

**MISSISSIPPI DEPARTMENT OF FINANCE & ADMINISTRATION**  
**Office of Budget & Fund Management**

**LOAN AGREEMENT**

**THIS LOAN AGREEMENT**, dated as of \_\_\_\_\_ (this “Agreement”) by and between the Mississippi Department of Finance and Administration (“DFA”) and the Mississippi State Department of Health (“MSDH”) set forth in Item 1 of Appendix A.

**W I T N E S S E T H:**

**WHEREAS**, pursuant to Public Law 108-27, Jobs and Growth Tax Relief Reconciliation Act of 2003 (TRRA) and Section 27-104-21, Mississippi Code Annotated, 1972, DFA is authorized to escalate its budget and expend federal flexible grant funds for the purpose of providing essential government services;

**WHEREAS**, MSDH has determined that, because of the timing of its receipt of health care expendable funds, its provision of community health services is in jeopardy;

**WHEREAS**, DFA has approved strategies utilizing agencies’ cash on hand for cash flow purposes for other agencies in FY 04 when the timing of receipt of health care expendable funds jeopardizes the agencies’ provision of essential government services;

**WHEREAS**, DFA has agreed to provide MSDH with a temporary loan in the amount set forth in Item 3 of Appendix A (the "Loan") under the terms and conditions set forth in Item 4 of Appendix A, in order to fund, in part, the provision of essential government services;

**WHEREAS**, to secure the payment of the Loan, MSDH has authorized, executed, and delivered the Note (as hereinafter defined) to DFA.

**NOW, THEREFORE KNOW ALL MEN BY THESE PRESENTS, THIS LOAN AGREEMENT WITNESSETH:**

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, do hereby agree as follows:

**SECTION 1. *Loan.*** Subject to and upon the terms and conditions set forth herein, DFA agrees to make the Loan to MSDH and MSDH agrees to borrow the proceeds of the Loan from

DFA. The Loan will be evidenced by a promissory note payable to the order of DFA and dated as of the date hereof in substantially the form attached hereto as Exhibit A (the "Note"), which Note shall bear no interest as shown on the face of the Note. Subject to the provisions of, and upon execution of this Agreement, the Note and any other documents required by DFA to secure MSDH's repayment of the Loan, DFA shall pay the proceeds of the Loan unto MSDH in order to finance, in part, essential government services.

**SECTION 2. *Loan Payments and the Note.*** All payments payable by MSDH under this Agreement and the Note (the "Loan Payments") are due and payable at the times and in the amounts set forth in Item 4 of Appendix A. DFA directs MSDH to pay, and MSDH agrees to pay to DFA, at the address set forth in Section 9 herein below, all payments payable by MSDH pursuant to this Agreement.

MSDH's failure to make timely loan payments shall constitute default, and shall be condition sufficient to authorize DFA to transfer to DFA an amount equal to not less than 100% of the total outstanding Loan Payments from any funds held in the State treasury to the credit of MSDH.

MSDH shall execute the Note to evidence its obligation to make the Loan Payments and any other sums payable by MSDH hereunder.

MSDH may, at its option, at any time and from time to time, upon not less than five (5) days written notice to the DFA, prepay the Loan without premium or penalty.

**SECTION 3. *Representations of DFA.*** DFA makes the following representations as the basis for the undertakings on the part of MSDH herein contained.

(a) DFA has been duly authorized and has by proper action executed and delivered this Agreement and, as to DFA, this Agreement is valid and legally binding and enforceable in accordance with its terms;

(b) The Loan for cash flow purposes will further the purposes of MSDH, to wit: prevent a disruption of essential government services, specifically community health services.

**SECTION 4. *Representations of MSDH.*** MSDH makes the following representations as the basis for the Loan and the undertakings on the part of DFA herein contained:

(a) MSDH has been duly authorized and has by proper action executed and delivered this Agreement and, as to MSDH, this Agreement is valid and legally binding and enforceable in accordance with its terms;

(b) It shall comply with the terms and provisions of this Agreement and the Note;

(c) All information furnished by MSDH to DFA for the purpose of approving the Loan is true, accurate, and complete;

(d) The Loan is being made solely for cash flow purposes for providing essential government services and will not be used for any other purpose.

**SECTION 5. *Covenants of MSDH.*** MSDH covenants and agrees, until the Loan is repaid and satisfied in full according to the terms of this Agreement, as follows:

(a) MSDH shall at all times keep proper books of account in a manner satisfactory to DFA and hereby authorizes DFA to make or cause to be made, at MSDH's expense and in such manner and at such times as DFA may require inspections and audits of any books, records and papers in the custody or control of MSDH or others, relating to essential government services provided by the Loan.

(b) MSDH shall promptly give to DFA written notice of the occurrence of any event or matter that has resulted or will result in a material adverse change in its ability to provide essential government services.

**SECTION 6. *Defaults and Remedies.*** The following shall be "events of default" under this Agreement, and the terms "event of default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by MSDH to pay or cause to be paid when due any payments required to be paid under Section 2 hereof and the Note;

(b) Failure by MSDH to observe and perform in any material way any covenant, conditions or agreement on its part to be observed or performed as set forth herein, which failure shall not be cured to the satisfaction of DFA within the earlier of ten (10) days after actual knowledge thereof by MSDH or written notice, specifying such failure and requesting that it be remedied, is given to MSDH by DFA;

(c) Whenever an event of default shall have occurred and be continuing, DFA may at anytime thereafter, at their option, declare the Loan to be due and payable, whereupon the maturity of the then unpaid balance of the Loan shall be accelerated and the same shall forthwith become due

and payable without presentment, demand, protest or notice of any kind, all or which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding, and DFA may take any action at law or in equity to enforce this Agreement to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of MSDH under this Agreement or the Note. No remedy conferred upon or reserved to DFA by this Agreement 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 statute. No delay or omission or exercise of any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. If MSDH shall default under any of the provisions of this Agreement and DFA shall employ attorneys or incur other expenses for collection of the Loan payments or for the enforcement or performance or observance of any obligation or agreement on the part of MSDH contained in this Agreement or the Note, MSDH, will on demand therefore pay the reasonable fees and expenses of DFA and its attorneys as they are incurred including all fees of counsel incurred for negotiation, trial, appeals or ruling of any lower tribunals, administrative hearings, or other proceedings.

**SECTION 7. *Indemnification of DFA.*** MSDH'S tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Sections 11-46-1, et. seq., Mississippi Code Annotated, 1972, including all defenses and exceptions contained therein. Nothing in this agreement shall have the effect of changing or altering this liability or eliminating any defense available to the State under this statute.

**SECTION 9. *Notice Addresses.*** All notices given pursuant to this Agreement shall be in writing signed by the party giving the notice and shall be given by (a) certified mail, postage prepaid, (b) prepaid overnight delivery, or (c) hand delivery. For the purposes of this Agreement, notices shall be sent to the parties at the addresses set forth in Item 5 of Appendix A hereto or to such other addresses that the parties may designate in writing.

**SECTION 10. *Miscellaneous.***

(a) The paragraph headings in this Agreement are for convenience only and are not intended to limit or interpret the provisions of this Agreement.

(b) All Appendices and Exhibits, which are referred in this Agreement, are made a part of and are incorporated into this Agreement.

(c) This Agreement shall be governed as to validity, construction and performance by the laws of the State of Mississippi.

(d) This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one in the same instrument.

(e) No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

(f) If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not effect any of the remaining clauses, provisions or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written on the cover page hereof.

MISSISSIPPI DEPARTMENT OF  
FINANCE AND ADMINISTRATION

Attest

\_\_\_\_\_  
Deborah T. Biggers  
Director, Office of Budget & Fund  
Management

\_\_\_\_\_  
Margaret H. Hill  
Executive Director

MISSISSIPPI STATE DEPARTMENT  
OF HEALTH

Attest

\_\_\_\_\_  
Mitchell H. Adcock  
Chief Financial Officer

\_\_\_\_\_  
Brian Amy, MD, MHA, MPH  
State Health Officer

**Appendix A  
to  
Loan Agreement**

- Item 1-** Name of Agency: Mississippi State Department of Health
- Item 2-** Use of Loan Funds: To provide, in part, for cash flow requirements for the provision of essential government services, specifically community health services.
- Item 3-** Loan Amount: Three Million Dollars and No Cents (\$3,000,000.00)
- Item 4** Loan Terms and Conditions: The terms of the Note shall be for 12 months at 0% annual interest. Monthly payments shall be made as evidenced by the loan amortization schedule attached thereto as Exhibit B. All funds shall be disbursed within ten business days of execution of the promissory note.
- Item 5** Address Notice:
- Mississippi Department of Finance and Administration  
13<sup>h</sup> Floor, Woolfolk Office Building, Suite 1301-E  
Post Office Box 267  
Jackson, Mississippi 39205  
Attention: Office of Budget & Fund Management
- Mississippi State Department of Health  
570 E. Woodrow Wilson Blvd.  
Post Office Box 1700  
Jackson, Mississippi 39215  
Attention: Finance & Accounts

**EXHIBIT A**  
**MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**Office of Budget and Fund Management**

**PROMISSORY NOTE**

\_\_\_\_\_, 2003

\$3,000,000.00

FOR VALUE RECEIVED, the undersigned, the Mississippi State Department of Health (MSDH) (the "Borrower"), promises to pay to the order of the Mississippi Department of Finance and Administration (DFA), the principal sum of Three Million Dollars and No Cents (\$3,000,000.00).

This Note has been executed under and pursuant to a Loan Agreement dated as of the date hereof between DFA and MSDH (the "Agreement"), which Agreement is incorporated herein in its entirety by reference. This Note is issued to evidence the obligation of the Borrower under the Agreement to repay the Loan (as defined in the Agreement) made by DFA hereunder. The Agreement includes provisions for prepayment of this Note. In the event that the terms of this Note conflict with the terms of the Agreement, the terms of the Agreement shall control.

As provided in the Agreement and subject to the provisions thereof, payments hereon are to be made to DFA at the address specified in the Agreement and on the dates and in the amounts as specified in the Agreement.

If payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the State of Mississippi, the due date thereof shall be extended to the next succeeding business day. Upon the occurrence of an event of default under the Agreement, the entire amount outstanding under this Note may be declared due and payable as provided in the Agreement. Upon such declaration, the Borrower shall pay all costs, disbursements, expenses and reasonable attorney's fees of DFA in seeking to enforce their rights under the Agreement and this Note.

The Borrower (a) waives diligence, demand, presentment for payment, notice of non-payment, protest and notice of protest and notice of any renewals of extensions of this Note and (b) agrees that the time for payment of this Note may be extended at the sole discretion of DFA without impairing its liability hereon. Any delay on the part of DFA in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one (1) default shall not operate as a waiver in the event of any subsequent or continuing default.

This Note must be signed and attested by duly authorized officers of the Borrower.

This Note shall be governed and construed in accordance with the laws of the State of Mississippi.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name all as of the day and year first above written.

MISSISSIPPI STATE DEPARTMENT  
OF HEALTH, BORROWER

Attest

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Mitchell H. Adcock  
Chief Financial Officer

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Brian W. Amy, MD, MHA, MPH  
State Health Officer



**EXHIBIT B**  
**LOAN AMORTIZATION**

**\$3,000,000.00**

<u>Payment Due Date</u>	<u>Payment Amount</u>
January 15, 2004	\$ 500,000.00
February 15, 2004	\$ 500,000.00
March 15, 2004	\$ 500,000.00
April 15, 2004	\$ 500,000.00
May 15, 2004	\$ 500,000.00
June 15, 2004	\$ 500,000.00
TOTAL.....	\$ 3,000,000.00



**ACKNOWLEDGMENT OF THE MISSISSIPPI STATE DEPARTMENT OF HEALTH**

STATE OF MISSISSIPPI )  
 ) ss:  
COUNTY OF \_\_\_\_\_)

Personally appeared before me, the undersigned authority in and for the said agency, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2003, within my jurisdiction, the within named Brian W. Amy, MD, MHA, MPH, and Mitchell H. Adcock, who acknowledged they are the State Health Officer and Chief Financial Officer, respectively, of the Mississippi State Department of Health, and that for and on behalf of said Department and as its act and deed, they executed the above and foregoing instrument, after first having been duly authorized by said Department so to do.

\_\_\_\_\_  
Notary Public

(S E A L)

My Commission Expires:

\_\_\_\_\_

