

ATTACHMENT 2  
LOAN SERVICE AGREEMENT

**LOAN SERVICE AGREEMENT BETWEEN  
THE COUNTY OF HUMBOLDT, HEADWATERS FUND AND  
REDWOOD REGION ECONOMIC DEVELOPMENT COMMISSION**

This agreement made and entered into this 24th day of January, 2017 by and between the County of Humboldt, Headwaters Fund hereinafter referred to as "COUNTY," and Redwood Region Economic Development Commission, a joint powers agency (hereinafter referred to as "RREDC") (collectively referred to as the "Parties").

WHEREAS, on November 15, 2016 the Headwaters Fund Board approved and recommended that COUNTY authorize a non-revolving line of credit in an amount not exceeding Seven Hundred Thousand Dollars (\$700,000) from the Headwaters Fund Community Investment Fund to the Redwood Coast Energy Authority (RCEA) for the purpose of working capital during start-up of the Community Choice Energy program; and,

WHEREAS, on 24 day of January, 2017, the Humboldt County Board of Supervisors approved a non-revolving line of credit of Seven Hundred Thousand Dollars (\$700,000) from the Headwaters Fund Community Investment Fund to RCEA through RREDC; and

WHEREAS, the Commercial Loan Agreement, Commercial Security Agreement, and Commercial Promissory Note (collectively, the "Loan Documents") have been executed on Jan. 24, 2017, which are attached hereto as Exhibits A, B, and C, respectively, and by this reference incorporated herein full; and

WHEREAS, the County wishes to hire an independent contractor to provide administrative services related to this loan, including but not limited to the retrieval of financial documents; and,

WHEREAS, RREDC is an agency with proven competence and experience in administering loan funds on behalf of the Headwaters Fund for many years;

WHEREAS, COUNTY wishes to hire RREDC to perform these services for the benefit of COUNTY;

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

**1. LINE OF CREDIT TERMS**

- A. COUNTY agrees to make available to RREDC from the Headwaters Fund Community Investment Fund an amount not to exceed Seven Hundred Thousand Dollars (\$700,000) to be used for working capital during start-up of Community Choice Energy program, in accordance with the Loan Documents. RREDC shall not and may not make a loan commitment to any other project or prospective borrower with these funds.
- B. RREDC has agreed to administer and service the Loan to RCEA, in which COUNTY is the lender with an undivided interest in the principal amount outstanding and interest rate as follows:

Note Date	Note Number	Principal Amt. Authorized	COUNTY Investment
		Non-revolving line of credit up to \$700,000	\$700,000

Note Due Date	COUNTY Interest Rate	Date of First RCEA Payment	Monthly Payment from RCEA
	5.00% fixed		

- C. The term of the Loan is 72 months. The Loan Documents authorize RCEA to draw on the Non-Revolving Line of Credit for a period of 12 months from the date of contract execution. RCEA will pay interest only payments for 12 months. Following the first 12 months the draw period will close and the borrowed amount will become a fully amortized loan with principal and interest payments for 60 months.
- D. RREDC agrees that upon the date of the investment payment by COUNTY, COUNTY will be the sole owner of the Promissory Note (Exhibit C) and will be entitled, under the circumstances and to the extent provided herein, to enforce and collect the Promissory Note.

## 2. CONTRACT COMMENCEMENT

This agreement is effective upon signing by all of the parties.

## 3. WORK TO BE PERFORMED

### A. RREDC shall perform the following services:

- 1) Ensure that all Loan Documents have been properly executed, filed, and recorded in compliance with all state, federal, and local laws and regulations;
- 2) Ensure that COUNTY's interests in the Loan are adequately represented and protected throughout the term and life of the Loan;
- 3) RREDC shall perform general administration tasks related to the Loan Documents as follows:
  - a. Legal record keeping including but not limited to Application, Loan Agreement, financial statements from RCEA.
    - i. RREDC agrees to maintain and preserve said records for at least five (5) years from the date of the final loan payment by RCEA.
  - b. Loan Servicing
    - i. RREDC shall timely collect payments by RCEA as set forth in the Loan Documents; and
    - ii. Send out Notice of Payment Due at least fifteen (15) days prior to due date; and

- iii. Send out Past Due Notice for all loans payments not received within fifteen (15) days of payment due date.
  - iv. Maintain accurate books and records that include, but are not limited to, posting payments by fund type and account number/name; and
  - v. Collect payments on a monthly basis and apply them on the day of receipt as follows: all payments and interest received from RCEA to RREDC shall be applied first to interest which is due on the Promissory Note at the interest rate specified in the Loan Documents, and RREDC shall remit to COUNTY, from the interest collected, an amount of interest computed at COUNTY's interest rate on the unpaid balance of COUNTY's investment; and
  - vi. Document all verbal and written communication about past due payments.
- c. In the event of a default by RCEA under the Loan Documents, RREDC shall initiate default collection procedures and all necessary recovery procedures as provided in the Loan Documents. These procedures include sending to RCEA 30, 60 and 90-day delinquency notices and the preparation of a Notice of Default to be executed by the RREDC. Upon notice of default and after the 90 day delinquency notice, all materials in RREDC's possession related to the Loan Documents and this agreement shall be made available by RREDC to the COUNTY. RREDC may upon the express written approval of COUNTY, initiate litigation to collect on the Loan. Under no circumstances shall RREDC initiate litigation to collect the loan without the express written approval of County.
- d. Monitoring and Reporting
- i. Provide quarterly statement to COUNTY of loan balance, all activity, and other information that may be required by COUNTY.
  - ii. Confirm payments of taxes and insurance by borrowers on all loans secured by real property;
  - iii. Prepare and provide RCEA with information necessary for tax reporting (interest paid during year) as required by state and federal law.
  - iv. Upon COUNTY's request, provide sufficient documentation reflecting RREDC's activities related to this Agreement and the servicing of the Loan in order to ensure compliance with the terms and conditions of this Agreement.

- B. RREDC shall request written approval from the County if RREDC proposes to subcontract any service Contractor is obligated to perform under this Agreement. The County, at the County's sole discretion, shall have the right to approve or disapprove of any such proposed subcontract.

- C. RREDC has the right to, and will use reasonable efforts in attempting to collect any and all items (including interest and principal payments) due or collectible in connection with the Loan. However, in the event RREDC makes any changes to its collection and repayment procedures which may substantially alter, change, amend, modify or otherwise affect the COUNTY's interest in the repayment of the Loan, RREDC shall notify the COUNTY at least thirty (30) days prior to effecting said changes. In the event COUNTY objects to the proposed changes in collection and repayment procedures, the Parties agree to confer in good faith to reach a mutually agreeable resolution. If the Parties are unable to reach a mutually agreeable resolution, COUNTY may terminate the Agreement for cause.
- D. RREDC shall promptly notify COUNTY in writing should RREDC learn or have any knowledge of the following:
- 1) Any change in the financial condition of RCEA, 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 RCEA, 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 RCEA, 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 RCEA, 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 RREDC or COUNTY 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 RCEA for an increase in and/or substitution or exchange of collateral securing the Loan;
  - 9) Any failure by RCEA to pay principal and/or interest payments under the Loan when due;
  - 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.

COUNTY must receive notification within at least 30 days following RREDC's knowledge of the aforementioned events.

- E. RREDC agrees to regularly provide COUNTY with complete and current credit-related and other information concerning RCEA, the Loan and the collateral securing the Loan, including, without limitation, copies of:
  - 1) Current financial statements of RCEA, 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 RCEA to RREDC in connection with the Loan;
  - 3) Any information and/or documents in possession of RREDC applicable to the existence, value and lien status of collateral securing the Loan; and
  - 4) Any additional factual information and/or documents in possession of RREDC bearing upon the continuing creditworthiness of RCEA.

4. RREDC'S REPRESENTATIONS AND WARRANTIES

- A. RREDC warrants that its directors, officers and employees possess the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. RREDC agrees that its directors, officers and employees will perform their duties under this Agreement with such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.
- B. RREDC warrants that it has exercised its due diligence in conducting a detailed analysis of the loan application from RCEA and has completed the loan underwriting process, consistent with the standards and skill exercised by professionals engaged in the same industry.
- C. RREDC shall service and manage the Loan in accordance with its usual practices and will exercise the same degree of care to protect COUNTY's interest as it does its own.
- D. RREDC shall maintain the appropriate licenses or certificates necessary to fulfill its contractual obligations to the COUNTY throughout the life of this Agreement.
- E. RREDC warrants that neither it, nor its directors, officers nor employees, presently have an interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of services under this Agreement.
- F. There is currently no action, suit or proceeding before any court or any governmental body or authority pending or threatened against RREDC.
- G. RREDC presently has available the necessary funds to participate in the Loan, and as of the date of execution, RREDC has acquired no knowledge of any fact which would materially adversely affect its ability to participate in the Loan or conflict with its ability to render performance of the obligations under this service Agreement.
- H. RREDC shall use all monies received from COUNTY solely in accordance with this Agreement and the Loan Documents.

- I. RREDC shall not commingle monies designated or owed to COUNTY with any other monies of RREDC nor shall it be commingled with monies of any other corporation, firm, association, entity, or individual. Further, RREDC shall establish and maintain for the benefit of COUNTY a separate ledger and segregated account.

5. COMPENSATION

- A. The County shall pay RREDC Zero Dollars (\$0.00) for the servicing of this Loan and fulfilling its obligations under this Agreement.

6. TERMINATION

- A. If, in the opinion of COUNTY, RREDC fails to adequately perform the services required hereunder, or otherwise fails to comply with the terms of this Agreement or the Loan Documents, COUNTY may terminate this Agreement by giving seven (7) days written notice to RREDC. In lieu of termination, COUNTY, at its sole option, may choose to notify RREDC in writing and ask that RREDC cure the violation within a specified time.
- B. In the event COUNTY fails to compensate RREDC as set forth in Section V, RREDC may terminate this Agreement upon thirty (30) days written notice. In lieu of termination, RREDC, at its sole option, may choose to notify COUNTY in writing and ask that COUNTY cure the violation within a specified time.
- C. Either Party may terminate this Agreement for convenience by giving thirty (30) days written notice to the other Party. Such notice shall state the effective date of termination.
- D. In the event either Party terminates this Agreement, the obligation of RREDC to surrender all materials pertaining to this Agreement under Section III shall become immediately effective and shall remain enforceable by COUNTY.

7. TERM

This agreement shall be in effect from the date it is signed by the parties until the funds loaned under the Loan Documents are repaid in full unless sooner terminated or extended according to the provisions of this agreement.

8. NOTICE

Notices shall be given to County at the following address:

Executive Director  
Headwaters Fund  
County of Humboldt  
520 "E" Street, Eureka, CA 95501

Notices shall be given to RREDC at the following address:

Executive Director

9. CERTIFICATIONS

A. RREDC by its signature below certifies the following:

- 1) RREDC is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers, compensation or to undertake self-insurance in accordance with the provisions of that Code, and RREDC will comply with such provisions before commencing the performance of the work of this contract.
- 2) It is further agreed that, except as may be in Section 1815 of the California Labor Code, the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the subcontractor shall forfeit, as a penalty, \$25.00 for each worker employed or permitted to labor more than eight hours in any calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.
- 3) During the performance of this contract, RREDC and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race religion, color, national origin, ancestry, physical handicap (including HIV and AIDS), mental disability, medical condition (cancer), marital status, age (over 40), and shall not deny family care leave. The evaluation and treatment of employees and applicants for employment are free of such discrimination. RREDC and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulation of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code will be complied with fully, RREDC and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. RREDC will include nondiscrimination and compliance provision of this State Nondiscrimination Clause in all subcontractors to perform work under this contract.
- 4) RREDC certifies by its signature below that RREDC is not a Nuclear Weapons Contractor, in that the RREDC does not knowingly or intentionally engage in the research, development, production, or testing of nuclear warheads, nuclear weapon systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. RREDC agrees to notify County immediately if it becomes a Nuclear Weapons Contractor, as defined above. County may immediately terminate this agreement if it determines that the foregoing certification is false or if RREDC becomes a Nuclear Weapons Contractor.
- 5) RREDC will make available to the authorized representative of the State, Federal government or County all records, accounts, documentation and other materials



deemed relevant to the work by the State or County, upon reasonable prior notice, for the purpose of examination or audit.

- 6) RREDC will comply with the Americans with Disability Act (ADA).
- 7) RREDC certifies under penalty of perjury under law of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990, and will provide a drug free workplace.
- 8) Failure to comply with these requirements may result in suspension of payment under this Agreement and/or termination thereof.

#### 10. HOLD HARMLESS/INDEMNIFICATION AGREEMENT

- A. RREDC agrees to indemnify, defend and hold harmless County, its Board of Supervisors, its officers, agents, employees, and volunteers from any and all claims and losses, whatsoever, accruing or resulting from any and all contractors, subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged resulting from any wrongful acts, errors and omissions, or negligence of RREDC, its agents and employees, pertaining to the performance of this agreement.
- B. Acceptance of insurance required by this Agreement does not relieve RREDC from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by RREDC's operations regardless if any insurance is applicable or not.

#### 11. INSURANCE

- A. This Agreement shall not be executed by COUNTY and RREDC is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.
- B. General Insurance Requirements. Without limiting RREDC'S indemnification obligations provided for herein, RREDC shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of RREDC, its agents, officers, directors employees, licensees, invitees, assignees or subcontractors:
  - 1) Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000) per occurrence for any one incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.

- 2) Workers Compensation and Employers Liability Insurance providing workers' compensation benefits as required by the Labor Code of the State of California. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its Board of Supervisors, officers, agents, employees, and volunteers. In all cases, the above insurance shall include Employers Liability coverage with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury and disease.
- 3) Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the address set forth below in accordance with the notice provisions described herein:

County of Humboldt  
Attn: Risk Management  
825 5<sup>th</sup> Street  
Eureka, CA 95501

C. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

- 1) The Comprehensive General Liability Policy shall provide that the COUNTY, its Board of Supervisors, officers, agents, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of RREDC. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its Board of Supervisors, officers, agents, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:
  - a. Includes contractual liability.
  - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
  - c. Is primary insurance as regards to County of Humboldt.
  - d. Does not contain a pro-rata, excess only, and/or escape clause.
  - e. Contains a cross liability, severability of interest or separation of insureds clause.
- 2) The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the notice provisions set forth herein. It is further understood that RREDC shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.
- 3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

- 4) For claims related to this project, the RREDC'S insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to RREDC'S insurance and will not be called upon to contribute with it.
- 5) Any failure to comply with reporting or other provisions of the Parties shall not affect coverage provided to COUNTY, its Board of Supervisors, officers, agents, employees, and volunteers.
- 6) RREDC shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the COUNTY's Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to and approved by COUNTY. If RREDC does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and RREDC agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to RREDC under this Agreement.
- 7) COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered and RREDC shall be required to purchase additional coverage to meet the aggregate limits set forth above.

## 12. WAIVER

No waiver of any breach of this contract shall be held to be a waiver of any prior or subsequent breach. The failure of the COUNTY to enforce at any time the provisions of this Agreement or to require at any time performance by RREDC of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the COUNTY to enforce these provisions. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of RREDC. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or default.

## 13. AMENDMENT

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or Agreement not incorporated herein, shall be binding on any of the Parties hereto.

## 14. RELATIONSHIP OF PARTIES

RREDC shall perform all work and services as described herein as an independent contractor. No person performing any of the work or services described herein shall be considered an officer, servant or employee of the COUNTY nor shall any such person be entitled to any benefits available or granted to employees of the COUNTY. RREDC shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors.

15. CONFIDENTIALITY

Each Party agrees that neither it nor any of its agents or employees will knowingly divulge or disclose any confidential financial information of the other or of RCEA, except to the extent that the disclosure is deemed to be necessary to perform the services required by this Agreement or is required by applicable law. Each Party agrees to comply with all laws regarding confidentiality and shall advise and require all subcontractors to comply with the laws of confidentiality.

16. SEVERABILITY

In the event that any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void by any court of law, then each Party shall be relieved of any obligations arising in such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

17. ASSIGNMENT

RREDC shall not delegate its duties or assign its rights hereunder, or both, either in whole or in part, without prior written consent of COUNTY. Any assignment by RREDC in violation of this provision shall be void, and shall be cause for immediate termination of the Agreement. This provision shall not be applicable to service agreements or contracts or similar arrangements usually or customarily entered into by RREDC to obtain or arrange for supplies, technical support or professional services.

18. AGREEMENT SHALL BIND SUCCESSORS

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the Parties and to each of their heirs, executors, administrators, successors and assigns.

19. MEDIA RELEASE

All press releases and informational material related to this Agreement shall receive approval from COUNTY prior to being released to the media (television, radio, newspapers, Internet). In addition, RREDC shall inform COUNTY of requests for interviews by media related to this Agreement prior to such interviews taking place. COUNTY reserves the right to have a representative present at such interviews. All notices required by this provision shall be given to COUNTY pursuant to the notice provisions set forth herein.

20. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

21. INDEPENDENT CONSTRUCTION

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

22. FORCE MAJEURE

Neither RREDC nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include but not limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing.

23. NO THIRD PARTY BENEFICIARY

Nothing contained in this Agreement is intended to confer any benefit or to create any claim in favor of any person or entity who is not a party to this Agreement.

24. TIME

For purposes of this Agreement, time is of the essence.

25. LITIGATION; JURISDICTION AND VENUE

- A. RREDC shall notify COUNTY immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the COUNTY.
- B. This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt, unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

26. ATTORNEYS FEES

- 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.

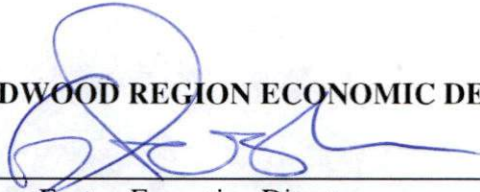
27. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the Parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties hereto.

28. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the Parties to this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized.

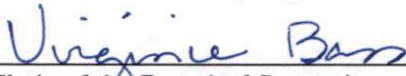
**REDWOOD REGION ECONOMIC DEVELOPMENT COMMISSION:**



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Gregg Foster, Executive Director


**COUNTY OF HUMBOLDT:**



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Chair of the Board of Supervisors

**APPROVED FOR INSURANCE REQUIREMENTS:**



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Kelly Vizgaudis  
Risk Management

## MEMBER'S CERTIFICATE OF COVERAGE

Issue Date  
7/1/2016

**Provider** Special District Risk Management Authority  
1112 'I' Street, Suite 300  
Sacramento, California 95814  
800.537.7790 www.sdrma.org



**Member** Redwood Coast Energy Authority  
633 3rd Street  
Eureka California, 95501

Member Number: 7260

This is to certify that coverages listed below have been issued to the Member named above for the period indicated. This certificate is not an insurance policy or an agreement of coverage and does not amend, extend or alter the coverage afforded by the agreements listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage described herein is subject to all the terms, exclusions, and conditions of the specific coverage document. This certificate of coverage evidences the limits of liability in effect at the inception of the agreements shown; limits shown may have been reduced by paid claims. This certificate is issued as a matter of information only and confers no rights upon the certificate holder.

Type of Coverage	Policy Number	Effective Date	Expiration Date	Limits
<b>Property</b>	See Coverage Docs	7/1/2016	7/1/2017	Per Occurrence
Property				\$ 1,000,000,000
Boiler & Machinery				\$ 100,000,000
Pollution	PPC-SDRMA-201617			\$ 1,000,000
Cyber	See Coverage Docs			Limits on File
				Replacement cost for Scheduled Property
<b>Mobile Equipment</b>	LCA-SDRMA-201617	7/1/2016	7/1/2017	Per Occurrence
Mobile Equipment				\$ 1,000,000,000
				Replacement cost for Scheduled Property
<b>General Liability</b>	LCA-SDRMA-201617	7/1/2016	7/1/2017	Per Occurrence
Bodily Injury				\$ 2,500,000
Property Damage				\$ 2,500,000
Public Officials Personal				\$ 500,000
Employment Benefits				\$ 2,500,000
Employee/Public Officials E & O				\$ 2,500,000
Employment Practices Liability				\$ 2,500,000
Employee/Public Officials Dishonesty	EDC-SDRMA-201617			\$ 1,000,000
<b>Auto Liability</b>	LCA-SDRMA-201617	7/1/2016	7/1/2017	Per Occurrence
Auto Bodily Injury				\$ 2,500,000
Auto Property Damage				\$ 2,500,000
Uninsured Motorist	UMI-SDRMA-201617			Limits on File
<b>Workers' Compensation</b>	WCP-SDRMA-201617	7/1/2016	7/1/2017	Per Occurrence
Employers Liability				\$ 5,000,000
Workers' Compensation				Statutory

Description: All listed coverage is in effect only for the time period specified.

  
 Gregory S. Hall - Chief Executive Officer

ATTACHMENT 3  
COMMERCIAL PROMISSORY NOTE  
AND  
COMMERCIAL LOAN AGREEMENT



## PROMISSORY NOTE

\$700,000.

Eureka, California  
\_\_\_\_\_, 2017

**FOR VALUE RECEIVED**, the Redwood Coast Energy Authority ("**Borrower**"), promises to pay to Headwaters Fund, a public fund for the advancement of economic and community development, administered by the County of Humboldt (the "**Fund**"), in lawful money of the United States of America, the principal sum of Seven Hundred Thousand Dollars (\$700,000) or so much thereof as may be advanced by Fund pursuant to the Loan Agreement referred to below, in accordance with the terms and conditions described herein.

This Promissory Note (this "**Note**") has been executed and delivered pursuant to and in accordance with the terms and conditions of a Loan Agreement dated as of the date hereof by and between Borrower and Fund (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

### 1. PAYMENTS

1.1 INTEREST RATE; PAYMENT DATES; MATURITY DATE. For the purposes of Loan repayment, the Borrower pledges the net revenue from implementation of the Community Choice Energy program that will be collected by the Borrower.

Commencing on the date of initial disbursement of Loan Proceeds and continuing through the date that all indebtedness and other amounts payable under the Loan Documents are paid in full, interest shall accrue on the outstanding principal balance of the Loan at the following rate (the "**Interest Rate**"): during the 72-month period commencing on the date of this Note, the Interest Rate shall be equal to five percent (5%) fixed rate.

The entire outstanding principal balance of the Loan together with interest accrued thereon and any other sums payable under this Note and the Loan Agreement shall be payable in full 72 months following the date of this Note (the "**Maturity Date**").

Borrower shall pay interest only payments for the initial 12 months commencing on the date of this Note. The initial 12 months shall be the draw period after which the draw period will close. Principal and interest payments for 60 months will follow the draw period. The Borrower shall have the right to repay the Loan in whole or in part at any time without penalty or premium.

1.2 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. In no event shall any amount due

under this Note become subject to any rights of offset, deduction or counterclaim on the part of Borrower.

1.3 MANNER OF PAYMENT. All payments on this Note shall be made to the County of Humboldt Treasurer, crediting the Headwaters Community Investment Fund (#3846). Borrower will mail or deliver payment to the Humboldt County Treasurer, 825 5<sup>th</sup> Street, Room 125, Eureka, California, 95501-1100. The Fund may designate, in writing, a different Manner of Payment at any time. Borrower shall mail or deliver copy of payment to Headwaters Fund Director and Loan Servicer Director.

1.4 ORIGINATION FEE AND CLOSING COSTS. Borrower shall pay an origination fee equal to one percent (1%) of the Loan amount to the Loan Servicer and shall be responsible for any closing and escrow charges incurred in connection with the making of the Loan and the disbursement of Loan Proceeds. The origination fee and the closing and escrow charges, if applicable, are in addition to the total loan amount of \$700,000 and will be payable out of Loan Proceeds upon initial disbursement thereof.

1.5 Borrower shall report Community Choice Energy program status updates to the Headwaters Fund Board on a quarterly basis for the first year and annually thereafter.

## 2. DEFAULTS

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for ten (10) days after Fund notifies Borrower thereof in writing.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of such entity's assets, (iii) orders the liquidation of Borrower or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

(d) If any representation or warranty contained in this Promissory Note or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.

(e) If Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 2) contained in this Promissory Note or the Loan Agreement and the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Fund shall have given written notice of the default to Borrower, provided that in the case of a nonmonetary default that is not susceptible of cure within thirty (30) days, an Event of Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default to completion with due diligence and in good faith, but in no event longer than 120 days from the receipt of notice of default.

(f) If an Event of Default shall have been declared under any other Loan Document, subject to the expiration of any applicable cure period set forth in such documents.

2.2 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default and the expiration of any applicable cure period, Fund shall have all remedies available to it under law or equity, including, but not limited to the following, and Fund may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of the Loan Documents;
- (c) Pursue any and all other remedies available under law to enforce the terms of the Loan Documents and Fund's rights there under.

2.3 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. The Fund may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

2.4 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again

be the rate specified in Section 1.1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Fund from exercising any of its other rights or remedies.

### 3. MISCELLANEOUS

3.1 WAIVER. The rights and remedies of Fund under this Note shall be cumulative and not alternative. No waiver by Fund of any right or remedy under this Note shall be effective unless in writing signed by Fund. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Fund will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of Fund arising out of this Note can be discharged by Fund, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Fund; (b) no waiver that may be given by Fund will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Fund to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 7.1 of the Loan Agreement.

3.3 SEVERABILITY. If any term, provision, covenant or condition of this Note is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

3.4 GOVERNING LAW; VENUE. This Note shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Note shall be litigated in the State of California and venue shall lie in the County of Humboldt, unless transferred by court order pursuant to California Code of Civil Procedure (CCP) sections 394 and 395.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Fund and its successors and assigns.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. The language of this Note shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Fund under this Note is solely that of borrower and lender. Nothing in this Note and/or the loan evidenced by this Note shall be construed as creating a partnership or joint venture between Fund and Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 NONRECOURSE. No member, officer, agent or employee of Borrower or Fund shall be individually or personally liable for the payment of principal or interest payable hereunder.

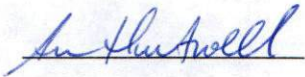
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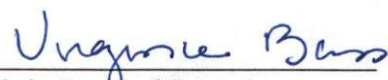
IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

(SEAL)

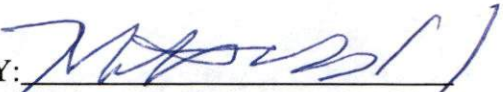
**HEADWATERS FUND**

ATTEST:  
CLERK OF THE BOARD

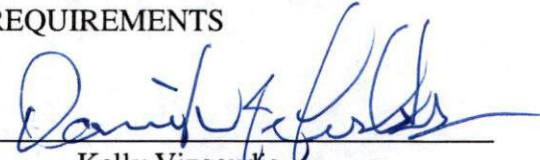


BY:   
Chair, Board of Supervisors  
County Of Humboldt  
State Of California

**Redwood Coast Energy Authority**

BY:   
Matthew Marshall, Executive Director, RCEA

APPROVED FOR INSURANCE  
REQUIREMENTS

  
Kelly Vizgaudis  
Risk Management

# Commercial Loan Agreement

Loan Number	Loan Amount	Contract Date	Maturity Date	Officer's Initials
	\$ 700,000.00			

**Customer:**  
**Redwood Coast Energy Authority**  
**633 Third Street**  
**Eureka, CA 95501**

**Lender:**  
**Chair, Board of Supervisors**  
**County of Humboldt**

☐ Refer to the attached Signature Addendum, incorporated herein, for additional Borrowers and their signatures.

**LOAN STRUCTURE.** This Commercial Loan Agreement (Agreement) contemplates ☐ a single advance term Loan ☒ a multiple advance draw Loan ☐ a revolving multiple advance draw Loan. The principal balance will not exceed **\$700,000.00**. Borrower will pay down a revolving draw Loan's outstanding Principal to \$ [Pay Down Balance] Time Period ]. This Loan is for ☐ agricultural ☒ business/ purposes.

☐ Borrower may not voluntarily prepay the Loan in full at any time. ☒ Borrower may prepay the Loan under the following terms and conditions (Any partial prepayment will not excuse any later scheduled payments until the Loan is paid in full.): **Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due.**

☒ **LATE CHARGES.** If a payment is made more than **15** days after it is due, Borrower will pay a late charge of **10%**.

**FEES.** Borrower agrees to pay the following fees in connection with this Loan at closing or as otherwise requested by Lender:

**Borrower to pay Loan Servicer 1% plus all out of pocket costs**

**REQUESTS FOR ADVANCES.** Borrower authorizes Lender to honor a request for an advance from Borrower or any person authorized by Borrower. The requests for an advance must be in writing, by telephone, or any other manner agreed upon by Borrower and Lender, and must specify the requested amount and date and be accompanied with any agreements, documents, and instruments that Lender requires for the Loan. Lender will make same day advances, on any day that Lender is open for business, when the request is received before n/a (Advance Cut-Off Time). Lender will disburse the advance into Borrower's demand deposit account (if any), account number n/a, or in any other agreed upon manner. All advances will be made in United States dollars.

☒ These requests must be made by at least 1 (Number Required to Draw) persons, acting together, of those persons authorized to act on Borrower's behalf.

☒ Advances will be made in the amount of at least **\$50,000** (Minimum Amount of Advance).

☒ Advances will be made no more frequently than **3 times per month** (Minimum Frequency of Advance).

☐ **Discretionary Advances.** Lender will make all Loan advances at Lender's sole discretion.

☐ **Obligatory Advances.** Lender will make all Loan advances subject to this Agreement's terms and conditions.

**FINANCIAL INFORMATION.** Borrower will prepare and maintain Borrower's financial records using consistently applied generally accepted accounting principles then in effect. Borrower will provide Lender with financial information in a form acceptable to Lender and under the following terms.

☒ **A. Frequency.** Annually, Borrower will provide to Lender Borrower's financial statements, tax returns, annual internal audit reports or those prepared by independent accountants within **90** days after the close of each fiscal year. Any annual financial statements that Borrower provides will be ☐ audited statements ☐ reviewed statements ☐ compiled statements.

☒ Borrower will provide Lender with interim financial reports on a ☒ Monthly ☐ Quarterly basis, and within days after the close of this business period. Interim financial statements will be ☐ audited ☐ reviewed ☐ compiled statements.

☒ **B. Requested Information.** Borrower will supply Lender with any other information about Borrower's operations, financial affairs and condition within **5** days after Lender's request.

☐ **C. Leverage Ratio.** Borrower will maintain at all times a ratio of total liabilities to tangible net worth, determined under consistently applied generally accepted accounting principles, of (Total Liabilities to Tangible Net Worth Ratio) or less.

☐ **D. Minimum Tangible Net Worth.** Borrower will maintain at all times a total tangible net worth, determined under consistently applied generally accepted accounting principles, of \$ (Minimum Tangible Net Worth Ratio) or more.

Tangible net worth is the amount by which total assets exceed total liabilities. For determining tangible net worth, total assets will exclude all intangible assets, including without limitation goodwill, patents, trademarks, trade names, copyrights, and franchises, and will also exclude any accounts receivable that do not provide for a repayment schedule.

☐ **E. Minimum Current Ratio.** Borrower will maintain at all times a ratio of current assets to current liabilities, determined under consistently applied generally accepted accounting principles, of (Minimum Current Ratio) or more.

☐ **F. Minimum Working Capital.** Borrower will maintain at all times a working capital, determined under consistently applied generally accepted accounting principles by subtracting current liabilities from current assets, of \$ (Minimum Working Capital) or more. For this determination, current assets exclude (Excluded Current Assets). Likewise, current liabilities include

(1) all obligations payable on demand or within one year after the date on which the determination is made, and (2) final maturities and sinking fund payments required to be made within one year after the date on which the determination is made, but exclude all liabilities or obligations that Borrower may renew or extend to a date more than one year from the date of this determination.

**ATTACHMENTS.** The following documents are incorporated by reference into this agreement: ☐ Asset Based Financing Agreement addendum dated \_\_\_\_\_ | ☐ Security Agreement addendum dated \_\_\_\_\_ |  
☐ Other \_\_\_\_\_ .

**ADDITIONAL TERMS:**

☒ **ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCABLE. TO PROTECT YOU (BORROWER) AND US (LENDER) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT, BY SIGNING THIS AGREEMENT, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.**

**DEFINITIONS.** In this Agreement, the following terms have the following meanings. **Accounting Terms.** Accounting terms that are not specifically defined will have their customary meanings under consistently applied generally accepted accounting principles. **Loan.** Loan refers to all advances made under the terms of this Agreement. **Loan Documents.** Loan Documents include this Agreement and all documents prepared pursuant to the terms of this Agreement including all present and future promissory notes (Notes), security instruments, guaranties, and supporting documentation as modified, amended or supplemented. **Property.** Property is any collateral, real, personal or intangible, that secures Borrower's performance of the obligations of this Agreement.

**ADVANCES.** To the extent permitted by law, Borrower will indemnify Lender and hold Lender harmless for reliance on any request for advance that Lender reasonably believes to be genuine. Lender's records are conclusive evidence as to the number and amount of advances and the Loan's unpaid principal and interest. If any advance results in an overadvance (when the total amount of the Loan exceeds the principal balance) Borrower will pay the overadvance, as requested by Lender. Regarding Borrower's demand deposit account(s) with Lender, Lender may, at its option, consider presentation for payment of a check or other charge exceeding available funds as a request for an advance under this Agreement. Any such payment by Lender will constitute an advance on the Loan.

**CONDITIONS.** Borrower will satisfy all of the following conditions before Lender makes any advances under this Agreement. If this Agreement provides for discretionary advances, satisfaction of these conditions does not commit Lender to making advances.

**No Default.** There has not been a default under the Loan Documents nor would a default result from making the advance.

**Information.** Borrower has provided all required documents, information, certifications and warranties, all properly executed on forms acceptable to Lender. **Inspections.** Borrower has accommodated, to Lender's satisfaction, all inspections. **Conditions and Covenants.** Borrower has performed and complied with all conditions required for an advance and all covenants in the Loan Documents. **Warranties and Representation.** The warranties and representations contained in this Agreement are true and correct at the time of making the advance. **Financial Statements.** Borrower's most recently delivered financial statements and reports are current, complete, true and accurate in all material respects and fairly represent Borrower's financial condition.

**Bankruptcy Proceedings.** No proceeding under the United States Bankruptcy Code has been commenced by or against Borrower or any of Borrower's affiliates.

**WARRANTIES AND REPRESENTATIONS.** Borrower makes these warranties and representations which will continue as long as this Agreement is in effect. **Power.** Borrower is duly organized, validly existing and in good standing in all jurisdictions in which Borrower operates. Borrower has the power and authority to enter into this transaction and to carry on its business or activity as it is now being conducted. All persons who are required by applicable law and the governing documents of Borrower have executed and delivered to Lender this Agreement and other Loan Documents. **Authority.** The execution, delivery and performance of this Agreement and the obligation evidenced by the Loan Documents are within Borrower's duly authorized power, has received all necessary governmental approval, will not violate any provision of law or order of court or governmental agency, and will not violate any agreement to which Borrower is a party or to which Borrower or Borrower's property is subject. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Borrower has not changed its name or place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Borrower will not use any other name and will preserve Borrower's existing name, trade names and franchises. **No Other Liens.** Borrower owns or leases all property that is required for its business and except as disclosed, the property is free and clear of all liens, security interests, encumbrances and other adverse interests. **Compliance With Laws.** Borrower is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Borrower or its property, except as disclosed to Lender. **Financial**



**Statements.** Borrower represents and warrants that all financial statements Borrower provides fairly represent Borrower's financial condition for the stated periods, are current, complete, true and accurate in all material respects, include all direct or contingent liabilities, and that there has been no material adverse change in Borrower's financial condition, operations or business since the date the financial information was prepared.

**COVENANTS.** Until the Loan and all related debts, liabilities and obligations under the Loan Documents are paid and discharged, Borrower will comply with the following terms, unless Lender waives compliance in writing. **Inspection and Disclosure.** Borrower will allow Lender or its agents to enter any of Borrower's premises during mutually agreed upon times, to do the following: (1) inspect, audit, review and obtain copies from Borrower's books, records, orders, receipts, and other business related data; (2) discuss Borrower's finances and business with anyone who claims to be Borrower's creditor; (3) inspect Borrower's Property, audit for the use and disposition of the Property's proceeds; or do whatever Lender decides is necessary to preserve and protect the Property and Lender's interest in the Property. As long as this Agreement is in effect, Borrower will direct all of Borrower's accountants and auditors to permit Lender to examine and make copies of Borrower's records in their possession, and to disclose to Lender any other information that they know about Borrower's financial condition and business operations. Lender may provide Lender's regulator with required information about Borrower's financial condition, operation and business or that of Borrower's parent, subsidiaries or affiliates. **Business Requirements.** Borrower will preserve and maintain its present existence and good standing in jurisdictions where Borrower is organized and operates. Borrower will continue its business or activities as presently conducted, by obtaining licenses, permits and bonds where needed. Borrower will obtain Lender's prior written consent before ceasing business or engaging in any line of business that is materially different from its present business. **Compliance with Laws.** Borrower will not violate any laws, regulations, rules, orders, judgments or decrees applicable to Borrower or Borrower's property, except for those which Borrower challenges in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its appeal should Borrower lose. On request, Borrower will provide Lender with written evidence that Borrower has fully and timely paid taxes, assessments and other governmental charges levied or imposed on Borrower and its income, profits and property. Borrower will adequately provide for the payment of taxes, assessments and other charges that have accrued but are not yet due and payable. **New Organizations.** Borrower will obtain Lender's written consent before organizing, merging into, or consolidating with an entity, acquiring all or substantially all of the assets of another; or materially changing legal structure, management, ownership or financial condition. **Other Liabilities.** Borrower will not incur, assume or permit any debt evidenced by notes, bonds or similar obligations except debt in existence on the date of this Agreement and fully disclosed to Lender; debt subordinated in payment to Lender on terms acceptable to Lender; accounts payable incurred in the ordinary course of business and paid under customary trade terms or contested in good faith with reserves satisfactory to Lender; or as otherwise agreed to by Lender. **Notice.** Borrower will promptly notify Lender of any material change in financial condition, a default under the Loan Documents, or a default under any agreement with a third party which materially and adversely affects Borrower's property, operations or financial condition. **Dispose of No Assets.** Without Lender's prior written consent, Borrower will not sell, lease, assign or otherwise distribute all or substantially all of its assets. **Insurance.** Borrower will obtain and maintain insurance with insurers in amounts and coverages that are acceptable to Lender and customary with industry practice. This may include without limitation credit insurance, insurance policies for public liability, fire, hazard and extended risk, workers compensation, and at Lender's request, business interruption and/or rent loss insurance. Borrower may obtain insurance from anyone Borrower wants that is acceptable to Lender. Borrower's choice of insurance provider will not affect the credit decision or interest rate. At Lender's request, Borrower will deliver to Lender certified copies of all of these insurance policies, binders or certificates. Borrower will obtain and maintain a mortgagee or loss payee endorsement for Lender when these endorsements are available. Borrower will require all insurance policies to provide at least 10 days prior written notice to Lender of cancellation or modification. Borrower consents to Lender using or disclosing information relative to any contract of insurance required for the Loan for the purpose of replacing this insurance. Borrower also authorizes its insurer and Lender to exchange all relevant information related to any contract of insurance executed as required by any Loan Documents. **Property Maintenance.** Borrower will keep property that is necessary or useful in its business in good working condition by making all needed repairs, replacements and improvements and by making payments due on the property. **DEFAULT.** If the Loan is payable on demand, Lender may demand payment at any time whether or not any of the following events have occurred. Borrower will be in default if any one or more of the following occur: (1) Borrower fails to make a payment in full when due. (2) Borrower makes an assignment for the benefit of creditors or becomes insolvent, either because Borrower's liabilities exceed its assets or Borrower is unable to pay debts as they become due; or Borrower petitions for protection under any bankruptcy, insolvency or debtor relief law, or is the subject of such a petition or action and fails to have the petition or action dismissed within a reasonable period of time. (3) Borrower fails to perform any condition or to keep any promise of covenant on this Agreement or any debt or agreement Borrower has with Lender. (4) A default occurs under the terms of any instrument evidencing or pertaining to this Agreement. (5) If Borrower is a producer of crops, Borrower fails to plant, cultivate and harvest crops in due season. (6) Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained by federal law. (7) Anything else happens that either significantly impairs the value of the Property or, unless controlled by New Jersey Banking Law, causes Lender to reasonably believe that Lender will have difficulty collecting the Loan.

**REMEDIES.** After Borrower defaults, and after Lender gives any legally required notice and opportunity to cure, Lender may at its option use any and all remedies Lender has under state or federal law or in any of the Loan Documents, including, but not limited to, terminating any commitment or obligation to make additional advances or making all or any part of the amount owing

immediately due. Lender may set-off any amount due and payable under the terms of the Loan against Borrower's right to receive money from Lender, unless prohibited by applicable law. Except as otherwise required by law, by choosing any one or more of these remedies Lender does not give up Lender's right to use any other remedy. Lender does not waive a default if Lender chooses not to use a remedy, and may later use any remedies if the default continues or occurs again.

**COLLECTION EXPENSES AND ATTORNEY'S FEES.** To the extent permitted by law, Borrower agrees to pay all expenses of collection, enforcement and protection of Lender's rights and remedies under this Agreement. Expenses include, but are not limited to, reasonable attorney's fees including attorney fees as permitted by the United States Bankruptcy Code, court costs and other legal expenses. These expenses will bear interest from the date of payment until paid in full at the contract interest rate in effect for the Loan.

**GENERAL PROVISIONS.** This Agreement is governed by the laws of the jurisdiction where Lender is located, the United States of America and to the extent required by the laws of the jurisdiction where the Property is located. **Joint and Individual Liability and Successors.** Each Borrower, individually, has the duty of fully performing the obligations on the Loan. Lender can sue all or any of the Borrowers upon breach of performance. The duties and benefits of this Loan will bind and benefit the successors and assigns of Borrower and Lender. **Amendment, Integration and Severability.** The Loan Documents may not be amended or modified by oral agreement. Borrower agrees that any party signing this Agreement as Borrower is authorized to modify the terms of the Loan Documents. Borrower agrees that Lender may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modification, substitutions, or future advances. The Loan Documents are the complete and final expression of the understanding between Borrower and Lender. If any provision of the Loan Documents is unenforceable, then the unenforceable provision will be severed and the remaining provisions will be enforceable. **Waivers and Consent.** Borrower, to the extent permitted by law, consents to certain actions Lender may take, and generally waives defenses that may be available based on these actions or based on the status of a party to the Loan. Lender may renew or extend payments on the Loan. Lender may release any borrower, endorser, guarantor, surety, or any other co-signer. Lender may release, substitute, or impair any Property securing the Loan. Lender's course of dealing, or Lender's forbearance from, or delay in, the exercise of any Lender's rights, remedies, privileges, or right to insist upon Borrower's strict performance of any provisions contained in the Loan Documents, will not be construed as a waiver by Lender, unless the waiver is in writing and signed by Lender. Lender may participate or syndicate the Loan and share any information that Lender decides is necessary about Borrower and the Loan with the other participants. **Interpretation.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement. Unless otherwise indicated, the terms of this Agreement shall be construed in accordance with the Uniform Commercial Code. **Notice.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in this Agreement, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Time is of the essence.

**SIGNATURES:** By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.

**Borrower: Redwood Coast Energy Authority**

Individual: \_\_\_\_\_

Date: 1/5/17

Individual: \_\_\_\_\_

Date: \_\_\_\_\_

**Lender: County of Humboldt, Headwaters Fund**

Individual: \_\_\_\_\_

Date: \_\_\_\_\_