role as Fund Sponsor, plus non-voting members of even or odd number, consisting of one (1) representative of each of the Participating Lenders. The institutions and organizations entitled to representation on the Committee are listed in Exhibit A.

Section 1.2 Designation and Replacement of Members

Initial members shall be designated in writing signed by the institution’s or organization’s contact person as identified through investment documentation. Members may be replaced at any time by delivering to the Secretary of the Committee a written statement of representational replacement signed by the institution’s or organization’s contact person.

Section 1.3 Voting Rights

Each member of the Committee, with the exception of Participating Lenders (who will be non-voting members), shall be entitled to cast one vote.

ARTICLE II
MEETING OF MEMBERS

Section 2.1 Regular Meetings

The Committee shall hold regular meetings each year to discuss the business of the Committee. The date, time, and location of the regular meetings shall be set by the Chairperson.

Section 2.2 Special Meetings

Special meetings may be called by the Chairperson or by members holding not less than one-third of the voting rights. The call of a special meeting shall designate the date, time and location of the meeting.

Section 2.3 Place of Meetings

All meetings shall be held at a location within the Asheville, North Carolina city limits.

Section 2.4 Notice of Meetings

Written or printed notice stating the date, time, and location of any meeting shall be delivered, either personally, by mail or by email, to each member not fewer than ten (10), nor more than sixty (60), days before the date of such meeting, by or at the direction of the Chairperson or the Secretary. In case of a special meeting, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the Committee’s current list of members, with postage thereon prepaid.

Section 2.5 Quorum and Voting

Members holding one-third (1/3) of the votes of the Committee shall constitute a quorum. An affirmative vote of a majority of the votes of the members present at a meeting shall be required to take any action. If a quorum is not

present at any meeting, a majority of the votes of the members present at the meeting shall be sufficient to adjourn the meeting.

Section 2.6 Participation by Telephone

Any one or more members may participate in a meeting by means of a conference telephone or similar communications device that allows all persons participating in the meeting to hear each other. Participation by these means shall be deemed presence in person at the meeting.

ARTICLE III OFFICERS

Section 3.1 Officers of the Committee

The officers of the Committee shall consist of a Chairperson, a Vice Chairperson, and a Secretary. Other officers (whose seniority and titles may be specified by the Committee) may be established by the Committee.

Section 3.2 Election and Term

Officers shall be elected by the Committee. The term of members of each officer shall run for two years from July 1 (or from the date of election for the initial election) through June 1.

Section 3.3 Removal

Any officer may be removed by a vote of two-thirds of the total eligible votes of the Committee.

Section 3.4 Chairperson

The Chairperson shall be primarily responsible for the implementation of policies of the Committee. The Chairperson shall have authority over the general management of the Committee. The Chairperson may sign and execute instruments on behalf of the Committee except in cases where the signing and the execution thereof shall be expressly delegated by the Committee to some other officer or agent of the Committee. In addition, the Chairperson shall perform all duties incident to the office of the Chairperson and such other duties as from time to time may be assigned by the Committee.

Section 3.5 Vice Chairperson

The Vice Chairperson shall assist the Chairperson in carrying out their responsibilities. The Vice Chairperson shall fulfill the responsibilities of the Chairperson when the Chairperson is unable to attend or carry out their duties. The Vice Chairperson shall serve as the next Chairperson [subject to election or vote on Vice Chair for 4 yrs - 2 as Vice & 2 as Chair, after Chair's term ends].

Section 3.6 Secretary

The Secretary shall keep the minutes of the meetings of the Committee. The Secretary shall see that all notices are duly given. The Secretary shall have charge of the books, records, and papers of the Committee. The Secretary shall in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to by the Chair or the Committee.

Section 3.7 Compensation

Officers shall serve without compensation.

ARTICLE IV DUTIES AND GENERAL POWERS OF THE COMMITTEE

Section 4.1 General Powers

The Committee shall govern and monitor the Fund in accordance with these Rules of Procedure and the Allocation of Services and Duties Agreement. Duties and General Powers of the Committee shall include the following:

- a. Form and appoint members to the Credit Underwriting Subcommittee, as defined herein;
- b. Form and appoint members to the other subcommittees, as determined to be advisable or necessary by the Committee;
- c. Review Loans closed, delinquencies, defaults, and Borrower feedback;

- d. Monitor Loan volume, delinquencies and defaults;
- e. Impose a moratorium on the Program if any of the “Trigger Point” measures exceed pre-set targets;
- f. Review and modify Loan underwriting criteria as required;
- g. Raise capital to augment the Fund; and
- h. Terminate the Fund.
- i. Create and disseminate an Annual Report as required

Section 4.2 Trigger Points

In accordance with the Allocation of Services and Duties Agreement, the Committee shall define certain “Trigger Points” with respect to annual loan origination volume, portfolio-wide delinquencies as a percentage of principal outstanding and credit loss defaults as a percentage of principal outstanding.

Section 4.3 Notification of Trigger Points

The Operating Committee shall notify the Fund Sponsor, the Note Holders, other Mountain Community Capital funders, and Participating Lenders, as defined in the Allocation of Services and Duties Agreement, immediately in the event a Trigger Point is met or exceeded, after which a meeting of the Committee will be convened within 30 days.

Section 4.4 Imposition of Moratoriums

In the event that any one or more of the “Trigger Point” parameters are exceeded at any time, the Committee may impose a moratorium on the Program (as defined in the Allocation of Services and Duties Agreement). The Committee shall have the authority to lift the moratorium at any time prior to termination of the Fund. Notwithstanding any of the foregoing, in the event that Fund-wide delinquencies exceed twenty-percent (20%) or average annual credit loss defaults exceed five-percent (5%) of principal outstanding, the Operating Committee may impose a moratorium on further lending activities under the Program.

Section 4.5 Termination of the Fund Prior to Maturity

In accordance with the Allocation of Services and Duties Agreement, the Fund may be terminated prior to maturity by.

- a. The City of Asheville, but only after a duly authorized, valid vote of the City Council, and by providing written notice of termination to the Custodian and the Participating Lenders at least 30 days in advance of termination;
- b. Buncombe County, through its manager or the manager’s designee, by providing written notice of termination to the Custodian and the Participating Lenders at least 30 days in advance of termination;
- c. Any Participating Lender, as to that Participating Lender, by providing written notice of termination to The City of Asheville and Custodian at least 30 days in advance of termination; or
- d. The Operating Committee, by a valid vote of no less than two-thirds of the total eligible votes of the Operating Committee and by providing written notice of termination to The City of Asheville, and the Participating Lenders at least 30 days in advance of termination.

ARTICLE V
OPERATING COMMITTEE

Section 5.1 Operating Committee

The Operating Committee shall have and exercise the following duties and general powers:

- a. All loans will require the approval of the Operating Committee.
- b. Loans greater than \$50,000, up to \$70,000, will be reviewed by the Operating Committee after loan closing for a period of time up to twelve months. The Operating Committee shall have the right to continue this additional review for an additional six months by majority vote of the membership.
- c. If a Participating Lender incurs a loss due to a Borrower Default on a Loan under the Program (a “Participating Lender Loss”) after following the terms and conditions of this Agreement, then such Participating Lender may apply to the Operating Committee for reimbursement of such Participating Lender Loss. The Participating Lender shall submit to the Operating Committee all documents and materials reasonably requested by the Operating Committee to demonstrate the amount of the Participating Lender Loss. Upon approval of such documents and materials, the Operating Committee shall notify Custodian and Custodian shall pay to such Participating Lender the amount of the Participating Lender Loss that is an Eligible Loss,

Section 5.3 Term of Office

The term of members of each subcommittee shall run from January 1 (or from the date of election for the initial election)] through December 31. Members shall continue to serve until a successor is appointed.

Section 5.4 Vacancies

Vacancies in the membership of any subcommittee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 5.5. Removal

The Committee may remove a member from a subcommittee at any time and for any or no reason by majority vote.

Section 5.6. Automatic Succession

If a member of a subcommittee is replaced on the Committee pursuant to Section 1.2, the representative member of the Committee shall automatically replace the member of the subcommittee.

Section 5.7 Quorum

A majority of the whole subcommittee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the subcommittee.

Section 5.8 Rules

Each subcommittee may adopt rules for its own government not inconsistent with these Rules of Procedure.

ARTICLE VI
GENERAL PROVISIONS

Section 6.1 Amendment of Rules of Procedure

These Rules of Procedure may be amended or repealed and new Rules of Procedure may be adopted by a two-thirds vote of the total eligible votes of the Committee; provided, however, that notice of the proposed action to amend these Rules of Procedure shall have been included in the notice of the meeting[, and that such Amendment is approved by the parties to the Agreement prior to consideration by the Committee]

EXHIBIT A
MCCF Operating Committee Members

Voting members:

The City of Asheville, North Carolina members:

Buncombe County Government members:

Community stakeholder members:

Non-voting members:

Self-Help Credit Union member:

Community Small Business member:

Mountain BizWorks member:

MOUNTAIN COMMUNITY CAPITAL FUND UNDERWRITING GUIDELINES

These Underwriting Guidelines have been adopted by the Operating Committee of the Mountain Community Capital Fund (“MCCF”) to set forth general underwriting guidelines for loans made pursuant to the Allocation of Services and Duties Agreement (the “Agreement”) between the City of Asheville, Buncombe County, and participating lenders. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement.

Loan Approvals: All loans will follow the loan approval procedures of the Participating Lender. All loans will require the additional approval of the Operating Committee.

Loan Size:

- There will be a \$5,000 minimum loan size.
- No loan greater than \$50,000 shall be made to a start-up business (defined as having less than 12 months of operations), and,
- The maximum amount of guarantee per loan is 85% of the new loan or \$75,000, whichever is less.

Credit Philosophy: MCCF will be used to extend each Participating Lender’s credit “reach” to provide financing for businesses that show promise but do not meet one or more of the Participating Lender’s normal underwriting criteria. Examples of underwriting differences could include:

1. Applicants with personal credit scores lower than typically allowed by the Participating Lender, provided that the reasons for the low score are understood and acceptable and do not represent a substantial risk to the Participating Lender’s ability to obtain perfected collateral security interests.
2. Applicants with a start-up or existing business applications who have less than the Participating Lender’s standard equity injection or standard collateral coverage.
3. Applicants with fewer traditional sources of outside personal income and support to provide for normal living expenses during the early months of a start-up business, when payment of salary from the business to the owner may not be possible.
4. Applications that, when taken as a whole, are just outside the Participating Lender’s standard risk parameters.

Loan Terms: Loan terms will not generally exceed: working capital: up to 7 years; equipment and upfit: up to 10 years; real estate: up to 15 years (with terms up to 20 years considered on an exception basis). For loan terms exceeding 10 years, the Participating Lender may release MCCF from the loan when the following conditions are satisfied: (i) loan-to-value is below the Participating Lender’s standard loan-to-value requirement for similar loans, (ii) the loan has been paid as scheduled for a period of not less than twelve (12) consecutive months, (iii) the loan is not in default and (iv) other conditions as approved by the Operating Committee.

Loan Pricing: Loans will be priced at the Participating Lenders’ standard rates and fees for the type of credit being extended. In addition, there will be one percent (1%) MCCF loss reserve fee that will flow back to MCCF, calculated on the entire amount of the loan and collected at closing. This fee, which may be financed, may change from time to time upon the mutual agreement of the Operating Committee and the lenders. This fee will be collected and paid by the applicant in addition to any loan origination fee charged by the Participating Lender as part of its standard business practice for the type of credit being extended.

Time in Business

- For most small businesses, 12 months minimum (with year-end financial statements).
- Start-up financing available with increased underwriting scrutiny.
 - Participating Lenders will have a target of no greater than 33% (1/3) of outstanding fund balance in MCCF loans to start-ups.
 - After one year of successful payments, loans will be released from their “start-up” designation.

Management Experience

- Proven track record of successful management experience.

EXHIBIT B Underwriting Guidelines

- Expertise of strategic alliance/joint venture partners will be considered when applicable. The strategic alliance/joint venture relationship must be formalized and documented.

Industry

- Any for-profit small business, as long as not a restricted business.
- Restricted Businesses: Prohibited businesses include adult businesses, bars, tattoo parlors, body-piercing shops, pawnshops, check-cashing businesses and car sales lots. Additionally, businesses cannot be engaged in illegal activities, loan packaging, speculation, multi-sales distribution, gambling, investment or lending. Specific types of businesses not eligible include real estate investment and other speculative activities, lending activities, pyramid sales plans, illegal activities, gambling activities, charitable, religious or certain other nonprofit institutions.

Cash Flow Coverage

- Combined business and personal income must be sufficient to cover business and personal expenses and debt, according to each lender's guidelines.
- Working Capital: applicant must demonstrate sufficient working capital (whether from loan proceeds or other sources) to sustain the business until it reaches stabilized pro forma cash flow coverage.

Financial Trends

- No strict guidelines, although an important factor in subjective decision making.
- Revenue, profitability and balance sheet trends will be used to judge the validity of projections.
- Projections that deviate from the proven trend (increased sales for a company that has shown decreasing sales historically) need to be fully explained and supported.

Collateral

- Loans will generally be secured by all available business assets and personal assets of the owners of 20% or more of the business, including, without limitation, business equipment, inventory, and liens on personal and business real estate.
- The Participating Lender is not required to take all available collateral if it determines:
 - The risk does not warrant the taking of the collateral (generally a function of loan size combined with the expense involved in perfecting the collateral position, or a lower level of perceived credit risk in a given loan);
 - Expected equity value, in the event of liquidation, is negligible; or
 - The collateral in question could ultimately hinder, rather than help, successful collection of the loan.
- The Participating Lender has the right to abandon collateral if, in the Participating Lender's judgment, costs of collection are excessive in relation to the expected return.
- Co-signers who can provide collateral support will be accepted if deemed advisable by the Participating Lender.

Leverage and Current Ratios

- Acceptable debt to income ratio at the Participating Lender's discretion.
- Working capital sufficient to meet business needs.

MOUNTAIN COMMUNITY CAPITAL FUND
Description of Funding Sources

Class: **0% Interest Note A** (“Note A”)
Investors: City of Asheville
Issuer: Self-Help
Risk: Highest Risk, First Loss
Amount: \$250,000
Interest Rate: 0.0%*
Maturity: Coterminous with the Fund, unless otherwise specified
Priority: *Pari passu*
Funding: Collateral Account A, which shall be used to offset only those losses incurred in the Program, as described in the MCCF Allocation of Services and Duties Agreement.
*This does not preclude the loan’s ability to be deposited into an interest-bearing account, with MCCF to retain interest upon repayment of the loan.

Class: **0% Interest Note B** (“Note B”)
Investors: Buncombe County
Issuer: Self-Help
Risk: Highest Risk, First Loss
Amount: Buncombe County \$200,000
Interest Rate: 0.0%*
Maturity: Coterminous with the Fund, unless otherwise specified
Priority: *Pari passu*
Funding: Collateral Account B, which shall be used to offset only those losses incurred in the Program, as described in the MCCF Allocation of Services and Duties Agreement.
*This does not preclude the loan’s ability to be deposited into an interest-bearing account, with MCCF to retain interest upon repayment of the loan.

Class: Grant Fund A (Forgivable Loan/Grant) (“Grant A”)
Grantor: City of Asheville
Grantee: Mountain BizWorks, (as managed by the Custodian)

Exhibit C: Description of Funding Sources

Risk: Highest Risk, First Loss

Amount: City of Asheville \$1,293,000; of which \$875,000 shall be contributed to MCCF

Interest Rate: N/A*

Maturity: Coterminous with the Fund, unless otherwise specified

Priority: Pari passu

Funding: Collateral Account C, of the grant amount \$875,000, will be used by Mountain BizWorks to make direct loans, at the time of new loans, Mountain BizWorks will expense an amount of 85% or \$75,000, whichever is less, to the Mountain Community Capital Fund to serve as collateral offset/loan guarantee which shall be used to offset only those losses incurred in connection with loans funded with ARPA, as described in the MCCF Allocation of Services and Duties Agreement. *This does not preclude the grant's ability to be deposited into an interest-bearing account, with MCCF to retain interest upon repayment of the loan.

Class: Grant Fund B (Forgivable Loan/Grant) ("Grant B")

Grantor: Buncombe County

Grantee: Mountain BizWorks, (as managed by the Custodian)

Risk: Highest Risk, First Loss

Amount: Buncombe County \$1,250,000; of which \$1,150,000 shall be contributed to MCCF

Interest Rate: N/A*

Maturity: Coterminous with the Fund, unless otherwise specified

Priority: Pari passu

Funding: Per the terms of the subrecipient agreement between Buncombe County and Mountain BizWorks, the grant of \$1,250,000 will be used to make loans to small businesses founded by low-income entrepreneurs who lack sufficient credit or collateral to access the needed capital to retain and create jobs. At the time of new loans, Mountain BizWorks will expense an amount of 85% of 75,00 whichever is less, to the Mountain Community Capital Fund to serve as collateral offset / loan guarantee. As a result of this grant, Mountain BizWorks will contribute a total of \$1,150,000 to Mountain Community Capital Fund to serve as available revolving loan loss reserve funds. *This does not preclude the grant's ability to be deposited into an interest-bearing account, with MCCF to retain interest upon repayment of the loan.

Class: Grant Fund C (Forgivable Loan/Grant) ("Grant C")

Grantor: Dogwood Health Trust

Grantee: Mountain BizWorks, (as managed by the Custodian)

Risk: Highest Risk, First Loss

Exhibit C: Description of Funding Sources

Amount: Dogwood Health Trust \$450,000; of which \$450,000 shall be contributed to MCCF

Interest Rate: N/A*

Maturity: Coterminous with the Fund, unless otherwise specified

Priority: Pari passu

Funding: Collateral Account E, of the grant amount \$450,000 will be used by Mountain BizWorks to contribute to the Mountain Community Capital Fund to serve as collateral offset/loan guarantee, which shall be used to offset only those losses incurred in the Program, as described in the MCCF Allocation of Services and Duties Agreement. *This does not preclude the grant's ability to be deposited into an interest-bearing account, with MCCF to retain interest upon repayment of the loan.
