

LOAN AGREEMENT

This Loan Agreement (this "**Agreement**") is entered into effective as of _____ ("**Effective Date**") by and between the City of Fort Bragg, a public body, corporate and politic (the "**City**") and Mendocino Coast Hospitality Center, a California nonprofit mutual benefit corporation (the "**Borrower**"). City and Borrower are hereinafter collectively referred to as the "**Parties**."

WHEREAS, the Borrower is a 501(c)(3) nonprofit corporation organized and established to provide homeless services within the City of Fort Bragg at various locations. (the "**Properties**"); and

WHEREAS, Borrower anticipates funding from Mendocino County, but this funding will be delayed causing a short period of time where Borrower will not be able to pay for necessary services to homeless individuals in the City pending approval by Mendocino County Board of Supervisors and receipt of funds; and

WHEREAS, Borrower has requested a short-term loan of \$25,000 from the City in order to fund services currently being offered to homeless individuals in the City to sustain Borrower until such time as funding from the County is received; and

WHEREAS, the City agrees to loan the funds necessary for Borrower to continue to operate its facility at the Properties; and

WHEREAS, the loan proceeds will be disbursed from the City's General Fund (the "**Fund**"), and the use of the loan proceeds pursuant to this Agreement will serve the public purpose of providing shelter and related services to homeless individuals within the City.

NOW THEREFORE, in consideration of their mutual undertakings and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

Section 1. The Loan and Disbursement of Loan Proceeds.

A. The Loan. Subject to the terms and conditions of this Agreement and for the purposes described herein, City agrees to make a loan to Borrower in the amount of up to Twenty-five Thousand Dollars (\$25,000) (the "**Loan**"). The outstanding principal balance of the Loan shall bear simple interest at the rate of three percent (3%) per annum until paid in full. The Loan shall be evidenced by a promissory note substantially in the form attached hereto as Exhibit A (the "**Promissory Note**"). The outstanding principal balance of the Loan, including accrued interest, shall be payable in one lump sum on January 31, 2020 or at regular intervals, not more than a week following reimbursement by Mendocino County to the Borrower, whichever occurs first (the "**Maturity Date**"). Any other waiver by the City of any obligation set forth in this Agreement or in the Promissory Note must be in writing. No waiver shall be implied from any failure by the City to take any action on any breach or default by the Borrower or to pursue any remedy allowed under this Agreement, the Promissory Note or applicable law. Any extension of time granted to the Borrower to perform any obligation under this Note shall not operate as a waiver or release from any of its obligations under this Note.

B. Use of Loan Proceeds. The proceeds of the Loan (the “**Loan Proceeds**”) shall be used solely and exclusively to provide shelter and related services to homeless individuals within the City as set forth in this Agreement.

C. Disbursement of Proceeds. Upon Borrower’s execution and delivery to the City of this Agreement and the Promissory Note, and execution of the funding contract between Borrower and Mendocino County to provide emergency winter shelter services from approximately December 15, 2019 to March 31, 2020, the City shall disburse the Loan Proceeds on a biweekly basis as requested by Borrower, not to exceed Twenty-five Thousand Dollars (\$25,000).

Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse any portion of the Loan Proceeds following termination of this Agreement by mutual agreement of the Parties.

Section 2. [reserved]

Section 3. Covenants, Representations and Warranties of Borrower.

Borrower covenants, represents and warrants to the City as follows:

A. Organization of the Borrower. Borrower is a duly organized nonprofit Public Benefit corporation, validly existing and in good standing under the laws of the State of California. Borrower has all requisite power and authority in the State of California to be a party to this Loan Agreement and perform its obligations under this Agreement and the Promissory Note.

B. Authorization of the Loan; No Violation. The execution, delivery and performance of this Agreement and the Promissory Note have been duly authorized by Borrower, and this Agreement and the Promissory Note, when duly executed and delivered will constitute the valid and binding obligations of Borrower enforceable in accordance with their respective terms. Borrower’s execution of this Agreement and the Promissory Note and performance thereunder will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

C. Hazardous Materials. (1) Borrower agrees not to release, use, manufacture, handle, generate, store, treat, discharge, bury or dispose of any Hazardous Materials on, under, in or about the Property, or transport to or from the Property any Hazardous Materials. Borrower agrees to indemnify and hold the City, its officers, employees and agents, harmless from and against any and all loss, claim, liability, damage, injunctive relief, injuries to person, property or natural resources, cost, expense (including reasonable fees of attorneys, expert witnesses, and other professionals advising or assisting the City), action or cause of action, arising in connection with the actual or alleged release or presence of any Hazardous Materials on, under, in or about the Property, whether foreseeable or unforeseeable, regardless of the source of such release or when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs in law or in equity of investigation, assessment, containment, removal, remediation of any kind, and disposal of such Hazardous Materials, all cost of determining whether the Property is in compliance, and causing the Property to be in compliance, with all

applicable Hazardous Materials Laws, all costs associated with claims for damages to persons, property, or natural resources and court costs.

(2) The term "**Hazardous Materials Law**" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements and any court judgments applicable to Borrower or to the Property, relating to industrial hygiene, environmental or unsafe conditions, or human health, including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials. The term "**Hazardous Materials**" includes petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials regulated by Hazardous Materials Law in any manner whatsoever. The term shall not, however, apply to those materials commonly used in accordance with all applicable laws in the operations of a mobile home park.

D. Indemnification. Borrower shall indemnify, defend and hold the City, its elected and appointed officials, employees, contractors and agents (collectively "**Indemnitees**") harmless from and against any and all demands, claims, suits, costs (including reasonable attorneys' fees), losses, damage, causes of action, fines, judgments, or liabilities of any kind arising directly or indirectly in any manner in connection with or resulting from (a) any and all activities conducted in connection with the Property, including without limitation, site investigations conducted by or for Borrower, (b) any failure of any representation by Borrower to be correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property or in connection with Borrower's operations, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the Loan, the Promissory Note or any transaction contemplated thereby, or the relationship between Borrower and City. Borrower's obligations under this Section shall survive the making and repayment of the Loan and the expiration or termination of this Agreement. Borrower's indemnity obligations shall not apply to any costs, losses, claims, or liability caused solely by the willful misconduct or gross negligence of the City, its officers, employees or agents.

E. Books and Records; Publicity. The City shall have the right, during business hours and after reasonable notice to Borrower, to inspect and copy Borrower's books and records with respect to the Property and the Loan. Upon City's request, Borrower shall use its best efforts to identify the City in publicity concerning the Property.

F. Litigation. There are no pending or threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Borrower other than those heretofore disclosed by Borrower to City in writing.

Section 4. Default and Remedies.

A. Events of Default. Provided that City has provided written notice to Borrower specifying the nature of such default, the occurrence of any of the following events shall, at the option of the City,

constitute an event of default by Borrower under this Agreement, if such default remains uncured 15 days following delivery of notice of monetary default or 30 days following delivery of notice of non-monetary default.

(1) Borrower fails to comply with or fully and timely perform any of Borrower's obligations under this Agreement;

(2) Unless approved in writing by the City and subject to Section 5.1, the Borrower voluntarily or involuntarily sells, transfers, disposes of or further encumbers all or any portion of its interest in the Property;

(3) Any representation or warranty contained in, or made in connection with the execution and delivery of this Agreement, or in any certificate or statement furnished pursuant hereto, shall prove to have been incorrect when made in any material respect;

(4) Borrower defaults in the performance of any other term, covenant, or agreement contained in this Agreement or the Promissory Note;

(5) 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**"): (A) Borrower (i) commences a voluntary case or proceeding, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) applies for or consents to the appointment of a trustee, receiver, assignee, liquidator or similar official, (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; or (B) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (a) is for relief against Borrower in an involuntary case, (b) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (c) orders the liquidation of Borrower, or (d) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or any other property of Borrower, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance; and

(6) Any final judgment for the payment of money that is not fully covered by liability insurance is rendered against Borrower and is not discharged within thirty (30) days, or if the execution of such judgment is stayed pending appeal but is affirmed on such appeal, such judgment is not discharged within thirty (30) days following such affirmation.

B. Remedies of the City upon Default. Upon the occurrence of an event of default by the Borrower in the performance of this Agreement or the Promissory Note, the City shall have the following rights, in addition to the City's other rights and remedies provided by law:

(1) The City may declare the entire outstanding principal balance of the Loan, including interest accrued, immediately due and payable;

(2) The City shall have full power to exercise any and all rights and powers granted to the City pursuant to the Promissory Note and this Agreement in the event of a default; and

(3) The City may terminate this Agreement.

Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided herein or in the Promissory Note. The City 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.

C. No Waiver. No failure or delay by City at any time to require performance by Borrower of any provision of this Agreement or to exercise any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof. The failure of City to insist upon the strict performance of any provision of this Agreement, or to exercise any election contained herein shall not be construed as a waiver or relinquishment for the future of such provision or election nor shall it constitute a waiver of the City's right to assert any future remedy provided for in this Agreement or the Promissory Note on the basis of the same or a similar breach of a covenant or warranty or other event of default.

Section 5. General Provisions.

A. Assignment, Transfer, and Encumbrance. The Loan shall not be assigned nor shall Borrower transfer or encumber its interest in the Property without the prior written consent of the City.

B. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(1) personal delivery, in which case notice is effective upon delivery;

(2) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or

(3) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

CITY:

City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

BORROWER:

**Mendocino Coast Hospitality Center
101 N. Franklin Street
Fort Bragg, CA 95437**

- C. Amendments. This Agreement may be modified only by a written instrument signed by both Parties.
- D. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.
- E. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.
- F. Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Borrower, or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Borrower or its successor or for any obligation of City under this Agreement.
- G. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.
- H. Headings; Construction. The headings of the sections and paragraphs of this Agreement have been inserted for convenience only and shall not be used to construe this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.
- I. Governing Law. This Agreement and the Promissory Note shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.
- J. Severability. If any term of this Agreement 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.
- K. Entire Agreement; Exhibits. This Agreement, together with the Promissory Note, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A and B attached hereto are incorporated herein by this reference.
- L. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

[BORROWER]

By: _____

MCHC, President

CITY OF FORT BRAGG

By: _____

City Manager

Approved as to form:

City Attorney

Exhibit A

FORM OF PROMISSORY NOTE