JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY
TOURISM CAPITAL PROJECT FUND
FUNDING AGREEMENT

This Tourism Capital Project Funding Agreement (this "Agreement") is made and entered into as of [DATE] (the "Effective Date"), by and between the Jackson County Tourism Development Authority, a public authority of Jackson County, North Carolina (the "JCTDA"), and Jackson County a governmental entity (the "Recipient"). The JCTDA and the Recipient are each a "Party" and together the "Parties."

RECITALS

WHEREAS, the JCTDA is funded by a six percent (6%) room occupancy tax collected from guests of Jackson County accommodations, and is authorized to expend a portion of those funds on tourism capital projects pursuant to Session Law 2011-170 (House Bill 96) and applicable North Carolina law governing the use of occupancy tax revenue; and

WHEREAS, the Recipient submitted a Tourism Capital Project Fund application (the "Application") requesting funding for the capital project described therein (the "Project"); and

WHEREAS, the JCTDA Board of Directors recommended, and the Jackson County Board of Commissioners (the "BOC") approved on [DATE], an award of Tourism Capital Project Funding for the Project, subject to the terms of this Agreement; and

WHEREAS, the Parties intend that the Project increase visitation and overnight stays at occupancy tax-paying lodging properties in Jackson County and serve a public tourism purpose for the duration of its useful life;

NOW, THEREFORE, in consideration of the mutual promises below and other good and valuable consideration, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Application. "Application" means the Recipient's Tourism Capital Project Fund application for the Project, including the Project Readiness Certification, milestone schedule, budget, and all attachments, incorporated into this Agreement as Exhibit A.

1.2 Award. "Award" means the maximum amount of Tourism Capital Project Funding approved for the Project, stated in Section 2.1.

1.3 Eligible Costs. "Eligible Costs" means costs for the acquisition, design, construction, extension, remodeling, repair, or improvement of the Project that are permitted under the TCPF Guidelines and this Agreement, and excludes the ineligible uses listed in Section 5.2.

1.4 Match. "Match" means the Recipient's contribution toward the total Project cost, in an amount at least equal to the Award (a minimum one-to-one (1:1) match), as documented under Article 3.

1.5 Substantial Completion. "Substantial Completion" means the Project is sufficiently complete to be used for its intended purpose.

1.6 Use Period. "Use Period" means the period beginning at Substantial Completion and continuing for the Project's useful life as stated in the Application, and in no event fewer than ten (10) years.

1.7 TCPF Guidelines. "TCPF Guidelines" means the Tourism Capital Project Fund purpose, eligibility, financial guidelines, and requirements set out in the Application packet, as amended by the JCTDA from time to time.

ARTICLE 2. AWARD, MATCH, AND BUDGET

2.1 Award Amount. The JCTDA awards the Recipient Tourism Capital Project Funding in a maximum amount of $205,160 (the "Award"), which shall not exceed fifty percent (50%) of the total Project budget. The Award is a fixed maximum and a reimbursement obligation, not a guaranteed payment.

2.2 Match Requirement. The Recipient shall provide and document Match in an amount at least equal to the Award. Volunteer time can count toward the Match. The Recipient shall maintain the Match through completion of the Project and shall notify the JCTDA of any reduction or withdrawal of committed Match funds.

2.3 Fixed Award; Cost Overruns. The Recipient is responsible for all Project costs exceeding the budget. The Award will not increase to cover cost overruns.

2.4 Final Reconciliation. Final disbursement shall be the lesser of (a) the Award or (b) fifty percent (50%) of the actual Eligible Costs of the Project. If actual Eligible Costs are lower than budgeted, the Award is reduced accordingly, and the Recipient must maintain at least a one-to-one (1:1) Match against actual Eligible Costs at completion.

2.5 Budget. The approved Project budget and sources and uses of funds are attached as Exhibit B. Changes to the Project, the Project timeline, or the budget after the Effective Date require a formal written modification under Section 14.5.

ARTICLE 3. DISBURSEMENT AND MATCH VERIFICATION

3.1 Conditions to Disbursement. Funds will be disbursed only after this Agreement is fully executed by all Parties and all conditions in this Agreement are satisfied. The JCTDA will not disburse funds until the full Match is documented as secured. Payment will be made only to the Recipient. No payment will be made directly to vendors or individuals. No cost incurred or obligated before BOC approval of the Award is reimbursable.

3.2 Reimbursement; Spend-First Rule. Tourism Capital Project Funding is disbursed on a reimbursement basis as the default. For each request for reimbursement, the Recipient shall have expended its Match on Eligible Costs before, or in proportion to, the request, such that for every dollar of TCPF funds drawn the Recipient has expended at least an equal dollar of committed Match on Eligible Costs. Each request must include receipts or paid invoices evidencing both the TCPF-eligible expense and the corresponding Match expenditure.

3.3 Advance of Funds. The JCTDA may, in its sole discretion, approve a milestone advance only where the Recipient demonstrates that (a) it cannot reasonably finance the Eligible Costs and await reimbursement, and (b) it has the organizational stability, financial controls, and grant-administration track record to be entrusted with public funds in advance. Government entities and established institutions with adequate reserves or bonding capacity are not eligible for

advances. Where an advance is approved: (i) it is limited to the amount of a specific documented obligation, such as a vendor deposit or contract draw, and is released only on presentation of that documentation; (ii) advanced funds shall be held in a separate restricted account used only for Eligible Costs; (iii) the Recipient shall provide receipts evidencing that advanced funds were expended on Eligible Costs within thirty (30) days of disbursement and shall return any portion not so expended; and (iv) the JCTDA may, in its sole discretion, condition any advance on security it deems appropriate, such as escrow, a lien, or a guarantee by the Recipient's governing board.

3.4 Match Verification. The Match must be documented by a resolution of the Recipient's governing board committing the Match to the Project, supported by source-appropriate proof (bank statement or audited financials for cash; a firm lender commitment letter for financed funds; executed award letters for other grants; appraisal or tax-assessed value and proof of ownership for donated property; and a third-party valuation plus donor commitment letter for donated goods or services). Thirty percent (30%) of the Match may be from in-kind contributions; volunteer time/labor counts as in-kind. Unfunded pledges may count toward no more than twenty-five percent (25%) of the required Match and must be supported by signed pledge agreements with payment schedules.

3.5 Phased Funding. The JCTDA may require that specific project milestones be met before any or all funding is disbursed, and funding may be provided in phases.

3.6 Operating Agreement. As a condition of disbursement, the Recipient shall provide the JCTDA with an executed agreement with Great Smoky Mountains Railroad or another qualified operator assigning responsibility for the operation, inspection, maintenance, repair, and safety of the rail bikes to the operator. Such agreement shall include indemnification and insurance provisions protecting both Jackson County and the JCTDA consistent with Articles 7 and 13 of this Agreement.

ARTICLE 4. PROJECT READINESS AND TIMELINE

4.1 Readiness Representations. The Recipient represents and warrants that, as of the Effective Date, the readiness items documented in its Project Readiness Certification remain accurate, including site control, design status, permitting status, committed Match, and confirmed utility and infrastructure capacity (water, sewer, power, and site access) for the completed Project, or a funded and scheduled plan to provide that capacity.

4.2 Milestone Schedule. The milestone schedule submitted with the Application is incorporated as part of Exhibit A. The Recipient shall pursue the Project in accordance with that schedule.

4.3 Commencement Deadline. The Recipient shall commence construction (or, for an equipment purchase, place a binding purchase order) within twelve (12) months of the Effective Date. If the Recipient fails to commence by this deadline and has not received an approved extension, the Award is automatically rescinded, this Agreement terminates, and the committed funds return to the Tourism Capital Project Fund. The Recipient may reapply in a future funding cycle.

4.4 Completion Deadline. The Recipient shall achieve Substantial Completion no later than [DATE], which is twenty-four (24) months from the Effective Date.

4.5 Extension. The Recipient may request one (1) written extension of the Commencement Deadline or the Completion Deadline. The request must be received by the JCTDA before the applicable deadline and must document the cause of delay (for example, permitting delays, weather, supply chain disruption, or contractor default). The JCTDA may grant an extension of up to twelve (12) months for good cause, subject to approval. Extensions are not guaranteed.

4.6 Award Lapse. A commitment of TCPF funds expires if the Recipient does not execute this Agreement within thirty (30) days of BOC approval, if construction does not commence by the Commencement Deadline, or if the Project is abandoned. Expired or rescinded commitments return to the Tourism Capital Project Fund.

ARTICLE 5. USE OF FUNDS

5.1 Permitted Use. The Recipient shall use the Award solely for Eligible Costs of the Project, in accordance with the Application and the TCPF Guidelines. Funds may not be used for marketing, feasibility studies, administrative fees, salaries, or due diligence.

5.2 Ineligible Uses. The Award may not be used for any ineligible use identified in the TCPF Guidelines, including annual operating expenditures; legal, accounting, auditing, fundraising, or similar consulting services; salaries; tangible personal property under $25,000, permanent collections, or art; interest, deficit, or loan reduction; expenses incurred outside the funding project period; prizes, awards, or promotional materials; travel; projects restricted to private or exclusive participation; entertainment, food, and beverage; or events not approved by Jackson County.

5.3 Repayment for Ineligible Use. If the Recipient is found to have used Award funds for an ineligible use, the Recipient shall repay those funds to the JCTDA plus five percent (5%) annual interest.

ARTICLE 6. CONTINUED USE AND ASSET PROTECTION

6.1 Continued Use. The Recipient shall maintain the funded Project in active public use consistent with this Agreement and applicable North Carolina occupancy-tax law throughout the Use Period.

6.2 Recapture. If, during the Use Period, the Project or any TCPF-funded asset is sold, transferred, encumbered, demolished, or converted to private, exclusive, or non-tourism use without the prior written consent of the JCTDA, the Recipient shall repay a pro-rata share of the Award based on the remaining portion of the Use Period, plus five percent (5%) annual interest.

6.3 No Assignment. The Recipient shall not assign this Agreement or transfer the funded asset during the Use Period without the prior written consent of the JCTDA.

ARTICLE 7. INSURANCE

7.1 Required Insurance. The Recipient shall require Great Smoky Mountains Railroad or any other operator to maintain, at its expense, liability insurance covering the rail bike operations, including passenger injury, death, and property damage, throughout the Use Period. Such insurance shall include commercial general liability coverage of not less than $1,000,000 per occurrence and $2,000,000 aggregate, together with umbrella or excess liability coverage of not

less than $5,000,000, and any specialized coverage necessary for the rail bike operations. The Recipient shall ensure that appropriate property insurance is maintained on the rail bikes.

7.2 Additional Insureds. Jackson County and the JCTDA, including their respective officials, officers, employees, and agents, shall be named as additional insureds under applicable liability policies. Before operation begins and annually thereafter, the Recipient shall provide the JCTDA with certificates of insurance and applicable additional-insured endorsements demonstrating compliance with these requirements.

ARTICLE 8. PROCUREMENT AND CONFLICTS OF INTEREST

8.1 Procurement. The Recipient shall procure goods and services for the Project through a competitive process, or shall document that costs reflect fair-market, arm's-length pricing, consistent with applicable North Carolina public contracting and procurement law.

8.2 Related-Party Transactions. The Recipient shall disclose in the Application, and obtain the JCTDA's prior approval of, any related-party transaction, including work performed by a board member's firm or property purchased from an affiliated party. Funds spent on undisclosed related-party transactions are subject to repayment with five percent (5%) annual interest.

ARTICLE 9. REPORTING

9.1 Project Status Reports. The Recipient shall submit Project Status Reports to the JCTDA at least every six (6) months following the Effective Date, and more frequently if required. Each report shall provide a narrative and financial status update and shall compare actual progress against the milestone schedule in Exhibit A, explaining any milestone delayed by more than sixty (60) days.

9.2 Construction Completion Report. Within forty-five (45) days of Substantial Completion, the Recipient shall submit a Construction Completion Report containing a narrative summary, an initial economic-impact evaluation, a full financial statement of funds received and expenses paid (with trackable receipts available on request), photographs or video, copies of marketing efforts, a summary of events held, and the documented or estimated number of participants, together with the Room Night Certification Form (Exhibit D). The JCTDA may withhold final disbursement until the Recipient submits the Construction Completion Report and any other documentation reasonably required to verify compliance with this Agreement.

9.3 Project Impact Reports. No later than January 30th and July 15th of each calendar year for three (3) years after Substantial Completion, the Recipient shall provide a detailed Project Impact Report of all events resulting from the Project, including attendee survey results (attendance, nights stayed in Jackson County, visitor spending, and suggested improvements) and Room Night Certification Forms for each event. If the Project results in no or few measurable overnight stays, the Recipient shall document its efforts to promote overnight stays in Jackson County occupancy tax-paying properties.

9.4 Acknowledgment of Funding. The Recipient shall acknowledge JCTDA funding support at the Project (such as in signage or plaques) and in announcements, press releases, and other communications announcing the Project's start and opening. The JCTDA will review and approve any such communication in advance.

ARTICLE 10. RECORDS AND AUDIT

10.1 Records Retention. The Recipient shall keep complete financial and project records for at least five (5) years following Substantial Completion.

10.2 Right to Inspect and Audit. Upon reasonable notice, the JCTDA, Jackson County, or their designees may inspect the Project site and audit the Recipient's records pertaining to the use of TCPF and Match funds. The Recipient shall cooperate with any such inspection or audit.

ARTICLE 11. MATERIAL CHANGE, SUSPENSION, AND TERMINATION

11.1 Notice of Material Change. The Recipient shall notify the JCTDA in writing within thirty (30) days of any event that materially affects the Project's scope, budget, timeline, site control, ownership, or Match, or that suspends or halts work, including any litigation, lien, title dispute, enforcement action, or other claim affecting the Project.

11.2 JCTDA Remedies. Upon such notice, or upon otherwise learning of such an event or of a default, the JCTDA may suspend further disbursement, require a corrective action plan, modify this Agreement, or terminate the Award and require the return of any funds not yet expended on completed, Eligible work.

11.3 Events of Default. The following constitute events of default: failure to commence or complete by the applicable deadline without an approved extension; abandonment of the Project; use of funds for an ineligible use; breach of the continued-use, insurance, notice, procurement, reporting, or Match requirements; unauthorized assignment, transfer, encumbrance, demolition, or conversion of the Project; any material misrepresentation in the Application; or any other material breach of this Agreement.

11.4 Recovery. Upon default, in addition to other remedies, the JCTDA may declare the Award rescinded and recover disbursed funds, with five percent (5%) annual interest where provided in this Agreement. Remedies are cumulative. Any repayment required under this Agreement shall be due within thirty (30) days after written demand by the JCTDA, unless the JCTDA approves a different repayment schedule in writing.

ARTICLE 12. REPRESENTATIONS AND WARRANTIES OF THE RECIPIENT

The Recipient represents and warrants that:

(a) the person signing this Agreement is authorized to bind the Recipient;

(b) the Recipient's taxes and required filings are current;

(c) the Recipient is not debarred or suspended from receiving federal, state, or local public funds;

(d) the completed Project will comply with the Americans with Disabilities Act and applicable building codes, zoning requirements, and permitting regulations;

(e) the information in the Application and its attachments is accurate and complete; and

(f) the Recipient has obtained or will obtain all permits and consents necessary to execute the Project.

ARTICLE 13. LIMITATION OF LIABILITY

13.1 Limitation of Liability. The Parties acknowledge that the JCTDA's sole role in the Project is to provide financial assistance and that Jackson County, as Recipient, will own the rail bikes but will not operate them. The Recipient shall ensure that Great Smoky Mountains Railroad or another qualified operator assumes responsibility for the operation, inspection, maintenance, repair, and safety of the rail bikes and related activities pursuant to a written agreement. Neither the provision of funding by the JCTDA nor any review, approval, or inspection by the JCTDA shall constitute an assumption of responsibility for the ownership, operation, maintenance, or safety of the Project.

13.2 Indemnification. The Recipient shall require Great Smoky Mountains Railroad or any other operator, through a written agreement, to defend, indemnify, and hold harmless Jackson County, the JCTDA, and their respective officials, officers, employees, and agents from and against all claims, liabilities, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to the possession, condition, maintenance, operation, or use of the rail bikes and related activities, including claims for personal injury, death, or property damage, except to the extent caused by the negligence or willful misconduct of an indemnified party and subject to applicable law. The JCTDA shall be expressly designated as an intended third-party beneficiary entitled to enforce these obligations.

13.3 No Multi-Year Commitment. The JCTDA cannot make binding multi-year commitments. Any priority given to a multi-year project is subject to annual appropriation and the availability of TCPF funds.

13.4 Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any governmental, sovereign, public official, or other immunity or defense available to Jackson County, the JCTDA, or their respective officials, officers, employees, or agents under applicable law.

ARTICLE 14. GENERAL PROVISIONS

14.1 Governing Law and Venue. This Agreement is governed by the laws of the State of North Carolina. Venue for any dispute shall lie in Jackson County, North Carolina.

14.2 Public Records. Materials submitted with the Application and this Agreement are public records subject to N.C. Gen. Stat. Chapter 132 and applicable exemptions.

14.3 Independent Status. The Recipient is an independent contractor. Nothing in this Agreement creates a partnership, joint venture, agency, or employment relationship between the Parties.

14.4 Entire Agreement; Order of Precedence. This Agreement, together with the Application (Exhibit A), the approved budget (Exhibit B), and the TCPF Guidelines, is the entire agreement of the Parties. In the event of a conflict, this Agreement controls, then the TCPF Guidelines, then the Application.

14.5 Amendment. Any modification of the Project, Project timeline, or budget, or of this Agreement, must be in writing and approved by the JCTDA and the BOC.

14.6 Notices. Notices shall be in writing and delivered to the Parties at the addresses on the signature page, or to the e-mail contact provided in the Application.

14.7 Severability; Waiver. If any provision of this Agreement is held invalid, the remaining provisions remain in effect. Failure to enforce any provision is not a waiver of it.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

RECIPIENT:
THE COUNTY OF JACKSON

Address: _____

ATTEST:

_____ _____

Angela M. Winchester, Clerk to Board Chair

Board of Commissioners

Date:_____ Date:_____

(County Seal)

JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY:

_____ Date: _____

Name and Title

Address: _____

JACKSON COUNTY (as required):

_____ Date: _____

Name and Title

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This the _____ day of _____ 202_

_____

Finance Officer

Jackson County, North Carolina

EXHIBITS

Exhibit A. Application, including Project Readiness Certification and milestone schedule

Exhibit B. Approved Project budget and sources and uses of funds

Exhibit C. Reimbursement request form (receipts and Match documentation)

Exhibit D. Room Night Certification Form