

**LOAN AGREEMENT  
BETWEEN THE CITY OF ARCATA AND  
OPEN DOOR COMMUNITY HEALTH CENTERS FOR PLANNING AND TECHNICAL  
ASSISTANCE WITH THE DEVELOPMENT OF A NEW HEALTH CARE CLINIC**

This loan agreement ("Loan Agreement") is entered into as of the date of the last party signing below ("Effective Date"), by and between the Open Door Community Health Centers, a California non-profit corporation organized under the laws of the State of California ("ODCHC" or "Borrower"), and the City of Arcata ("City" or "Lender").

**Recitals**

- A. Open Door Community Health Centers has applied to the City of Arcata for financial assistance in planning and technical activities associated with development of a new health care clinic, more commonly known as the "Community Life Wellness Center," to be developed on APNs 507-292-032 and 507-191-077, Weott Way, Arcata, CA.
- B. Pursuant to Resolution 112-22 adopted by the Arcata City Council on November 2, 2011, the City has authorized providing ODCHC a loan of up to \$35,000.00 from the City's Community Development Block Grant (CDBG) Program Income.
- C. ODCHC desires to accept said loan on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises, conditions and terms recited herein and made a material part hereof, the parties agree as follows:

**1. Defined Terms.** All capitalized terms not otherwise defined in this Loan Agreement shall have the meaning set forth in the Note. In addition, as used in the Loan Documents, the following terms will have the following meanings:

**"Event of Default"** means the failure to complete or perform any material requirement, condition or term of any of the Loan Documents.

**"Loan"** means the loan from the City of Arcata to ODCHC as defined in Section 3 of this Agreement.

**"Loan Documents"** means this Loan Agreement, the Note and all exhibits and attachments to said documents, and any future amendments thereto.

**"Note"** means the promissory note executed by Borrower in favor of Lender on even date herewith, evidencing the Loan made by Lender to Borrower.

**"Potential Default"** means an event that would constitute an Event of Default, as defined in the any of the Loan Documents, but for any requirement of notice to be given or period of grace or time to elapse.

**"Planning and Technical Activities"** means the activities identified in Exhibit A for which Borrower may use Loan proceeds.

## **2. Completion of Planning and Technical Activities.**

- a. Activities. Borrower agrees to use all Loan proceeds in accordance with the scope of work set out in Exhibit A, attached hereto and incorporated herein (“Planning and Technical Activities”) and for no other uses. Changes to the Planning and Technical Activities as set out in Exhibit A will not be permitted except as authorized in writing by the Arcata City Manager.
- b. Completion Date. Borrower shall diligently proceed with completion of all Planning and Technical Activities. All Planning and Technical Activities shall be completed no later than March 30, 2013.

## **3. Planning and Technical Assistance Loan.**

- a. Promissory Note. Lender shall provide up to \$35,000.00 to Borrower at zero percent (0%) interest for a ten (10) year term for Planning and Technical Activities, on further terms and conditions set forth in this Agreement and evidenced by a promissory note executed by Borrower in favor of Lender on even date herewith.
- b. Certificate of Occupancy. Lender shall forgive the Loan upon issuance of a Certificate of Occupancy to Borrower to occupy and use the Community Life Wellness Center. In the event Borrower is unable to complete construction and receive a Certificate for Occupancy for the Community Life Wellness Center on or before the Maturity Date defined in the Note, prior to the Maturity Date, Borrower may apply to Lender to restructure the Loan or extend the Maturity Date.
- c. Compliance With CDBG Program Income Reuse Plan. Borrower expressly acknowledges that the Loan funds are provided from the City of Arcata’s Community Development Block Grant (CDBG) Program Income, and the use said funds is governed by the City of Arcata CDBG Program Income Reuse Plan, approved by the Arcata City Council on December 5, 2012. The State’s administration of the federal CDBG Program, for non-entitlement jurisdictions, is pursuant to the provisions of 42 U.S.C. 5301 et seq., 24 CFR Part 570 Subpart I, and 25 California Code of Regulations Section 7050 et seq. Borrower shall comply with all applicable terms of said Program Income Reuse Plan, and all applicable state and federal law associated with said CDBG Program Income.

## **4. Disbursements.**

- a. Advances: Using a form approved by Lender, Borrower may request an advance disbursement of Loan funds in the amount of up to fifty percent (50%) of the Loan principle. Receipt of such an advance is conditioned on the occurrence of the following events:
  - i. Borrower has obtained and delivered to Lender adequate letters of intent from the current owners of APNs 507-292-032 and 507-191-077 that provide requisite control over the real property to Borrower to allow completion of the Community Life Wellness Center. The City retains sole discretion to determine the adequacy of said letters of intent in establishing the property owners’ intent; and
  - ii. Borrower and/or the Mad River Community Hospital has retained or caused to be retained a qualified consultant or consultants to complete the planned development, major subdivision and obtain all necessary land use permits associated with

development of the Community Life Wellness Center as set forth in the conceptual Mad River Hospital Master Site Plan determined by the Arcata Planning Commission on June 14, 2011 to be consistent with the Arcata General Plan: 2020.

- b. Remaining Disbursements: Each request for disbursement of Loan funds subsequent to advances defined in Section 4.a. above shall be in the form approved by Lender and shall include an itemized invoice signed by the appropriate contractor or consultant, if any. Lender may require, without limitation, supporting information and documentation as necessary to verify the expenditures, including without limitation:
  - i. Waivers of mechanics' or materialmen's liens from any of Borrower's consultants or contractors and each subcontractor and supplier with respect to the Planning and Technical Activities for which payment is being requested;
  - ii. A statement verified under penalty of perjury by any of Borrower's consultants or contractors that all work covered by the application for payment has been completed in accordance with the applicable contracts and should now be paid, and that all costs incurred in connection with the Planning and Technical Activities either have been paid or will be paid out of the proceeds of the disbursement;
  - iii. Supporting billings from Borrower's consultants or contractors with respect to the work for which payment is requested.
- c. Retention: Borrower shall retain ten percent (10%) from all advances and disbursements of all Loan funds until it receives copies of all final plans funded by Loan.

**5. Conditions Precedent to Each Loan Advance and Disbursement.**

- a. The obligation of Lender to make any advances or disbursements pursuant to the terms of this Agreement will be subject to the following conditions precedent:
  - i. No Event of Default or Potential Default will have occurred and be continuing;
  - ii. The representations and warranties in the Loan Documents will be correct as of the date of the requested advance or disbursement as though made on that date; and
  - iii. Borrower will have delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials requested by Lender under the terms of any of the Loan Documents.
- b. Regardless of the failure of any condition precedent to Lender's obligation to make advances or disbursements, Lender may make any advance or disbursements if Lender, in its sole discretion, determines it to be advisable. The making of any advance or disbursement, either before or after the satisfaction of all conditions precedent with respect to Lender's obligation to make the advance or disbursement, will not be deemed to constitute an approval or acceptance by Lender of the Planning and Technical Activities completed or a waiver of the condition with respect to a subsequent advance or disbursement.

## **6. Default, Remedies.**

- a. Events of Default. Borrower's failure to complete or perform any material requirement, condition or term of any of the Loan Documents comply with any term, condition or covenant of the Loan Document, including without limitation compliance with applicable CDBG Program Income laws and regulations, shall constitute a default (each an "Event of Default"):
- b. Remedies. On the occurrence of an Event of Default, in addition to any other rights in this Agreement or in any of the Loan Documents, at law or in equity, Lender may, without prior demand, exercise any one or more of the following rights and remedies:
  - i. Terminate its obligation to make advances or disbursements;
  - ii. Declare the Note and all sums owing to Lender with respect to the other Loan Documents immediately due;
  - iii. Make any advances or disbursements after the happening of any one or more Event of Default, without waiving its right to demand payment of the Note and all other sums owing Lender with respect to the other Loan Documents or any other rights or remedies and without liability to make any other or further advances or disbursements, regardless of lender's previous exercise of any rights and remedies;
  - iv. Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Agreement; or
  - v. Make any payment from undisbursed Loan funds or other funds of Lender.
- c. Expenditure of Lender's Funds. If Lender spends funds in exercising or enforcing any of its rights or remedies under any of the Loan Documents, the amount of funds spent will be payable to Lender on demand, together with interest at the rate stated in the Note for the Loan funds from the date the funds were spent until repaid.

## **7. Financial Management.**

- a. Borrower agrees that all costs of the Planning and Technical Activities shall be recorded in accordance with generally accepted accounting principles, and shall be supported by checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges, and that all checks, payrolls, time records, invoices, contracts, vouchers, orders or other accounting documents which pertain, in whole or in part, to the Planning and Technical Activities shall be thoroughly identified and readily accessible to Lender.
- b. Borrower agrees that excerpts or transcripts of all checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents related to or arguably related to the Planning and Technical Activities will be provided upon request to Lender.
- c. At any time during normal business hours, Borrower's records with respect to the Planning and Technical Activities shall be made available for audit, examination and review by Lender.

- d. If requested by Lender, Borrower shall submit an audited cost certification to Lender after completion of the Planning and Technical Activities.

## 8. Miscellaneous Provisions.

- a. Acquisition of Permits, Licenses; Comply with Laws. Borrower shall obtain any and all federal, state, and local permits required to conduct the Planning and Technical Assistance Activities. Borrower shall comply with such permits and all applicable laws and regulations.
- b. Assignment of Lender's Rights. The City retains the right in its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.
- c. Assignment of Borrower's Rights. Borrower may not assign or delegate any of its rights, interests or duties under this Agreement without the prior written consent of Lender. Any such assignment of delegation made without the required consent shall be voidable by Lender, and may, at the option of Lender, result in the forfeiture of all financial support provided herein.
- d. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties.
- e. Indemnity. Borrower will protect, defend, indemnify, and save and hold harmless the City, its officers, employees, agents, contractors, successors and assigns, from and against any and all liability, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons, caused by, in connection with, or arising out of any activities undertaken pursuant to this Agreement. Borrower's obligation to protect, defend, indemnify, and save and hold harmless as set forth in this paragraph shall include any and all attorneys' fees incurred by the City, its officers, employees, agents, contractors, successors and assigns, in the defense of handling of said suits, demands, judgments, liens and claims and all attorneys fees and investigation expenses incurred by the City, its officers, employees, agents, contractors, successors and assigns, in enforcing or obtaining compliance with the provisions of the Agreement.
- f. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- g. Binding on Successors. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in the office of interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the City.
- h. Waiver. No waiver by the Agency of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereto or default hereunder.
- i. Contract Administration. The City shall maintain authority over this Agreement through the City Manager or his designee. The City Manager shall have authority to issue interpretations, waivers, amendments, relating to this Agreement that do not change the material terms of the Agreement. All other waivers or amendments shall require the written consent of the City

Council. Approval by the City as required in this Agreement shall be approval by the City Manager, unless specifically stated otherwise.

- j. Borrowers' Warranties and Representations. The undersigned represents that he/she has been duly authorized by Borrower and has the capacity to enter into this Loan Agreement, and that the obligations entered into herein shall be binding on Borrower.
- k. Notices. All notices to Lender or Borrower shall be given personally or via first class mail to the addresses set forth below, or to such addresses as Lender and Borrower may hereinafter designate.

**WHEREAS**, this Agreement has been entered into by the undersigned as of the date of the last party signing below.

**BORROWER:**

Open Door Community Health Centers, a California non profit corporation

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

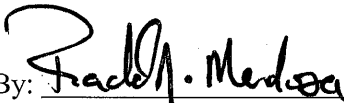
Name: HERMANN SPETZLER

Its: CEO

670 9th St  
Suite 203  
Arcata, CA 95521

**LENDER:**

City of Arcata

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

Randal J. Mendosa, City Manager

City Of Arcata  
736 F Street  
Arcata, CA 95521

Approved as to Form:

By:  \_\_\_\_\_  
Nancy Diamond, City Attorney

**Exhibit A**  
**Scope of Work**

Scope of work to be performed under this agreement shall include the following:

Updated Wetland Delineation	\$5,300
Cultural Resources Exploration	\$8,200
Transportation Analysis	\$17,250
ODCHC 5% Administrative Services	\$1,750
Project Management	\$2,500
<b>Total</b>	<b>\$35,000</b>