

County of Humboldt
Headwaters Revolving Loan Fund
Master Participation Agreement

This Master Loan Participation Agreement (Agreement) , dated as of the 8th day of April 2014, by and between the County of Humboldt (Participant) and the Arcata Economic Development Corporation (Lender) (collectively, the Parties) with respect to participation in the County of Humboldt's Headwaters Fund Revolving Loan Fund Program (Loan Fund) as defined and described in The Headwaters Fund Revolving Loan Fund Lender Manual (Lender Manual), as amended from time to time, is made subject to the following terms and conditions.

RECITALS

WHEREAS, as the result of a Request for Proposals (RFP), Lender was under contract as a lender for the Participant's Loan Fund continuously from 2004 to 2013, when the contract expired; and

WHEREAS, Participant issued a new RFP for lenders, which closed January 31, 2014; and

WHEREAS, Headwaters Fund staff has evaluated the proposals received and have recommended that the Humboldt County Board of Supervisors enter into contracts with both Lender and Redwood Region Economic Development Commission (RREDC) to provide Loan Fund services to the County; and

WHEREAS, the Board of Supervisors, after receiving all the evidence and testimony during a duly noticed hearing on April 8, 2014, has decided to enter into two contracts for Loan Fund services: one with RREDC and one with Lender; and

WHEREAS, Lender desires to enter into contract with the County to provide Loan Fund services as set forth in this Agreement and in the Lender Manual, the Lender Agreement, and the Participation Certificate; and

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Definitions.** For purposes of this Agreement, the following terms will have the meaning indicated.
 - A. "Agreement" means this Master Loan Participation Agreement.
 - B. "Borrower" means the borrower indicated in the applicable Participation Certificate.

- C. "Collateral" means the realty, equipment, inventory, chattel paper and/or other property which secures the payment of the Note.
- D. "Lender" shall mean the Arcata Economic Development Corporation, the Lender that originally entered into a Loan, as such Lender is identified on the Participation Certificate relating to such Loan.
- E. "Lender Agreement" shall mean the agreement between the County of Humboldt, as Participant, and the Arcata Economic Development Corporation, as Lender, dated as indicated above, and amended from time to time.
- F. "Loan" shall mean a loan or series of loans from Lender to Borrower, which are subject to Participation.
- G. "Loan Documents" mean the Note, Security Agreement and any guarantees and other documents under which Lender has rights and which are executed and delivered in connection with the Participation Loan.
- H. "Note" means the Note, Loan Agreement or any other document which evidences Borrower's indebtedness to Lender as indicated in the applicable Participation Certificate.
- I. "Participant" shall mean the County of Humboldt, which has purchased a Participation in a Loan as identified on the Participation Certificate relating to such Loan.
- J. "Participation Loan" means the loan contemplated by a Note.
- K. "Participating Interest" means the undivided interest held in and to any of the Loans by Participant in a Participation Loan as more fully explained in Paragraph 2 and identified on the Participation Certificate relating to such Loan.
- L. "Participation Certificate" means a Participation Certificate executed by the parties with reference to this Agreement, which describes a Participation Loan, the related Participating Interest, and various other related matters.
- M. "Pro Rata Share" means at any point in time the percentage of the principal balance of the Participation Loan represented by Participant's then-outstanding investment in the Participation Loan.
- N. "Participation Rate of Interest" means the rate of interest specified in the Participation Certificate as applicable to a Participation Loan and which is contemplated to be received by Participant or Participant 's outstanding investment in the Participation Loan from time to time commencing as provided in paragraph 2. The rate of interest specified in the Participation Certificate may differ from the rate contemplated under the Note.
- O. "Lender Manual" means the Headwaters Fund Revolving Loan Fund Lender Manual, as amended from time to time.

- P. "Security Agreement" means the mortgage, deed of trust, financing statements(s), guarantee(s) and/ or other security instrument or security instruments in the broadest sense possible creating a lien on the Collateral, executed and delivered to Lender in connection with a Participation Loan, and includes the Note, to the extent such documents perform that function.

2. Participating Interest Sale and Making of Participations.

Lender agrees to sell, and Participant agrees to purchase, an ownership interest in the Loan for which a participation certificate ("Participation Certificate") is issued by the Lender and accepted by Participant. Upon receipt of any or all payment for the ownership interest from Participant, the Lender shall apply such funds on its books to the purchase of the ownership interest, and immediately upon the Lender doing so, Participant shall be deemed to have purchased the corresponding ownership interest in the amount of the funds so applied. The Lender shall promptly confirm Participant's purchase by notation thereof upon the Lender's records. The sale and purchase is subject to the return to Lender of a fully-executed copy of the Participation Certificate and will occur, as appropriate, as follows:

- A. To the extent the Loan has been previously funded and as indicated in the Participation Certification, upon payment to Lender of the amount to be paid by Participant for the Participating Interest; or
- B. To the extent the Loan has been partially funded as indicated in the Participation Certificate, upon payment to Lender of Participant's amount of advances made previously and, as to each further advance, upon the payment to Lender of the amount to be paid by Participant for all such advances; or
- C. To the extent the Loan has not been previously funded, as to each advance upon the payment to Lender of the amount to be paid by Participant as to that advance.

The Participating Interest includes the right to receive the applicable portion of all principal and interest payments and such other payments made in connection with the Participation Loan as are set forth in the related Participation Certificate.

The Participating Interest also includes an undivided ownership interest equal to the Pro Rata Share in the Note, Lender's security interest in the related Collateral, Security Agreement, other related Loan Documents and the Participation Loan. Interest will commence accruing as to Participant with respect to any portion of the Participation Loan as of Lender's receipt of the applicable portion of the Purchase Price for the Participating Interest.

3. Participation Loan Closing and Administration

- A. This Participation Loan will have been negotiated by Lender. Participant will not take part in any negotiations with Borrower which may precede consummation of any portion of the Participation Loan.
- B. Lender will administer loan repayment billing, collection, loan servicing,

amortization record and job creation records in accordance with the provisions of this Agreement and the Lender Manual, as such may be amended from time to time.

- C. Lender shall exercise the same degree of care and discretion in continuing to service the Loan and in collecting payments thereunder, as the Lender would ordinarily take in servicing the Loan and in collecting payments thereunder solely for its own account.
 - D. Lender will notify Participant in writing and consult with Participant before undertaking any of the actions listed below in this section. Lender will provide updates to Participant in writing on a monthly basis once any of the actions below are taken. If Participant owns more than 50% of a Loan, the Lender may not, without the prior written consent and concurrence of the Participant, undertake any of the actions listed below:
 - (1) Make or consent to any amendments in the terms and conditions of the Loan, or in the terms of the note or notes evidencing the Loan, or in any security agreement or instrument securing the Loan;
 - (2) Waive or release any claim against any Borrower and/or against any co-maker, guarantor or endorser under the Loan;
 - (3) Make or consent to any release, substitution or exchange of Collateral;
 - (4) Accelerate payment under the Loan and/or under any note or notes evidencing the Loan;
 - (5) Commence any type of collection proceeding against the Borrower and/or against any co-maker, guarantor, or endorser under the Loan; and/or
 - (6) Seize, sell, transfer, assign, foreclose or attempt to exercise against any collateral securing the Loan.
 - E. In no event may Lender restructure a Loan more than three (3) times. If Lender wishes to restructure a loan more than three (3) times, Lender must obtain permission from Participant and Participant and Lender must agree upon a plan to address the troubled loan.
 - F. In the event of a disagreement as to the appropriate course of action in a given instance in Section 3(0), the decision of Participant will govern if Participant owns more than 50% of a Participation Loan.
 - G. With respect to Section 3(0) above, Participant will consult or grant consent or denial within 15 working days of receipt of request from Lender. If Participant does not respond within 15 working days, approval is deemed given by Participant for the discrete action requested by Lender.
4. Obligation to Fund. As stated in Section 2, by executing this Agreement and a Participation Certificate, Participant has agreed to purchase the Participation Interest in

the Loan. To the extent the Participation Loan has been previously funded, Participant agrees to pay Lender any amount to be paid by Participant for the Participating Interest in then-available funds at the time Participant returns a fully executed copy of the Participation Certificate to Lender. To the extent the Participation Loan has not been previously funded, Participant agrees to pay any amount to be paid by Participant for the Participating Interest as to each advance by check or draft of then- available funds, or as otherwise directed by Lender at the time of funding of the advance, or at such later time as Lender directs. In the event Participant fails to fund a required advance in a timely manner, Lender may terminate its obligation to tender further investments in the Participation Loan to Participant without notice.

5. Review of Documents. By execution of a Participation Certificate, Participant acknowledges that Participant has reviewed such documents as Participant has deemed appropriate in connection with the applicable Participation Loan and has made its decision to purchase the related Participating Interest based upon such review and whatever further advice of Participant's own advisors as Participant has deemed appropriate.
6. Participating Interest Remittances. Not later than the fifteenth (15th) day of every month, Lender will remit to Participant any principal and/or interest payment in connection with this Participation Loan to which Participant is entitled hereunder. These remittances will be made in the manner specified in the applicable Participation Certificate.
7. Reports. In addition, Lender will provide standard participation accounting reports, as those reports may change from time to time, promptly following generation and comply with all reporting requirements set forth in the Lender Manual, as such may be amended from time to time.
8. Participation Loan Collections. Subject to any limitations set forth in this Agreement, the Lender Agreement and the Lender Manual, Lender has the exclusive right to, and will use reasonable efforts in attempting to, collect any and all items (including interest and principal payments and direct expense reimbursements) due or collectible in connection with the Participation Loan.
9. Default. If either Party acquires any knowledge of a default in connection with a Participation Loan or any matter which, in its judgment, such Party deems may affect the enforceability or collectability of such Participation Loan, then the Party having such knowledge will, with reasonable promptness, notify the other Party in writing, and the Parties will thereafter consult regarding the action to be taken in connection therewith pursuant to Section 3(0) of this Agreement. Except as limited by this Agreement, Lender has the responsibility to implement any actions determined to be appropriate, and in connection therewith, may contract with such agents as Lender deems appropriate. Participant shall not have any responsibility whatsoever to reimburse Lender any amounts Lender pays third parties in connection with enforcing a Participation Loan.
10. Limitation of Participant's Duties. Participant has no duties or responsibilities except those expressly set forth in this Agreement. Participant does not have any obligations to Lender relative to a Participation Loan, and nothing in this Agreement is intended to or is to be so construed as to impose upon Participant any obligations in respect to a

Participation Loan except as expressly set forth herein.

11. Lender's Duty of Care. Participant hereby acknowledges that Lender, in the performance of its duties and obligations hereunder, shall be obligated to exercise the degree of ordinary care as to a Participation Loan which Lender exercises in the conduct and management of loans similar to the Participation Loan.
12. Lender Representations and Warranties.
 - A. Lender hereby represents and warrants to Participant that at the time Lender executes the Participation Certificate:
 - (1) The execution, delivery and performance of this Agreement and the Participation Certificate have been duly authorized by all requisite corporate or other actions of Lender;
 - (2) Lender is, or upon the satisfaction of certain conditions contained in the loan commitment will be, the owner of the applicable Participation Loan and has the right to sell to Participant the applicable Participating Interest;
 - (3) Lender has in its possession (or will have in its possession prior to funding) fully executed counterparts of the applicable Loan Documents;
 - (4) Lender has no actual knowledge of any fact which in Lender's opinion would materially adversely affect the enforceability or collectability of the Participation Loan which it has not disclosed in writing to Participant;
 - (5) Lender has provided Participant with copies of all current credit information Lender has as to the parties obligated in connection with the Participation Loan, and any information provided is, to the best of Lender's knowledge, true, complete and accurate as to the subject matter thereof, except as otherwise noted by Lender;
 - (6) Lender will promptly provide the Participant upon request with copies of all relevant credit and other information in the possession of the Lender that are used by the Lender as the basis of and for its decision to make the Loan to the Borrower;
 - (7) Lender will additionally provide the Participant with copies of the Loan Documents that are executed by the Borrower as well as by other co-makers, guarantors and endorsers under the Loan;
 - (8) The Borrower, together with all co-makers, guarantors and endorsers under the Loan, has consented to the sale of the Loan;
 - (9) The Loan satisfies all guidelines and requirements set forth in the Lender Manual in effect on the date the Loan is funded by Lender; and
 - (10) Where the Loan is presently in existence:
 - (i) There are no events of default under the Loan and/or under the

- Loan documents;
 - (ii) The Loan has not been classified as delinquent on the books of the Lender;
 - (iii) The Loan is presently on accrual status; and
 - (iv) The terms of the Loan have not previously been renegotiated as a result of a prior loan default or deterioration in the Borrower's financial condition.
- B. The Lender makes no representations or warranties, whether express or implied, to the Participant, as to the collectability of the Loan, the continued solvency of the Borrower, or as to the existence, sufficiency or value of the collateral securing the Loan in the event of a Loan default.
- C. The Lender makes no representations or warranties, whether expressed or implied, to the Participant as to the validity and enforceability of the Loan documents, other than that:
 - (1) The Loan documents were validly executed by the Borrower, as well as, to the degree applicable, by the co-makers, guarantors and/or endorsers under the Loan;
 - (2) To the extent required under applicable law, the security agreements under the Loan were (and/or will be) properly recorded and/or filed in order to result in the valid perfection of a security interest in the collateral subject to such agreements; and
 - (3) To the extent required under applicable law, the Lender has taken, and/or will take, and/or will continue to take whatever additional actions may be necessary and proper to validly perfect and maintain a security interest on the collateral securing the Loan.

13. Additional Obligations of Lender

- A. The Lender shall promptly notify the Participant in writing within ten (10) business days should the Lender learn or have any knowledge of the following:
 - (1) Any change in the financial condition of the Borrower, or of any co-maker, guarantor or endorser, under the Loan, which may have a material adverse effect upon continuation of payments under the Loan or the Loan's ultimate collectability;
 - (2) Any material change in the value of collateral securing the Loan;
 - (3) Any change in lien status as affecting the secured collateral;
 - (4) Any request by the Borrower, or by any co-maker, guarantor or endorser under the Loan for any change in the terms and conditions of the Loan, or in the terms of any note or notes evidencing the Loan or in any security agreement or instrument securing the Loan;
 - (5) Any request by the Borrower, or by any co-maker guarantor or surety under the Loan for the release, substitution or exchange of any collateral securing the Loan;
 - (6) Any request of the Borrower, or by any co-maker, guarantor or endorser under the Loan for the release of any personal obligations of any such party under the Loan;

- (7) Any request to the Lender for any change in the terms and conditions of the Loan, or in the terms of any note or notes evidencing the Loan, or in any security agreement or instrument securing the Loan;
- (8) Any request by the Lender for an increase in and/or substitution or exchange of collateral securing the Loan;
- (9) Any failure by the Borrower to pay principal and/or interest payments under the Loan when due; and/or
- (10) The occurrence of any other event, which with the passage of time and/or failure to cure, would constitute an event of default under the Loan, or under any note or notes evidencing the Loan, or under any Loan Document and/or security agreement instrument securing the Loan.

B. The Lender agrees to provide the Participant, when requested, with complete and current credit related and other information concerning the Borrower, the Loan and the collateral securing the Loan, including, without limitation, copies of:

- (1) Current financial statements of the Borrower, as well as of all co-makers, guarantors and sureties under the Loan;
- (2) Any officer's certificates, financial and other statements and information submitted by the Borrower to the Lender in connection with the Loan;
- (3) The records of the Lender reflecting the amounts and dates of receipt of principal and interest payments under the Loan;
- (4) Any information and/or documents in possession of the Lender applicable to the existence, value and lien status of collateral securing the Loan;
- (5) Any additional factual information and/or documents in possession of the Lender bearing upon the continuing creditworthiness of the Borrower.
- (6) All information, documents and reports provided for and required to be supplied to Participant by Lender pursuant to the Lender Manual, as amended from time to time.

14. Participant Warranties. Participant hereby represents and warrants to Lender that at the time Participant executes a Participation Certificate:

A. The execution, delivery and performance of this Agreement and the Participation Certificate have been duly authorized by all requisite action of Participant; and

B. Participant has the financial ability and legal authority to fund the Participating Interest. Participant will have the projected principal of the Participation Loan in accordance with the terms of this Agreement.

15. Insolvency. In the event Lender becomes insolvent or the subject of a bankruptcy proceeding, commits an act of bankruptcy, makes an assignment for the benefit of creditors, is subjected to the appointment by any public authority of any person to take charge of Lender or Lender's assets, has Lender's interest in a Participation Loan involuntarily sold, or in the sole opinion of Participant, is in breach of Lender's obligation hereunder or any provision in the Lender Manual, as amended from time to time, Participant will have the option on notice to Lender to assume all of the powers granted to Lender in this Agreement and to designate any person or firm, in its discretion, to exercise such powers. In such event, the Loan Documents and records relative to each Participation Loan will be delivered promptly to Participant or its designee, as the case may be, together with such other documents as Participant may reasonably request. In

18. No Brokers. Lender and Participant each warrant to the other that they have not had, and will have no, dealings with any agent or broker in connection with the negotiation or performance of this Agreement and hereby agree to indemnify and hold the other harmless from any cost, expense, or liability for any compensation, commission or charges claimed by any agent or broker with respect to this Agreement or the sale of a Participating Interest pursuant to the provisions hereof.
19. Securities Laws. Participant releases Lender to the maximum extent permissible under law from any liability under state or federal securities laws arising from the failure by Lender to register a Participating Interest. Participant and Lender acknowledge that it is their respective analysis that a Participating Interest is either not a security under federal or state law or, if a security, is exempt from registration or qualification.
20. Term and Continuing Obligations of the Parties. The Parties obligations under this Agreement shall commence upon the date first written above and shall continue until June 30, 2019 except that the Parties specifically agree that the Participant has no obligation to utilize Lender's services to purchase any participating interests in loans. The obligations to service, monitor, and report to the Participant pursuant to the terms of this Agreement, the Lender Agreement, Lender Manual or any Participation Certificate shall survive the expiration or termination of this Agreement and shall continue until Participant's participating interest has been repaid in full.
21. General Provisions.
 - A. Each party hereto will pay its own attorney fees incurred in connection with the negotiation and execution of this Agreement.
 - B. Notwithstanding any other provision of law, if any lawsuit or proceeding is brought by either party hereto to enforce the terms of this Agreement, each party in such proceeding hereby agrees to pay its own court costs and reasonable attorney fees incurred in bringing and defending such action.
 - C. Venue for any action relating to this Agreement will be in an appropriate Court in Humboldt County, California.
 - D. This Agreement and the terms and provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
 - E. This Agreement, the Lender Manual, the Lender Agreement, and the Participation Certificate, together constitute the entire agreement between the Parties hereto with respect to its subject matter, supersedes all prior and contemporaneous agreements between the parties with respect to the subject matter and may not be modified, amended or otherwise changed in any manner except by a writing executed by the party to be charged. In the event of any conflict in the terms of the Lender Manual, Lender Agreement, the Participation Certificate, and this Agreement, the terms of this Agreement shall control.
 - F. If any term or provision of this Agreement or the application thereof is held invalid or unenforceable as to any party, the balance of the Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

- G. It is understood that any and all documents, information, and reports prepared by and/or submitted by Lender shall become the property of the Participant. Lender may retain copies for its own records. In the event of termination of this Agreement, for any reason whatsoever, Lender shall promptly turn over all information, writings and documents to the Participant without exception or reservation.
- H. The waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other provision of this Agreement.
- I. For the purposes of this Agreement, time is of the essence.
- J. It is agreed that the laws of the State of California will be applicable to the interpretation of this Agreement.
- K. Paragraph headings in this Agreement are for convenience only and not an aid in interpretation.
- L. This Agreement may be assigned by Participant. This Agreement may not be assigned by the Lender without the written consent of the Participant. In the event Lender voluntarily assigns its obligations under this Agreement, Lender hereby agrees that assignee will take over all of Lender's obligations and duties arising from this Agreement, without exception.
- M. Lender shall comply with Title VII of the Civil Rights Act of 1964 and no person shall, on the grounds of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), military service, or any other classification protected by federal, state, or local laws and ordinances be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
- N. Lender certifies by its signature to this Agreement that Lender or Lender's agents, representatives, employees, contactors, and subcontractors are not a Nuclear Weapons Contactor, in that Lender is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Lender agrees to notify Participant immediately if Lender or Lender's agents, representatives, employees, contractors, and subcontractors become a nuclear weapons contractor, as defined above. Participant may immediately terminate this Agreement if it determines that the foregoing certification is false or if Lender or Lender's agents, representatives, employees, contractors, and subcontractors becomes a nuclear weapons contractor.
- O. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in business and real estate matters. In addition, each party has been represented by experienced and knowledgeable

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