

LOAN AGREEMENT

(The City of Elk Grove – Small Business Loan Program)

THIS LOAN AGREEMENT (the "Loan Agreement") is made and entered into as of _____ [date], by and between **The City of Elk Grove**, a California municipal corporation ("Lender") and _____ [name of borrower], a _____ ("Borrower"), with respect to the following:

A. Borrower has requested Lender to make a loan to Borrower pursuant to Lender's Small Business Loan Program, funded by Community Development Block Grant monies from the U.S. Department of Housing and Urban Development.

B. Lender has agreed to make the loan described in this Loan Agreement on the terms and conditions set forth in this Loan Agreement and the requirements of state and federal law.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties set forth in this Loan Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows.

1. DEFINITIONS. Unless a particular word or phrase is otherwise defined or the context requires otherwise, capitalized terms used in this Loan Agreement shall have the meanings set forth below.

1.1. Business. The term "Business" shall mean the business operations contemplated to be conducted by Borrower in accordance with the Borrower's business plan dated _____ [date].

1.2. Business Day. The term "Business Day" shall mean any day on which Lender's office is open for business, other than Saturdays, Sundays, and legal holidays designated by federal law.

1.3. Effective Date. The term "Effective Date" shall mean the date on which Borrower has satisfied the conditions set forth in Section 5.

1.4. Event of Default. The term "Event of Default" shall have the meaning set forth in Section 6 of the Loan Agreement.

1.5. Indebtedness. The term "Indebtedness" means (a) indebtedness created, issued, or incurred by Borrower for borrowed money (whether by loan or the issuance and sale of debt securities), whether or not recourse is limited to specific assets of Borrower; (b) obligations of Borrower to pay the deferred purchase or acquisition price of property or services, other than trade accounts payable arising in the ordinary course of business, as long as such trade

accounts payable are not for borrowed money and are paid within one hundred eighty (180) days of the date the respective goods are delivered or the respective services are rendered (unless such trade account payable is being contested in good faith and a sufficient cash reserve, as reasonably determined by Lender, has been established); (c) indebtedness of others secured by a lien on the property of Borrower, whether or not the indebtedness so secured has been assumed by Borrower; (d) obligations of Borrower in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of Borrower; and (e) indebtedness of others guaranteed by Borrower.

1.6. Obligations. The term "Obligations" means the Borrower's obligation to pay to Lender (a) any and all sums due Lender under the Loan or otherwise under the terms of this Loan Agreement; (b) in the event of any proceeding to enforce the collection of the Obligations, or any of them, after an Event of Default, the reasonable expenses of any exercise by Lender of its rights, together with reasonable attorney fees, expenses of collection, and court costs; and (c) any other indebtedness or liability of Borrower to Lender, whether direct or indirect, absolute or contingent, now or hereafter arising, as provided in this Loan agreement

1.7. Principal Balance. The term "Principal Balance" means the outstanding principal balance under the Loan, as evidenced in Lender's account ledger on which the Principal Balance and all payments relating to the Loan shall be entered, which account ledger will be definitive as to the amounts outstanding.

1.8. Program Requirements. The term "Program Requirements" means the requirements of the Lender's Small Business Loan Program and the U.S. Department of Housing and Urban Development's Community Development Block Grant program. An overview of the Program Requirements is attached hereto as Exhibit A.

2. TERMS OF THE LOAN.

2.1. Nature of Facility; Use of Proceeds. Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender funds in the aggregate principal amount of _____ [dollar amount] Dollars (\$_____ [dollar amount]) (the "Loan"). Borrower shall apply the proceeds of the Loan pursuant to the Program Requirements.

2.2. Payments. Borrower shall pay to Lender, beginning on _____ [date of first payment], and continuing through _____ [insert date payments due and frequency of payments (e.g., the first day of each successive month)] or until paid, principal and interest in the sum of \$_____ [insert amount due at each payment interval] and shall execute a promissory note in substantially the form attached hereto as Exhibit B.

2.3. Interest Rate. The Principal Balance of all monies advanced by Lender under the Loan shall bear interest at a rate equal to the lower of (a) _____ [number] % per annum, or (b) the highest rate permitted by applicable law, compounded annually on the basis of a 365-day year, commencing on the date of this Loan Agreement (the "Interest Rate").

2.4. Calculation of Interest. Interest shall accrue on the Loan on the basis of a 365-day year. Borrower agrees that any calculation of amounts accruing hereunder at the Interest Rate shall in each instance be made by Lender and shall, if determined in good faith, be conclusive and binding on Borrower in the absence of manifest error.

2.5. Prepayment. Borrower shall have the right to prepay all or any portion of the Loan outstanding at any time without penalty.

2.6. Security. Borrower shall provide security for the loan in the form of [_____ insert form of security such as a lien, deed of trust, personal guarantee, letter of credit etc. _____] in substantially the form attached hereto as Exhibit C.

3. REPRESENTATIONS AND WARRANTIES OF BORROWER. To induce Lender to make the Loan and to enter into this Loan Agreement, Borrower makes the following representations and warranties, which shall be true and correct as of the date hereof and throughout the term of this Loan Agreement:

3.1. Status of Borrower; Power and Authority. Borrower has the power to borrow and to execute, deliver, and carry out the terms and provisions of this Loan agreement.

3.2. No Conflicts or Defaults. Borrower's entry into this Loan Agreement will not immediately, or with the passage of time, the giving of notice, or both, (a) violate the provisions of the Articles of Incorporation or Bylaws of Borrower, if applicable; (b) violate any governmental laws or regulations applicable to Borrower; (c) result in a material default under any material contract, agreement, or instrument to which Borrower is a party; or (d) result in the creation or imposition of any security interest in, or lien, charge, or encumbrance on, any of Borrower's assets.

3.3. Litigation. Borrower is not subject to any order of, or written agreement or memorandum of understanding with, any governmental authority. To the best of Borrower's knowledge, there are no actions, suits, claims, investigations, or proceedings pending at law or in equity or before or by any governmental authority, or threatened against Borrower or any of its assets or properties or the transactions contemplated by this Loan Agreement.

3.4. Validity, Binding Nature, and Enforceability of the Loan Agreement. This Loan Agreement executed by Borrower constitutes the legal, valid, and binding Obligations of Borrower and are enforceable against Borrower in accordance with their terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to the enforcement of creditors' rights.

4. BORROWER'S COVENANTS.

4.1. Affirmative Covenants. Borrower covenants and agrees, during the term of the Loan and while any Obligations are outstanding and unpaid, to perform all the acts and promises set forth in Section 4.1.

(a) Payment and Performance. Borrower shall pay and perform all Obligations in full when and as due under the terms of this Loan Agreement (taking into account notice requirements and applicable grace periods), time being strictly of the essence.

(b) Program Requirements. Borrower shall comply with all of the Program Requirements. This includes, but is not limited to, the requirements outlined in this paragraph. Pursuant to the Program Requirements, the Borrower must provide payroll documentation to the Lender showing job creation sufficient to satisfy the Program Requirements that one full time equivalent job is created for each \$35,000 provided under this Loan Agreement. Further, the Borrower may be subject to state and federal environmental and labor (e.g., prevailing wage) law. Borrower shall comply with all applicable state, federal, and local law.

(c) Further Assurances. Borrower agrees to execute such other and further documents as may from time-to-time in the reasonable opinion of Lender be necessary to perfect, confirm, establish, reestablish, continue, or complete the purposes and intentions of this Loan Agreement.

4.2. Negative Covenants. The Borrower covenants and agrees that, without the Lender's prior written consent, from and after the Effective Date and until all the Obligations are paid in full:

(a) Program Requirements. Borrower shall comply with all Program Requirements. This includes, but is not limited to, the requirements outlined in this paragraph. Pursuant to the Program Requirements, the Borrower may not use the money received under this Loan Agreement for the following: (1) Reimbursement of expenses incurred prior to the Lender's formal Loan approval and/or completion of project's environmental review; (2) Support to another business in which the Borrower may have an interest; (3) Subsidy of interest payment on existing loans; (4) Refinancing or consolidating existing debt; (5) Relocation of a business from another jurisdiction; (6) Reimbursement for expenditures prior to Loan approval; or (7) Reimbursement for legal or accounting expenditures.

(b) Other Agreements. Borrower shall not enter into any agreement containing any provision that would be violated or breached by the performance of its Obligations under this Loan Agreement.

5. REQUIRED DOCUMENTS. As a condition precedent to all duties and obligations of Lender under this Loan Agreement, Borrower shall have delivered to Lender any documents that the Lender may reasonably require, including such document necessary to satisfy the Program Requirements.

6. EVENTS OF DEFAULT. The matters described in Sections 6.1–6.8 shall constitute Events of Default and shall entitle Lender to exercise the rights and remedies under Section 7.

6.1. Failure To Pay. Borrower's failure to pay any sum of money owed to Lender in connection with the Obligations, whether principal, interest, penalty, premium, fee, charge, or assessment, within thirty (30) days after the date when due, time being strictly of the essence.

6.2. Failure of Warranty or Representation to be True. The failure of any representation or warranty provided by Borrower to be materially true.

6.3. Failure to Perform Affirmative Covenants; Violation of Negative Covenants. Borrower's failure to perform any of the affirmative covenants provided in Section 4.1 or Borrower's violation of any of the negative covenants set forth in Section 4.2.

6.4. Default Under Loan Agreement. Borrower's breach of any of the material terms, covenants, or conditions set forth in this Loan Agreement.

6.5. Judgments. Borrower's suffering uninsured final judgments for payment of money in a material amount (considering Borrower's then current financial condition and the amount of the Principal Balance then outstanding), individually or in the aggregate, and Borrower's failure to discharge the same within a period of sixty (60) days, unless execution has been effectively stayed, whether by appeal, the posting of a bond, or otherwise.

6.6. Borrower's Involuntary Bankruptcy. Entry of a decree or order for relief, by a court having jurisdiction, against or with respect to Borrower in an involuntary case (or the failure of any such case to be dismissed within ninety (90) days of its commencement) under federal bankruptcy laws or any state insolvency or similar laws requiring (a) the liquidation of Borrower; (b) a reorganization of Borrower or the Business; or (c) the appointment of a receiver, liquidator, assignee, custodian, trustee, or similar official for Borrower or any of the properties of Borrower.

6.7. Borrower's Voluntary Bankruptcy. Borrower's (a) commencement of a voluntary case under federal bankruptcy laws or any state insolvency or similar laws; (b) consent to the appointment for taking possession by a receiver, liquidator, assignee, custodian, trustee, or similar official for Borrower of any of its property; (c) making any assignment for the benefit of creditors; or (d) failing generally to pay its debts as they become due, either as to the amount of such debts or the number of such debts.

6.8. Dissolution. If applicable, Borrower's commencement or becoming the subject of any dissolution proceedings; undertaking any action for the purpose of dissolving and winding up Borrower; or resolving to take or taking any action for the purpose of surrendering any right, license, franchise, or other incident of Borrower's existence.

7. REMEDIES.

7.1. Lender's Specific Rights and Remedies. On the happening of any Event of Default, Lender, in addition to any and all rights provided by law or equity, may:

(a) Accelerate and call due the unpaid Principal Balance of the Loan, and all accrued interest and other sums due thereunder;

(b) File suit against Borrower; and

(c) Exercise all other rights and remedies provided by this Loan Agreement or state or federal law.

7.2. Collection Costs. If suit or action is instituted to enforce any of the terms of this Loan Agreement, the prevailing party shall be entitled to recover from the other party its attorney fees and costs in addition to all other sums provided by law.

7.3. Notice of Default. Lender shall provide Borrower with (a) ten (10) Business Days' prior written notice and an opportunity to cure any default arising from Borrower's failure to satisfy a payment Obligation, and (b) thirty (30) Business Days' prior written notice and an opportunity to cure any other act or omission constituting an Event of Default. Notwithstanding anything to the contrary stated herein, Borrower shall not be entitled to any notice or opportunity to cure any of the Events of Default described in Sections 6.6, 6.7 and 6.8.

8. GENERAL PROVISIONS.

8.1. Modifications. The Loan Agreement may be amended, changed, or modified only as may be agreed in writing by Borrower and Lender from time-to-time.

8.2. Binding Effect. The Loan Agreement shall be binding on the parties and their successors and assigns. The rights and benefits of any party under the Loan Agreement may not be assigned without the prior written consent of the other party, which consent may be granted or withheld in such other party's sole and absolute discretion.

8.3. Entire Agreement. The Loan Agreement constitutes the entire agreement of the parties relating to the Loan. There are no promises, terms, conditions, obligations, or warranties other than those contained in the Loan Agreement. The Loan Agreement supersedes all prior communications, representations, or agreements, verbal or written, between the parties relating to the Loan.

8.4. Governing Law. The validity, meaning, enforceability, and effect of the Loan Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the State of California.

8.5. Incorporation by Reference. All documents, instruments, attachments, exhibits, and other writings executed with, referred to in, or attached to this Loan Agreement are incorporated by reference into this Loan Agreement and are made a part of this Loan Agreement as if fully set out herein. This Loan Agreement, before such incorporation, controls in the event of any conflict with the terms of the Loan Agreement.

8.6. Jurisdiction and Venue. Borrower consents to the venue and jurisdiction of any court, state or federal, located in the county of Sacramento. Borrower agrees that any action, proceeding, or other matter arising directly or indirectly under this Loan Agreement may be brought by Lender in its sole discretion in any such court. Borrower agrees to that venue for any action, proceeding, or other matter properly placed in any such court located in the county of Sacramento.

Borrower consents and agrees that any service of process may be made on Borrower wherever Borrower can be located or by certified mail directed to Borrower at Borrower's address set forth in Section 8.7 (with a copy to Borrower's counsel at the most recent notice address). This provision is permissive, not mandatory, and Lender reserves the right to bring any action, proceeding, or other matter arising directly or indirectly under this Loan Agreement against Borrower wherever either the Borrower or its properties might be found or might otherwise be subject to jurisdiction.

8.7. Notices. Any notice under the Loan Agreement shall be in writing, without implying the obligation to provide such notice. Any notice to be given or document to be delivered under the Loan Agreement shall be deemed to have been duly received on (a) delivery, if delivered in person or by any expedited delivery service that provides proof of delivery; (b) tested telex; or (c) the 5th Business Day after mailing, if mailed by certified mail, return receipt requested, postage prepaid, addressed to Lender or Borrower at the appropriate addresses. The addresses for notices are those set forth below or such other addresses as may be hereafter specified by written notice by the parties:

If to Lender: The City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Manager

If to Borrower: _____ [Borrower's name and address]

Attn: _____

8.8. Relationship of the Parties. Neither Lender nor Borrower shall be deemed a partner, joint venturer, agent, or related entity of the other by reason of the Loan Agreement.

8.9. Severability. If a court of competent jurisdiction finds any term or provision of this Loan Agreement, or the application thereof to any person or circumstance, to be invalid, void, or unenforceable to any extent, (a) such court may amend and/or interpret such term or provision so that it will be valid to the fullest extent possible under law; and (b) the remaining provisions of this Loan Agreement and any application thereof shall continue in full force and effect without being impaired or invalidated in any way.

8.10. Time. Time is of the essence under this Loan Agreement.

8.11. Usury. Borrower and Lender intend to comply with applicable usury laws. Accordingly, notwithstanding any provision in this Loan Agreement or in any other Loan Document to the contrary, neither this Loan Agreement nor any other Loan Document shall require the payment, or permit the collection, of interest in excess of the maximum amount permitted by law. If compliance with this Loan Agreement or any other Loan Document would result in a violation of applicable usury law, the amount of the payment obligation imposed by this Loan Agreement or any other Loan Document shall be reduced to the maximum amount permitted by law.

8.12. Waivers. Lender may at any time or from time-to-time waive all or any rights under any of the Loan Agreement, but any waiver or indulgence at any time or from time-to-time shall not constitute, unless specifically so expressed by Lender in writing, a future waiver by Lender of performance by Borrower.

8.13. Counterparts. This Loan Agreement may be executed in multiple counterparts, all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Borrower and Lender have executed this Loan Agreement as of the date first written above.

LENDER:

The City of Elk Grove,
a California municipal corporation

Dated: _____

By: _____
Laura S. Gill
City Manager

APPROVED AS TO FORM:

ATTEST:

By: _____
Jonathan P. Hobbs
City Attorney

By: _____
Jason Lindgren
City Clerk

BORROWER:

[NAME OF BORROWER],
[state of incorporation, if applicable]

Dated: _____

By: _____ [Signature]
Name: [Typed name]
Its: [Title]

