

## LOAN AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_ day of June, 2014, by and between the Milwaukee Health Services, Incorporated, a Wisconsin Non-Stock Not-for-Profit Corporation, ("BORROWER"), and the City of Milwaukee, a Wisconsin Municipal Corporation ("City").

### WITNESSETH

**WHEREAS**, BORROWER is a federally qualified health center that provides health care services to Medicaid and Medicare recipients and uninsured persons; and,

**WHEREAS**, BORROWER wishes to purchase a CPS Upgrade to Version 12 from GE Centricity which will enable it to qualify for certain reimbursements under the meaningful use provision of the American Recovery and Reinvestment Act, as well as make due on past due payments to GE Centricity, which in total will cost approximately \$190,000; and

**WHEREAS**, City has agreed to assist BORROWER by funding a loan to BORROWER in the amount of \$190,000.00 (the "Loan") for the Project in accordance with the terms and conditions set forth in this Agreement;

**WHEREAS**, Milwaukee Common Council File No. 140239, approved on June 3, 2014 authorizes the execution of this Agreement and the funding of the Loan; and,

**WHEREAS**, City has agreed to provide the Loan to BORROWER, the proceeds of which will fund the Project

**WHEREAS**, City is willing to make the Loan to BORROWER, upon the terms and subject to the conditions hereinafter set forth,;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, City and BORROWER agree as follows:

### ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

"Closing Date" means June \_\_, 2014.

"Event of Default" means the occurrence of any of the events described in Section 7.1.

"Loan Documents" means this Agreement, Note, and all other documents, instruments, agreements and certificates related to or executed in connection with this Agreement.

"Maturity Date" means the maturity date of the Note as provided in Section 2.2 of this Agreement.

"Note" means the Note from BORROWER (as Maker) to City (as payee) in the form attached hereto as **Exhibit A**.

"Project" means the purchase of a CPS Upgrade to Version 12 from GE Centricity, as well as making due on past due payments to GE Centricity.

"Project Funds" means the proceeds of the Loan

## **ARTICLE 2 THE LOAN**

2.1 **The Loan**. City hereby makes a term loan in the principal amount of \$190,000.00 to BORROWER. The Loan will be evidenced by, and be repayable pursuant to the Note. The principal amount will be disbursed to BORROWER in one lump sum of \$190,000.00 on the Closing Date.

2.2 **Term**. The Note will bear a final maturity date of February 2, 2020, ("Maturity Date").

2.3 **Interest Rate**. The Note shall not bear interest.

2.4 **Terminations or Default**. The entire principal loan balance on the Loan shall be due and payable upon the earlier of (i) the occurrence of an Event of Default or (ii) the Maturity Date.

## **ARTICLE 3 BORROWER'S REPRESENTATIONS AND WARRANTIES**

In order to induce City to make the Loan, BORROWER represents and warrants to City as follows:

3.1 **Loan Purpose**. The proceeds of the Loan will be applied solely to finance Project and only in compliance with the terms of this Agreement and all Loan Documents.

3.2 **BORROWER**. BORROWER is a corporation legally formed and validly existing under the laws of the State of Wisconsin.

3.3 **Authorizations and Binding Effect**. The execution and delivery by BORROWER of the Loan Documents to which it is a party, and the performance by BORROWER of its obligations there under, are within its corporate power, have been duly authorized by proper action on the part of BORROWER's Board of Directors, are not in violation of any existing law, rule or regulation of any governmental agency or authority, any order or decision of any court, BORROWER's Articles of Incorporation and Bylaws, or the terms of any agreement, restriction or undertaking to which BORROWER is a party or by which it is bound, and do not require the approval or consent of any governmental body, agency or authority or any other person or entity. The Loan Documents to which BORROWER is a party will constitute the valid and binding

obligations of BORROWER enforceable in accordance with their terms and conditions, except as limited by Bankruptcy, insolvency or similar laws of general application affecting the enforcement of creditors' rights and except to the extent that general principles of equity might affect the specific enforcement of such Loan Documents.

3.4 Litigation. There is no litigation or administrative proceeding pending or, to the knowledge of BORROWER, threatened against or affecting BORROWER or the properties of Borrower, which if determined adversely, would have a material, adverse effect upon the business, financial condition or properties of Borrower.

3.5 Accuracy of Information. All information furnished by BORROWER to City is true, correct and complete in all material respects as of the date furnished and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make such information not misleading.

3.6 Taxes. BORROWER has filed all federal, state and other income and other tax returns required to be filed, if any, which returns properly reflect taxes owed by BORROWER for the period covered thereby and it has paid or made appropriate provisions for the payment of all taxes which may become due pursuant to said returns and for the payment of all present installments of any assessments, fees and other governmental charges upon BORROWER or any of its property.

#### **ARTICLE 4 CONDITIONS FOR BORROWING**

City's obligation to make the Loan is subject to the satisfaction of the following conditions:

4.1 On or Before the Closing Date. BORROWER shall have delivered to the City the following, all in form and content satisfactory to City:

- a) The Note, duly executed by BORROWER.
- b) This Agreement, duly executed by BORROWER.
- c) Certificate of Secretary. A certificate of the secretary of BORROWER:  
(i) attaching a copy of the resolutions of the board of directors of BORROWER, authorizing the execution, delivery and performance by BORROWER of this Loan Agreement and any other documents delivered or to be delivered in connection herewith, (ii) certifying the names of the officers of BORROWER authorized to sign this Agreement and the other documents delivered or to be delivered in connection herewith, (iii) attaching true, correct and complete copies of the Articles of Incorporation and Bylaws of BORROWER, and (iv) providing the federal tax identification number of BORROWER.

- d) Financial Statements. BORROWER's current Financial Statements certified by BORROWER.

4.2 At the time of the disbursement of funds hereunder by City, (a) BORROWER shall be in compliance with all of the terms and conditions set forth in this Agreement on its part to be observed or performed, and (b) no Event of Default, as defined in this Agreement, nor any event which upon notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing at the time of such disbursement.

## **ARTICLE 5 BORROWER'S AFFIRMATIVE COVENANTS**

BORROWER covenants that until the Note has been paid in full:

5.1 Use of Project Funds. BORROWER shall utilize the Project Funds only for the Project and at all times in compliance with the terms of this Agreement and the Loan Documents.

5.2 Reports of use of Funds. BORROWER will furnish to City:

- a) On or before July 1, 2014 BORROWER shall provide City with proof, satisfactory to City, that BORROWER has used the Project Funds on the Project. Failure to provide satisfactory proof to the City on or before July 1, 2014 shall constitute an Event of Default.
- b) at the end of each fiscal year of BORROWER and in any event within 180 days thereafter, the annual audited financial statements of BORROWER, including a balance sheet, income statement and statement of changes in cash flows, prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous year;
- c) any additional documents, including the annual budget of BORROWER, reports of independent accountants and notices of any event material to the business of BORROWER that are sent to the directors of BORROWER.
- d) promptly upon request, any additional documents or information reasonably requested by City as to the Project or BORROWER.

5.3 Books and Records. BORROWER shall keep and maintain such books, records and other documents as may be reasonably necessary to reflect and disclose fully the amount and disposition of the proceeds of the Loan, the total cost of activities paid for, in whole or in part, with the proceeds of the Loan, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources.

5.4 Audits. All such books, records and other documents maintained by BORROWER under Sections 5.2 & 5.3 shall be available at the offices of BORROWER for inspection,

copying, audit and examination at all reasonable times by any duly authorized representative of City.

- 5.5 Management. BORROWER shall at all times maintain management and staff with qualifications and skills necessary and appropriate to manage the Project in compliance with the Loan Documents, and shall utilize such other resources as appropriate for the Project.
- 5.6 Notice of Breach or Compliance Failure. BORROWER shall immediately notify City of any breach of, or failure to comply with, any covenant or agreement contained in this Agreement or any other Loan Document.

## ARTICLE 6 BORROWER'S NEGATIVE COVENANTS

BORROWER covenants that, without the prior written consent of City, it will not, until the Note has been paid or discharged in full pursuant to its terms and conditions:

- 6.1 Limitations on Transfers. Sell, transfer, or assign any ownership interest in itself or the Project without the prior written consent of City. City consent shall not be required for the sale of additional stock provided said sale does not alter the majority ownership of the BORROWER entity.
- 6.2 Discrimination Prohibited. Commit or participate in committing any act of discrimination against any person on the basis of race, color, sexual orientation, sex, age, disability, lawful source of income, marital status, familial status, or national origin or ancestry in connection with the Project.
- 6.3 Merger and Name. BORROWER will not merge or consolidate, or enter into any analogous reorganization or transaction with any person or entity or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or permit any other entity to merge into it, or acquire all or a substantial part of the assets of any other person or entity, without the prior written consent of the City. BORROWER will not change its name or the state in which it is organized without 30 days' prior written notice to City.
- 6.4 Nature of Business. BORROWER shall not engage in any line of business or operation materially different from that presently engaged in by BORROWER.
- 6.5 Use of Proceeds and Funds. BORROWER shall not use, and shall not permit the use of, the proceeds of the Loan or the proceeds from any loan made under the Project for any purpose other than as set forth in this Agreement, including without limitation Sections 3.1 and 6.1 hereof.

## ARTICLE 7

## **EVENTS OF DEFAULT; REMEDIES.**

7.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default:

- a) Failure to Pay Note. BORROWER's failure to pay principal or interest due on the Note within ten (10) days after the same has become due and payable; or
- b) Falsity of Representations and Warranties. Should any representation or warranty made in any Loan Document be false in any material respect on the date as of which made or as of which the same is to be effective; or
- c) Breach of Covenants and Agreements. BORROWER's failure to comply with any covenant or agreement, other than BORROWER's duty to pay under the Note, contained herein or in any Loan Document and continuance of such default for a period of thirty (30) days after written notice to BORROWER from City (or such longer period as may be agreed to in writing by City); or
- d) Insolvency or Bankruptcy. BORROWER's becoming insolvent or the subject of insolvency proceedings, failure generally to pay its debts as and when the same become due, making an assignment for the benefit of creditors, or having a receiver, trustee, custodian or other similar official appointed for, or take possession of, any substantial portion of BORROWER's property; or BORROWER taking any corporate action to authorize it to become the subject of proceedings under the U.S. Bankruptcy Code (the "Code"), executing or filing of a petition to become a debtor under the Code, has an involuntary petition under the Code filed against which remains un-dismissed for a period of 60 days or becoming the subject of an order for relief entered pursuant to the Code.

7.2 Remedies. Upon the occurrence of an Event of Default, the Note shall, upon written notice from City, become immediately due and payable in full. Presentment, demand, protest and notice of nonpayment and dishonor are hereby expressly waived.

7.3 Waiver. City may waive any Event of Default without waiving any other subsequent or prior Event of Default by the BORROWER. No delay on the part of City or any subsequent holder of the Note in exercising any right, power or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein described are cumulative and not exclusive of any other rights or remedies which City may otherwise have.

## **ARTICLE 8 INDEMNIFICATION OF CITY**

BORROWER shall indemnify and hold harmless City, its officers, employees, officials and agents from and against any and all losses, claims, damages, expenses and all suits in equity or actions at law (including reasonable counsel fees) and liabilities arising from, in connection with, or as a result of the operation, construction or maintenance of the Project or any actions of BORROWER undertaken pursuant to this Agreement. Nothing in the foregoing indemnity shall protect City against its own default, negligence, or willful misconduct.

## **ARTICLE 9 MISCELLANEOUS**

9.1 Survival. The agreements, representations and warranties contained herein shall survive closing and execution and delivery of the Loan Documents.

9.2 Expenses. BORROWER agrees, whether or not the transaction hereby contemplated shall be consummated or the Loan disbursed, to pay reasonable out-of-pocket expenses incurred by City in connection with the administration, amendment or enforcement of any Loan Document.

9.3 Notices. All notices provided for herein shall be in writing and shall be (a) delivered or (b) sent by express or first class mail; and, if to City, addresses it at:

City of Milwaukee  
200 E. Wells Street  
Milwaukee, WI 53202  
Attn: Commissioner of Health

With copy to:  
Office of the City Attorney  
200 E. Wells Street  
Milwaukee, WI 53202

And, if to BORROWER, address it at:

Milwaukee Health Services, Incorporated  
Tito IZard, MD  
President & CEO  
2555 N. MLK Drive  
Milwaukee WI 53212

Or to such other address with respect to either party as such party shall notify the other in writing; such notices shall be deemed given when delivered or mailed.

9.4 Titles. The titles of sections in this Agreement are for convenience only and do not limit or construe the meaning of any section.

9.5 Parties Bound. The provisions of this Agreement shall inure to the benefit of and be binding upon any successor of any of the parties hereto and shall extend and be available to any holder of the Note.

9.6 Governing Law. This Agreement is being delivered in and shall be deemed to be a contract governed by the laws of the State of Wisconsin and shall be interpreted and enforced in accordance with the laws of Wisconsin.

9.7 Entire Agreement. This Agreement and the other Loan Documents shall constitute the entire agreement of the parties pertaining to the subject matter hereof and shall supersede all prior or contemporaneous agreements and understandings of the parties in connection therewith.

9.8 Limitation on Waivers. If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive the same or other or any future breach hereunder on any other occasion. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by virtue of other contracts. No delay or omission to exercise any right or power available upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. To entitle City to exercise any remedy reserved or available to it, it shall not be necessary to give any notice other than such notice as may be herein expressly required.

9.9 Amendments. This Agreement shall not be effectively amended, changed, modified, altered or terminated and no modification, alteration or amendment to this Agreement shall be binding upon either party hereto until such modification, alteration or amendment is reduced to writing and executed by both parties hereto.

9.10 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

9.11 Severability. If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provisions in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Agreement, shall not affect the remaining portions of this Agreement, or any part thereof.

9.12 Time of the Essence. Time is of the essence of this Agreement.

[Signatures on Following Pages]



**WHEREOF, the parties have executed this Agreement as of the day, month and year first above:**

**BORROWER:**

By: \_\_\_\_\_  
Tito Izard, MD, its President and CEO

**CITY:**

By \_\_\_\_\_  
Tom Barrett, Mayor

By \_\_\_\_\_  
James Owczarski, City Clerk

**Countersigned:**

\_\_\_\_\_  
Martin Matson, Comptroller

Signatures of Tom Barrett, James Owczarski, and Martin Matson, authenticated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Jeremy R. McKenzie, Assistant City Attorney  
State Bar No. 1051310

**Approved as to form and execution**

This \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Assistant City Attorney  
Drafted By: Jeremy R. McKenzie, Assistant City Attorney

**EXHIBIT A**  
**Note**

\$190,000

Milwaukee, Wisconsin  
June \_\_, 2014

**FOR VALUE RECEIVED, Milwaukee Health Services, Incorporated**, a Wisconsin Non-Stock Corporation, which is a federally qualified health center, ("Maker") promises to pay to the order of the **City of Milwaukee** or any future holder hereof ("Payee"), the principal sum of One Hundred Ninety Thousand U.S. Dollars (\$190,000.00) pursuant to the terms of that certain Loan Agreement ("Loan Agreement") dated on a date even herewith, entered into by Maker and Payee. Principal due hereunder shall be paid as follows:

1. Interest shall not accrue on the principal balance of the loan evidenced by this Note.
2. The principal balance shall be paid in 60 monthly installments with the first such installment due on February 2, 2015. The first fifty-nine (59) installments shall be in the amount of \$3,166.67. The sixtieth (60<sup>th</sup>) payment shall be in the amount of \$3,166.71.
4. Principal shall be due and payable on February 2, 2020, or such later Maturity Date established under the Loan Agreement.

All payments of principal and interest due hereunder shall be paid to Payee at The Milwaukee Health Department, 841 North Broadway 3<sup>rd</sup> floor, Milwaukee WI 53202-3653 or to such other person or at such other address as Payee may from time to time direct.

The entire outstanding balance of principal, if not sooner paid, shall be due and payable as provided in the Loan Agreement.

This Note may be prepaid in full or in part at any time without penalty.

Upon the occurrence of an Event of Default under the Loan Agreement, provided such Event of Default has not been cured to the reasonable satisfaction of Payee within the applicable cure period, the entire outstanding principal balance shall, at the option of Payee, mature and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default.

Maker waives and renounces presentment, protest, demand and notice of dishonor and any and all lack of diligence or delay in collection or endorsement hereof, and expressly consents to any extension of time, release of any party liable for these obligations, release of any security which may have been or which may hereafter be granted in connection herewith, or any other indulgence or forbearance which may be made without notice to Maker and without in any way affecting the liability of Maker.

If any Payment due under this Note or any payment required under the Loan Agreement is not fully paid within ten (10) days after the date due, Maker shall pay to Payee a late charge equal to five percent (5%) of such installment payment, to compensate Payee for the extra cost of handling delinquent payments. Neither the requirement that such late charge be not paid, nor the payment of the late charge, will be deemed to be a waiver of a default arising from the late payment.

Nothing contained herein nor any transaction related hereto shall be construed or shall so operate either presently or prospectively (a) to require the payment of interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to require the payment or the doing of any act contrary to law; but if any clause or provision herein contained shall otherwise so operate to invalidate this Note and/or the transaction related hereto, in whole or in part, then such clause(s) and provision(s) only shall be held for naught as though not contained herein and the remainder of this Note shall remain operative and in full force and effect.

If for any reason interest in excess of the amount as limited in the foregoing paragraph shall have been paid hereunder, whether by reason of acceleration or otherwise, then in that event any such excess interest shall constitute and be treated as a payment of principal hereunder and shall operate to reduce such principal by the amount of such excess on the date received by Payee, or if in excess of the then principal indebtedness, such excess shall be refunded.

All of the covenants contained herein shall bind, and the benefits hereof shall also inure to the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. The rights and remedies of Payee as provided in this Note shall be cumulative and concurrent, and may be pursued singularly, successively or together against Maker, at the discretion of Payee.

This Note shall be construed in accordance with the laws of the State of Wisconsin.

The Maker agrees that if, and as often as, this Note is placed in the hands of an attorney for collection, or to defend or enforce any of the Payee's rights hereunder or under any document securing this Note, whether or not litigation is commenced, the undersigned shall pay to Payee, Payee's reasonable attorney's fees, together with all court costs and other expenses incurred or paid by Payee in connection therewith.

**IN WITNESS WHEREOF**, the undersigned Maker has executed this Note as of the date first above.

**Milwaukee Health Services, Incorporated**

By: \_\_\_\_\_  
Tito Izard, M.D.  
Its: President & CEO