



# Banking on Business Agreement

This Banking on Business Agreement (this “**Agreement**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the FEDERAL HOME LOAN BANK OF PITTSBURGH, a corporation organized and existing under the laws of the United States of America, and having its principal place of business at 601 Grant Street, Pittsburgh, Pennsylvania 15219 (“**FHLB-PGH**”) and \_\_\_\_\_, a \_\_\_\_\_, and having a place of business at \_\_\_\_\_ (the “**Participating Member**”).

## **BACKGROUND**

FHLB-PGH has established the Banking On Business Program (the “**Program**”) to provide funds to its Members to assist small businesses in financing the start-up or expansion of their businesses. The objectives of the Program are to create or retain job opportunities and promote local economic growth. The Participating Member has agreed to participate in the Program.

## **OPERATIVE PROVISIONS**

NOW, THEREFORE, intending to be legally bound hereby, incorporating the above-defined terms in this Agreement, in consideration of the foregoing and the mutual covenants contained in this Agreement, and for further good and valuable consideration, the FHLB-PGH and the Participating Member agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

“**Business Day**” means any day on which FHLB-PGH is open for business.

“**Eligible Small Business**” means a Small Business that (i) is not an Ineligible Business and (ii) has been approved by FHLB-PGH.

“**Enrollment Form**” means the FHLB-PGH form that the Participating Member uses to enroll in the Program, as may be modified, amended, or supplemented by FHLB-PGH from time to time.

“**Funding Approval Form**” means the FHLB-PGH form that the Participating Member uses to request that approved Recoverable Assistance monies be placed in its demand deposit account at FHLB-PGH, as may be modified, amended, or supplemented by FHLB-PGH from time to time.

“**Ineligible Business**” means (i) any business in the financial, insurance, real estate, housing finance, or government sectors of the economy, (ii) any non-profit organization, (iii) any business that is either illegal or, in the sole discretion of FHLB-PGH, immoral, or (iv) any business that for other reasons is deemed to be unacceptable in the sole discretion of FHLB-PGH.

“**Loan Agreement**” means the FHLB-PGH form by which (i) the Participating Member and an Eligible Small Business acknowledge that the Recoverable Assistance received by such Eligible Small Business was funded by FHLB-PGH and (ii) the Eligible Small Business agrees to repay the Recoverable Assistance to the Participating Member in accordance with the terms set forth therein, as may be modified, amended, or supplemented by FHLB-PGH from time to time

“**Member**” means any insured financial institution or insurance company that has received approval from FHLB-PGH to join the Federal Home Loan Bank System and has purchased the required stock.

“**Performance Measurement Form**” means the FHLB-PGH form that the Participating Member must complete to assist FHLB-PGH in assessing the performance of the Program, as may be modified, amended, or supplemented by FHLB-PGH from time to time.

“**Recoverable Assistance**” means the monies provided to the Participating Member by FHLB-PGH for disbursement to an Eligible Small Business.

“**Pro Rata Basis**” when used to describe how payments will be allocated to loans made pursuant to the Program, means sharing such payments based on the ratio of each loan to the Eligible Small Business to the amount of the combined loans to the Eligible Small Business.

“**Registration Form**” means the FHLB-PGH form that the Participating Member uses to submit a Small Business for review by FHLB-PGH to determine if such Small Business qualifies to receive Recoverable Assistance under the Program, as may be modified, amended, or supplemented by FHLB-PGH from time to time.

“**Small Business**” means any firm, proprietorship, partnership or corporation that has less than 50 employees and the lesser of \$10 million in annual receipts or the annual receipts limits set by the Small Business Administration’s size standards by Standard Industry Classification.

“**Small Business Transaction**” means the Participating Member’s description of the use of all or any portion of the Recoverable Assistance provided to an Eligible Small Business.

2. **Banking on Business Manual.** The Program shall be operated in accordance with FHLB-PGH’s Banking On Business Manual (the “**Manual**”). The Manual, as may be amended, modified, or supplemented from time to time by FHLB-PGH, is incorporated in this Agreement by reference thereto. Any reference to this Agreement shall be a reference to this Agreement and the Manual. All capitalized terms used but not elsewhere defined in this Agreement shall have the respective meanings ascribed to such terms in the Manual.

3. **Program Enrollment.** To enroll in the Program in any calendar year, the Participating Member must submit to FHLB-PGH a fully completed Enrollment Form by such date designated by FHLB-PGH. Enrollment Forms shall be accepted from the Participating Member or a consortium composed of the Participating Member and other Members of FHLB-PGH.
4. **General Requirements of Enrollment.** Enrollment in the Program is subject to compliance by the Participating Member with all the terms and conditions set forth in this Agreement.
5. **Small Business Registration.** Once enrolled in the Program, the Participating Member shall submit a fully completed Registration Form to FHLB-PGH for each Small Business Transaction proposed by the Participating Member. If FHLB-PGH determines, in its sole discretion, that the Small Business has a need for Recoverable Assistance as set forth in such Registration Form, the Participating Member shall be notified by FHLB-PGH that such Small Business has been approved as an "Eligible Small Business" and funds have been reserved for the Small Business Transaction.
6. **Structure of Small Business Transaction.** The approval by FHLB-PGH of each Small Business Transaction is subject to the following:
  - (a) The Participating Member shall document a need by the Eligible Small Business for the Recoverable Assistance in accordance with the requirements set forth in the Manual.
  - (b) The Participating Member shall certify that the Participating Member would not have approved a loan to the Eligible Small Business without the Recoverable Assistance.
  - (c) The Participating Member shall provide financing to the Eligible Small Business (separate from the Recoverable Assistance) and have credit exposure in each Small Business Transaction in accordance with the requirements set forth in the Manual ("**Participating Member Financing**").
  - (d) The terms and conditions of the Small Business Transaction shall be consistent with similar credit facilities extended by the Participating Member to other borrowers.
  - (e) The Small Business Transaction shall be an Eligible Use of the Program's funds.
  - (f) The Recoverable Assistance shall be disbursed by the Participating Member to the Eligible Small Business subject to the repayment terms set forth in this Agreement.
  - (g) The Participating Member shall provide to FHLB-PGH, promptly after receiving a request from FHLB-PGH, any documents relating to the Small Business Transaction, including, without limitation, the documentation described in Paragraph 6(a) of this Agreement or the certification described in Paragraph 6(b) of this Agreement.
7. **Eligible Uses of Recoverable Assistance.** Recoverable Assistance shall be used by an Eligible Small Business only for an Eligible Use.
8. **Ineligible Uses of Recoverable Assistance.** Recoverable Assistance shall not be made available: (i) to any Ineligible Business or (ii) to reduce or refinance the existing debt of a Small Business, if the Recoverable Assistance will be used solely to improve the Small Business' cash flow or the Participating Member's credit risk ("**Ineligible Uses**").
9. **Funding.** In order to access funds reserved for a Small Business Transaction, the Participating Member must submit a fully completed Funding Approval Form to FHLB-PGH at least two (2) Business Days prior to accessing such funds. The funds requested shall be deposited by FHLB-PGH into the Participating Member's Demand Deposit Account at FHLB-PGH (the "**DDA**").
10. **Repayment Terms.**
  - (a) The Participating Member shall, and shall cause each Eligible Small Business that receives Recoverable Assistance to, execute a Loan Agreement completed by the Participating Member in accordance with the terms set forth in the Manual. Without in any way limiting the foregoing, the Participating Member agrees that, in completing the Loan Agreement, it shall use the loan amortization schedule provided by FHLB-PGH unless FHLB-PGH has agreed otherwise in writing.
  - (b) The Participating Member hereby authorizes FHLB-PGH to debit the Participating Member's DDA at FHLB-PGH on the last business day of each month for the amount currently due to FHLB-PGH from each Eligible Small Business under the terms of its Loan Agreement. The amount collected will represent 12 months of payments made by the business and will be collected on the anniversary date the BOB loan was granted by the Participating Member; provided, however, if the Participating Member experiences (i) a material adverse change in financial condition, (ii) a default under its Advances, Collateral Pledge and Security Agreement with the FHLB-PGH, or (iii) a reduction in its internal credit rating (as determined by the FHLB-PGH) to less than satisfactory (each hereinafter, a "**Material Adverse Change**"), then FHLB-PGH, at its option and in its sole discretion, may, but in no event be required to adjust the frequency of the collection schedule from an annual schedule to a quarterly or monthly schedule. It is the responsibility of the Participating Member to make certain that sufficient funds are in its DDA on the due date. FHLB-PGH shall send the Participating Member notice of the amount(s) to be debited from the DDA at least fifteen (15) days prior to the date the funds are to be debited. The Participating Member must inform FHLB-PGH at least two (2) business days prior to the date the funds are to be debited if the Participating Member believes that any amount to be debited is incorrect. FHLB-PGH shall make a reasonable effort to reconcile any discrepancy, however, the Participating Member agrees that FHLB-PGH's final determination as to any amount due shall in all cases be conclusive and binding on the Participating Member.
  - (c) The Participating Member shall notify FHLB-PGH immediately if it becomes aware of any Material Adverse Change.
  - (d) The Participating Member shall notify FHLB-PGH immediately if:
    - (i) an Eligible Small Business has defaulted under the terms of its Loan Agreement or any other documents between it and the Participating Member related to the Small Business Transaction;
    - (ii) the Participating Member receives any notice from an Eligible Small Business pursuant to its Loan Agreement;
    - (iii) an Eligible Small Business uses all or any portion of the Recoverable Assistance it received for a purpose that is not an Eligible Use;

- (iv) an Eligible Small Business no longer satisfies the requirements to be an “Eligible Small Business” hereunder;
  - (v) an Eligible Small Business refinances its Participating Member Financing with another financial institution or otherwise prepays all or any portion thereof;
  - (vi) an Eligible Small Business is the subject of any Bankruptcy Event; or
  - (vii) the Participating Member becomes aware of any fraud on the part of an Eligible Small Business in obtaining, or otherwise in relationship to, the Recoverable Assistance it received.
- (e) If an Eligible Small Business:
- (i) defaults under the terms of its Loan Agreement or any other documents between it and the Participating Member related to the Small Business Transaction;
  - (ii) uses all or any portion of the Recoverable Assistance it received for a purpose which is not an Eligible Use;
  - (iii) no longer satisfies the requirements to be an “Eligible Small Business” hereunder;
  - (iv) is the subject of any Bankruptcy Event; or
  - (v) commits any fraud in obtaining, or otherwise in relationship to, the Recoverable Assistance it received;
- then, upon the occurrence of any such event, FHLB-PGH may require the Participating Member to immediately recover the Recoverable Assistance and return it to FHLB-PGH.
- (f) If an Eligible Small Business refinances the Participating Member Financing with another financial institution or otherwise prepays the Participating Member Financing in full, the Participating Member shall cause the Eligible Small Business to prepay the Recoverable Assistance in full. In the event that the Eligible Small Business fails to so prepay the Recoverable Assistance, the Participating Member shall remit a portion of the prepayment on a pro rata basis to FHLB-PGH as payment for the Recoverable Assistance.
  - (g) If the Eligible Small Business prepays a portion, but less than all, of the Participating Member Financing, the Participating Member shall remit a portion of the payment on a pro rata basis to FHLB-PGH as payment for the Recoverable Assistance.
  - (h) If an Eligible Small Business shall fail to repay its Recoverable Assistance to the Participating Member in accordance with the terms set forth in its Loan Agreement or this Agreement, the Participating Member shall use all reasonable collection efforts to recover the Recoverable Assistance from such Eligible Small Business.
  - (i) Failure by the Participating Member to remit any principal or interest received from an Eligible Small Business to FHLB-PGH in accordance with the terms set forth in this Agreement shall result in suspension of further Committed Funding.

## **11. Performance Measurement.**

- (a) The Participating Member shall provide to FHLB-PGH promptly after receiving a request from FHLB-PGH, any documents related to the Small Business Transaction, including, without limitation, the Loan Agreement and the documents evidencing the obligations of the Eligible Small Business to the Participating Member.
- (b) In order to enable FHLB-PGH to measure the impact of the Program on Small Businesses and community economic growth, the Participating Member shall submit to FHLB-PGH a fully completed Performance Measurement Form, and any other documents related to the Participating Member’s participation in the Program that have been requested by FHLB-PGH.

## **12. Representations and Warranties of the Participating Member.** The Participating Member hereby represents and warrants to FHLB-PGH as follows:

- (a) **Existence and Power.** The execution and delivery of this Agreement and compliance by the Participating Member with all provisions of this Agreement (i) are within the power and authority of the Participating Member, and (ii) have been duly authorized by all requisite corporate proceedings. This Agreement has been duly executed and delivered by the Participating Member and constitutes a valid and binding agreement of the Participating Member, enforceable in accordance with its terms, except as such enforceability may be limited by laws affecting the rights of creditors generally or by principles of equity.
- (b) **Authority.** The execution and delivery of this Agreement shall not conflict with or result in a breach of the terms, conditions or provisions of, give rise to a right of termination under, constitute a default under, or result in any violation of its Articles of Incorporation or Association, bylaws, or similar instruments or any mortgage, agreement, contract, instrument, order, judgment, decree, or current statute, law, rule or regulation to which the Participating Member or any of its assets is subject.
- (c) **Compliance with All Laws.** The Participating Member’s participation in the Program is in compliance with all applicable state and federal laws, including, without limitation, the Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq., and Regulation B, 12 C.F.R. §202 et seq.

## **13. Miscellaneous.**

- (a) **Indemnification.** The Participating Member agrees to indemnify and hold FHLB-PGH harmless for any and all losses, liabilities, damages, claims, costs, and expenses, including, without limitation, attorneys’ fees, incurred or suffered by FHLB-PGH for any breach of this Agreement by the Participating Member or the willful misconduct or negligence of the Participating Member in the performance of its obligations or responsibilities under this Agreement or its reckless disregard of such obligations or responsibilities.
- (b) **Notices.** Any notice required under this Agreement shall be in writing and deemed sufficiently delivered when: (i) sent by certified United States mail, postage paid, return receipt requested, (ii) delivered in person, (iii) sent by telefacsimile transmission, (iv) sent by telegram or telex or (v) sent by electronic mail (e-mail) with a hard copy confirmation, and, if not otherwise specified, shall be directed by the Participating Member or FHLB-PGH at the addresses set forth below:

If to the Participating Member:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
e-mail: \_\_\_\_\_

If to FHLB-PGH:  
Federal Home Loan Bank of Pittsburgh  
Community Investment Department  
601 Grant Street  
Pittsburgh, PA 15219-4455  
e-mail: katherine.swanson@fhlb-pgh.com

Either party to this Agreement may change the individual(s) or addresses listed hereinabove from time to time by written notice from an authorized individual of such party to the other party.

- (c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each of the parties to this Agreement.
- (d) Governing Law. This Agreement shall be governed by the statutory and common law of the United States and, to the extent federal law incorporates or defers to state law or is not applicable, the laws (exclusive of the choice of law provisions) of the Commonwealth of Pennsylvania, including, without limitation, the Uniform Commercial Code in effect in said Commonwealth.
- (e) Amendments. FHLB-PGH and the Participating Member may from time to time enter into agreements amending, modifying or supplementing this Agreement or changing the rights of FHLB-PGH or of the Participating Member under this Agreement, and FHLB-PGH may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Participating Member under this Agreement. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing.
- (f) Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed an original, but all of which taken together shall be one and the same instrument.
- (g) Telefacsimile Execution. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.
- (h) Waivers. The respective rights and remedies of each party are cumulative, and no exercise or enforcement by either party of any right or remedy hereunder shall preclude the exercise or enforcement by such party of any other right or remedy hereunder, or which such party is entitled by law to enforce. Each party may waive any obligation of, or restriction upon, the other party under this Agreement only in writing. No failure, refusal, neglect, delay, waiver, forbearance or omission of either party to exercise any right under this Agreement or to insist upon full compliance by the other

with its obligations hereunder shall constitute a waiver of any provision of this Agreement.

- (i) Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- (j) Assignment. Neither party may assign this Agreement nor assign or delegate any right or obligation provided for under this Agreement, without the express prior written consent of the other party, which consent shall not be unreasonably withheld. Any and all purported assignments without said written consent shall be null and void ab initio.
- (k) Relationship of the Parties. The Participating Member shall have no obligation or responsibility to FHLB-PGH except as specifically stated in this Agreement, and the Participating Member shall have no fiduciary duties to FHLB-PGH except as set forth in Paragraph 10 of this Agreement. FHLB-PGH shall have no obligation or responsibility to the Participating Member except as specifically stated herein, and FHLB-PGH shall have no fiduciary duties to the Participating Member. It is the intention of the parties to this Agreement that this Agreement does not create a joint venture or partnership between the parties, but rather constitutes a contractual arrangement between them.
- (l) Termination. Either party to this Agreement may terminate its participation in the Program at any time by giving thirty (30) days' prior written notice to the other party. If FHLB-PGH terminates its participation in the Program, it shall remain obligated to fund any Recoverable Assistance that was approved, but not yet funded, by it prior to the termination date. Notwithstanding any termination hereunder: (i) the provisions set forth in this Agreement, including, without limitation, the provisions set forth in Paragraphs 10 and 11 of this Agreement, shall remain in full force and effect with respect to any funds outstanding under the Program until such funds have been fully repaid or repayment has been waived in full as set forth herein; and (ii) all obligations of indemnification, reimbursement and the like set forth in this Agreement, including, without limitation, those set forth in Paragraph 13(a) of this Agreement, shall survive the termination of this Agreement.
- (m) Access to Records. FHLB-PGH may from time to time request that the Participating Member allow the inspection of any of the books and records of the Participating Member pertaining to this Agreement and the Participating Member shall allow such inspections and access to such books and records at reasonable times during the normal business hours of the Participating Member and upon reasonable terms without disruption to the normal business operations of the Participating Member.
- (n) Confidentiality. The parties to this Agreement agree that the terms and conditions of this Agreement shall be confidential and shall not be disclosed to any person other than those who must perform tasks to effectuate this Agreement; provided, however, that either party may disclose the terms and conditions of this Agreement to its respective Board of Directors, officers, managers, insurers, attorneys, accountants, auditors, tax authorities, regulators or as otherwise may be required by law.
- (o) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes any and all prior agreements or

- understandings, verbal or written, between the parties with respect to the subject matter of this Agreement.
- (p) Headings. The headings appearing at the beginning of each Paragraph of this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.
  - (q) Other Rights and Remedies. In the event that the Participating Member fails to fulfill any of its

obligations under this Agreement, including, without limitation, its obligations under Paragraph 10 of this Agreement, for whatever reason, then in any such event, the FHLB-PGH, at its option and in its sole discretion, may, but shall in no event be required to, fulfill such obligations of the Participating Member.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

**FEDERAL HOME LOAN BANK OF PITTSBURGH**

\_\_\_\_\_  
**(Participating Member)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_