

**First Amendment to the County of Humboldt  
Headwaters Revolving Loan Fund  
Master Participation Agreement**

This First Amendment to the Master Loan Participation Agreement (the Agreement) effective April 8, 2014, by and between the County of Humboldt (Participant) and the Arcata Economic Development Commission (Lender) (the Parties), is effective on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**RECITALS**

- A. WHEREAS, the Parties entered into the Agreement to establish terms and conditions for Lender's participation in the Participant'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;
- B. WHEREAS, the COVID-19 pandemic caused the Participant to issue a Shelter in Place order on March 20, 2020, and declare a Local Emergency on March 30, 2020; and
- C. WHEREAS, as a result of the pandemic, local businesses are suffering severe economic losses; and
- D. WHEREAS, the Parties now desire to implement a Business Relief Emergency Loan Fund (BRELf) to provide loans to qualifying businesses, under terms varying from those governing Loan Fund loans;
- E. WHEREAS, certain terms of the agreement must be amended by this First Amendment to accommodate the conditions necessitating the BRELf.

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**

The Agreement shall be amended as follows, with changes in bold.

1. Section 3, Participation Loan Closing and Administration, is hereby revised to read:
  - 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 **67%** of a Loan, the Lender may not, without the prior written consent and concurrence of the Participant, undertake any of the actions listed below, **except when making loans fully guaranteed (100%) by the US Small Business Administration (SBA) in the Paycheck Protection Program (PPP):**
  - 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 County and County 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 each instance in Section 3(D), the decision of Participant

will govern if Participant owns more than 50% of a Participation Loan.

- G. With respect to Section 3(D) *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.

2. Section 5, Review of Documents, shall be revised as follows:

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. **Due to the Covid-19 declared disaster, Participant is allowing the Lender to fund loans made under the BRELF without Participant having first reviewed and approved the Participation Certificate. Participation Certificates will be submitted to Participant within 30 days of loan closing. Participant funds may be provided to Lender in advance to afford expeditious funding of loans under the BRELF.**

2. Section 12, Lender Representations and Warranties, shall be revised as follows:

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, **or will within 30 days of closing the loan**, provide 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.
  - (v) **Items i-iv above do not apply to loans or loan adjustments made under the BRELF.**

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.
3. All remaining provisions of the Agreement remain in effect.