

SUPPORT AGREEMENT

THIS SUPPORT AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2019, by and among **WEBSTER ENTERPRISES OF JACKSON COUNTY, INC.**, a North Carolina Non-Profit Corporation P.O. Box 188, Sylva, NC 28789 (the “Borrower”), **COUNTY OF JACKSON**, a body politic and political subdivision of the state of North Carolina, 401 Grindstaff Cove Road, Suite A207, Sylva, NC 28779 (the “County”).

WITNESSETH:

The Borrower has applied to First-Citizens Bank & Trust Company (the “Lender”) for certain financing more particularly described hereinafter and the Lender is willing to extend such financing to the Borrower upon the County’s support. The County has agreed to support the Borrower in recognition of the benefits to the County and its residents. This support will take the form of a promise by the County to pay the debt service of the Borrower, as provided in this Agreement. The County’s obligation to make payments will be subject to annual appropriations of funds by the Board of Commissioners. Therefore, in consideration of the mutual covenants, terms, provisions and conditions set forth hereinafter and of the financing identified hereinafter to be provided by the Lender to the Borrower and for other good and valuable consideration, the receipt and sufficiency all of which are hereby acknowledged, the Borrower, and the County hereby agree as follows:

ARTICLE ONE THE TRANSACTION

1.1 FINANCING. Lender is loaning Borrower \$100,000.00 in a revolving loan to cover the costs and expenses described below. This Agreement is executed by and among the parties hereto for the purpose of setting forth the terms and conditions between the Borrower and County with respect to the Loan.

1.2 EVIDENCE OF INDEBTEDNESS. Subject to and upon the terms and conditions of this Agreement, the County agrees to support the Borrower by appropriating funds of \$100,000.00, the amount of the Loan, to be used to pay the Borrower’s debt service if the Borrower is not able to pay their debt service for any reason and these funds shall be deposited with Lender in the manner Lender requires to be used on behalf of Borrower for only this purpose.

1.3 PURPOSES AND USES. The proceeds of the Loan shall be used for the sole purpose of pre-funding costs and expenses, including salary and labor for the Pre-Employment Transition Services (“PETS”) program provided by Borrower and offered in Jackson County which provides services to Jackson County students. Borrower is the recipient of a grant for the PETS program however the grant reimburses costs and

expenses and the Loan is necessary for the Borrower to cover up-front costs and expenses later reimbursed by the grant.

1.4 SECURITY FOR COUNTY. If the County funds deposited with Lender on behalf of the Borrower are needed to pay Borrower's debt service on the loan and Borrower does not repay County when reimbursed from the PETS grant, County will forgo giving Borrower funds each year through its grant program, currently \$35,000.00, until the amount paid on Borrower's debt service is repaid. All other options to collect the amount by County from Borrower remain options to County as described hereinafter.

1.5 NON-BINDING OBLIGATION. The County Board of Commissioners, hereafter "Board" hereby undertakes a non-binding obligation to appropriate to the lender on behalf of the Borrower the amount of the Borrower's loan to the fullest degree and in such manner as is consistent with the Constitution and Laws of the State of North Carolina. The County while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations in future fiscal years, and hereby recommends that future Boards of Commissioners do likewise.

1.6 COUNTY BUDGET. The County's draft budget prepared each year for consideration for the Board will include the initial proposal of the loan amount to be appropriated to the Lender on behalf of the Borrower. This obligation continues for the duration of this Agreement even if the Board acts in any fiscal year to reduce or eliminate the appropriation. Notwithstanding that the initial proposed budget includes an appropriation for the loan amount, the Board may determine not to include the appropriation in the final County budget for any fiscal year, or may amend an adopted budget to reduce or delete an approved appropriation with notice to the Lender and the Borrower for that fiscal year.

ARTICLE TWO CONDITIONS PRECEDENT

The County will appropriate funds to be used to pay Borrower's debt service on the Loan only upon approval by County of the following instruments and documents, all of which shall first be reviewed by and must be reasonably acceptable to the County and its legal counsel as to both form and substance:

2.1 LOAN DOCUMENTS. The Note, the Deed of Trust, and any other Loan Documents which the Lender shall require of the Borrower.

2.2 ORGANIZATIONAL DOCUMENTS. The Borrower shall submit to the County copies of its Articles of Incorporation, its 501 c 3 status, and appropriate minutes and resolutions authorizing the transactions contemplated herein and designating its authorized signatories who shall have the power and authority to execute and deliver all Loan Documents on its behalf.

2.3 BASIC INSURANCE REQUIREMENTS. At Borrower's sole expense, Borrower shall procure and maintain the following minimum insurances with insurers authorized to do business in North Carolina and rated A-VII or better by A.M. Best.

A. WORKERS' COMPENSATION

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident
\$500,000 Disease - Each Employee
\$500,000 Disease - Policy Limit

B. COMMERCIAL GENERAL LIABILITY

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury Limit
\$5,000 Medical Expense Limit

C. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit - Any Auto

D. PROFESSIONAL LIABILITY

\$1,000,000 Claims Made

Borrower shall provide evidence of continuation or renewal of Professional Liability Insurance for a period of two (2) years following termination of the Agreement.

2.4 ADDITIONAL INSURANCE REQUIREMENTS.

A. The Borrower's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

JACKSON COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY INSURANCE POLICY.

B. Before commencement of any work or event, Borrower shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.

- C. Borrower shall have no right of recovery or subrogation against Jackson County (including its officers, agents and employees).
- D. It is the intention of the parties that the insurance policies afforded by Borrower shall protect both parties and be primary and non-contributory coverage for any and all losses covered by the above-described insurance.
- E. Jackson County shall have no liability with respect to Borrower's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Borrower.
- F. Notwithstanding the notification requirements of the Insurer, Borrower hereby agrees to notify Jackson's County Manager at 401 Grindstaff Cove Road, Suite A207, Sylva, NC 28779, within two (2) days of the cancellation or substantive change of any insurance policy set out herein. Jackson, in its sole discretion, may deem failure to provide such notice as a breach of this Agreement.
- G. Insurance procured by Borrower shall not reduce nor limit Borrower's contractual obligation to indemnify, save harmless and defend Jackson County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. Certificate Holder shall be listed as follows:

Jackson County
Attention: Don Adams, County Manager
401 Grindstaff Cove Road, Suite A207
Sylva, NC 28779
- I. If Borrower is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Borrower shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

2.5 CONDITIONS PRECEDENT TO ANNUAL RENEWAL. The obligation of the County to continue to support the loan with appropriated funds each year on the renewal date is subject to the compliance by the Borrower with the following requirements:

- A. Representations and Warranties. All representations and warranties of the Obligors contained in this Agreement and all Loan Documents shall remain true and correct in all material respects.

B. Other Conditions. All Conditions Precedent set forth in Article Two of this Agreement shall have been and shall remain fulfilled in all material respects.

C. Performance. The Borrower shall have fully performed all duties and obligations required to be performed hereunder as of or prior to the date of such requested renewal.

D. Annual Requirements and Report to County. An annual report is given to the Jackson County Manager, at least 45 days prior to the date of renewal, showing the amount of the Loan drawn down for that year, how the Loan funds were used by Borrower, how the Loan funds were reimbursed by the PETS grant, the current status of the jobs created by the PETS program and how many Jackson County students were served by the PETS program. To continue the Support and Appropriated funds for Borrower's debt service, County will need to be satisfied that three and a half jobs have been created and retained in Jackson County for this PETS program and that the expected number of Jackson County students have been served by the PETS program. County will also verify, prior to appropriating the funds each year, that the Loan funds have only been used for pre-funding costs of the program and that the grant remains active and is reimbursing the pre-funding costs as anticipated.

E. No Defaults. The Borrower shall not be in breach or default in the performance or observance of any other terms and provisions of this Agreement or of any other Loan Document, and there shall have been no material adverse change in the financial condition of the Borrower or the County subsequent to the day of execution of this Agreement, except as shall have been reported in writing to the County and approved or waived in writing by the County.

F. Payment of Construction Costs. The Borrower shall have applied all grant reimbursement funds to the Loan upon receipt of the grant funds.

G. No Modifications. No changes, modifications, supplements, alterations or amendments to or of the PETS program shall have been made in any material respect without the prior written approval of the County.

ARTICLE THREE REPRESENTATIONS AND WARRANTIES

In order to induce the County to enter into and execute this Agreement and to secure the Loan to the Borrower, the Borrower makes the following representations and warranties to the County, which shall survive the execution of this Agreement and remain in full force and effect until complete payment and discharge of the Security:

3.1 EXISTENCE. The Borrower is duly organized, validly existing and in good standing under the laws of the State of North Carolina, with full power and authority to enter into this Agreement and to perform in accordance with the terms thereof.

3.2 AUTHORITY. The Borrower has taken all appropriate action to authorize the execution and delivery of this Agreement and the Loan Documents by all necessary persons on behalf of the Borrower. The execution, delivery and performance by the Borrower of this Agreement does not and will not require the consent of any other parties, nor will the same result in any breach of or constitute a default under any agreement or instrument, particularly the PETS Grant Agreement, to which the Borrower is a party.

3.3 LEGALLY ENFORCEABLE AGREEMENT. This Agreement and each of the Loan Documents are duly and properly executed and delivered by the Borrower for value received and constitute the valid Obligations of the Borrower, legally binding upon and enforceable against the Borrower in accordance with its terms, not subject to any defense based upon usury, capacity of the Borrower or, to the best of the Borrowers knowledge, other defense, except as may be subsequently limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

3.4 LITIGATION. No actions, suits or proceedings are pending or, to the best of the Borrowers knowledge, threatened before any Court, Governmental Authority or arbitrator (a) involving the validity, priority or enforceability of this Agreement, or (b) against or affecting any Borrower which may, in any one case or in the aggregate, materially adversely affect the financial conditions, affairs, properties or business operations of the Borrower or the ability of the Borrower to perform any of the Obligations.

3.5 NO DEFAULTS. To the best of the Borrowers knowledge, the Borrower is not presently in default under any of the terms or conditions of this Agreement, or any order, injunction, judgment, award, or decree of any applicable judicial or Governmental Authority; or, in any material respect, any other deed of trust, mortgage, lease, bank loan, credit agreement or other instrument to which the Borrower is a party or by which the Borrower, may be bound or affected.

3.6 OPERATIONS. The execution, delivery and performance of the Obligations by the Borrower do not and will not violate or contravene any provisions of any instrument creating or governing the operations of the Borrower, and will not result in a breach of or constitute a default under any other deed of trust, mortgage, bank loan, credit agreement or other instrument to which the Borrower is a party or by which the Borrower may be bound or affected.

3.7 DISCLOSURE. To the best of the Borrowers knowledge, no representation or warranty of the Borrower contained in this Agreement, any other Loan Documents, or any Construction Documents, and no statement contained in any certificate, schedule, list, financial statement or instrument now or hereafter to be furnished to the Lender by or on behalf of the Obligors contains or will contain any untrue statement or omission of any material fact.

3.8 SOLVENCY. There is not pending or, to the best of the Borrowers knowledge, threatened by or against the Borrower, nor is there contemplated any petition in bankruptcy, order for relief (whether voluntary, involuntary or by operation of law), any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States of America or any state thereof, any liquidation of all or the greater portion of the property of any of the Obligors or any other action brought under the aforesaid bankruptcy laws or other similar laws involving any of the Obligors.

3.9 COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS. To the best of its knowledge, the Borrower is in full material compliance with all applicable Governmental Requirements pertaining to the Borrower.

ARTICLE FOUR COVENANTS

The Borrower hereby covenants with the County for as long as the Parties are subject to this Agreement as follows:

4.1 FURTHER ASSURANCES. The Borrower shall execute and deliver, or cause to be executed and delivered, to the County such further documents, instruments, certificates, assurances and other items, and shall do all such additional and further acts and deeds which the County shall deem reasonably necessary or desirable to comply with the terms and conditions of, or to effectuate the intent of, this Agreement.

4.2 BOOKS AND RECORDS. The Borrower shall keep and maintain full and accurate accounts and records with respect to the PETS program and grant in accordance with generally accepted accounting principles consistently applied.

4.3 INDEMNITY. The Borrower shall indemnify, defend and hold harmless the County from and against all third-party liens, claims, demands, actions, causes of action, assessments, losses, damages, liability, costs and expenses, including without limitation, interest, reasonable attorneys' fees and penalties, arising out of, affecting or in connection with the County's support and appropriation of funds to pay the Borrower's debt service, the execution and performance of this Agreement or any other Loan

Documents, any acts or omissions of the Borrower, any breach of this Agreement or any of the Loan Documents.

4.4 NOTICE OF DEFAULT. The Borrower shall promptly furnish written notice to the County of the occurrence of any Event of Default under this Agreement, any of the Loan Documents, or of any event which would become an Event of Default hereunder or thereunder upon lapse of any time specified in herein or therein.

4.5 NOTICE OF LITIGATION. The Borrower shall furnish to the Lender immediately upon receipt thereof, copies of any pleadings in litigation, notices of bankruptcy, notices of default, or notices of any proceedings before any Governmental Authority which could have a material adverse effect on the financial condition, affairs, properties or operations of the Borrower or its ability to perform under the Loan Documents.

4.6 PERFORMANCE PURSUANT TO LOAN DOCUMENTS. The Borrower shall at all times perform in accordance with and comply with all terms, conditions, covenants, requirements, representations and warranties set forth herein, in this Agreement and all of the Loan Documents.

4.7 PRESERVATION OF EXISTENCE. The Borrower shall preserve and maintain its existence in good standing throughout the term of the Loan, without material modification.

ARTICLE FIVE DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT. The term “Event of Default”, whenever used hereinafter, shall mean any one or more of the following events:

A. Occurrence of an Event of Default set forth or defined in the Loan Documents which is not cured within any applicable grace period set forth therein, including without limitation failure to timely pay or perform any Obligations set forth therein, with a default thereunder to constitute a default hereunder.

B. Failure by the Borrower to fully, completely and timely perform or observe any Obligations under this Agreement or to observe, satisfy and comply with any of the terms, covenants, conditions, requirements, restrictions and provisions of this Agreement, which failure is not cured within such grace period with respect thereto as is set forth herein or, if no grace period is set forth herein as to any such failure, if such failure is not cured within thirty (30) calendar days following written notice thereof from the County; provided, however, that if such default cannot reasonably be cured within the 30-day period, then the Borrower shall have an additional reasonable time (not to exceed 60 days in the aggregate) in which to effectuate such cure, provided both that the Borrower has begun and is

diligently pursuing efforts to cure within the 30 day period and that the default is reasonably susceptible of being cured.

C. Falsity in any material respect of any representations or warranties contained herein as and when made.

5.2 REMEDIES UPON DEFAULT. Upon occurrence of any Event of Default, the County shall have the right to immediately exercise any and all of the following rights and remedies without further notice to the Borrower:

A. Forbearance of Annual Grant Funds. In addition to all other rights and remedies set forth herein, the County will forgo giving Borrower funds each year through its grant program until the appropriated funds for Borrower's debt service is repaid.

B. Termination. The County may suspend or terminate all obligations of the County under this Agreement.

C. Costs and Expenses. All reasonable costs and expenses of every nature and kind incurred by the County in the exercise of any of the foregoing remedies, including without limitation reasonable attorneys' fees, shall be and constitute a portion of the Obligations, which shall be secured pursuant to this Agreement.

D. No Waiver. No delay or failure by the County to exercise any right or remedy conferred hereunder, shall be deemed a waiver by the County of any future right to exercise such right or remedy; nor shall any waiver of any Event of Default be deemed to be a waiver of any other Event of Default or of the future occurrence of the same Event of Default.

E. Nature of Remedies. All of the foregoing rights and remedies are cumulative and concurrent; shall be in addition to any other right, power and remedy set forth herein or in any of the Loan Documents, and now or hereafter existing in law at equity, or otherwise; and may be pursued separately, successively or concurrently against the Borrower at the sole discretion of the County.

ARTICLE SIX
MISCELLANEOUS

6.1 ENTIRE AGREEMENT. This Agreement supersedes all prior discussions between the Borrower and the County with respect to appropriating funds to pay the Borrower's debt service and contains the sole and entire understanding between the parties. No amendments, conditions, deletions, modifications or changes to or of this Agreement shall be of any force or effect whatsoever unless reduced to writing and executed by the parties hereto.

6.2 SURVIVAL. All representations, warranties and covenants made herein shall survive the execution and delivery of this Agreement and the disbursement of the Loan, and shall remain in full force and effect until complete payment and discharge of all Obligations.

6.3 SEVERABILITY. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but unenforceability or invalidity for any reason of any provision of this Agreement shall be limited strictly to such provision and shall not limit or impair the operation, validity or enforceability of any other provision of this Agreement.

6.4 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

6.5 TIME IS OF THE ESSENCE. Time is and shall be of the essence of this Agreement and all performance hereunder.

6.6 RELATIONSHIP OF PARTIES. Neither any provision of this Agreement or any of the Loan Documents nor any acts of the parties to this Agreement or any of the Loan Documents shall be construed to create a partnership or joint venture between the Borrower and the County nor to make any party the agent or representative of the other, nor shall any provision hereof nor any acts of the parties hereunder be construed to make the County liable to anyone for any labor or services performed or rendered on, or materials supplied or furnished to, the Property or for any debts or claims accruing against the Borrower on account thereof.

6.7 COMMITMENT. Borrower recognizes that County's only commitment is to consider appropriations as provided in Section 1. The Borrower recognizes that so long as the County complies with the requirements of Section 1.6, then the Borrower has no recourse against the County for any action that results in the removal or reduction of an appropriation for the County Support.

6.8 NOTICES. All notices, requests, demands and other communications allowed, made or required to be made pursuant to the terms of this Agreement shall be in writing and shall be deemed to be given or made when personally delivered (including personal delivery by Federal Express or other nationally recognized overnight private courier service) or when deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed in any such event to the party to whom such communication is directed at such address as is set forth in this Agreement or at such other address as may hereafter be designated in writing by the respective parties hereto.

6.9 GOVERNING LAW. This Agreement and all of the Loan Documents shall be governed and construed under and in accordance with the laws of the State of North Carolina. Nothing in this Agreement is or shall be deemed to be a lending of the credit of the County to Borrower or to any counterparty under the Loan documents or to any other person or entity and nothing in this Agreement is or shall be deemed to be a pledge of the faith and credit of the County's taxing power. Nothing in this Agreement obligates the Board to appropriate funds to the Borrower and if any part of this Agreement is found to violate the Constitution or Laws of the State of North Carolina, the Agreement shall be immediately terminated.

6.10 HEIRS, SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, provided that the Borrower shall not assign or otherwise transfer voluntarily, involuntarily or by operation of law any rights, responsibilities, liabilities or Obligations hereunder without the express written consent of the County.

6.11 CAPTIONS. The headings and captions in this Agreement are included only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any other provision hereof.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Loan Agreement has been duly executed by the parties hereto as of the date first written above.

ATTEST:

COUNTY OF JACKSON

BY: _____
Angela M. Winchester, Clerk to the Board

BY: _____

DATE: _____

WEBSTER ENTERPRISES OF JACKSON
COUNTY, INC.

ATTEST:

BY: _____

BY: _____

PRINTED NAME: _____

DATE: _____