





# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2007-0172**

**Final Action:**

**Sponsor(s):** Administration & Finance Committee

**JUL - 3 2007**

Resolution authorizing the borrowing of up to \$150,000; providing for the issuance and sale of a Taxable General Obligation Promissory Note therefore; and levying a tax in connection therewith (Wisconsin Department of Natural Resources Ready for Reuse Brownfields Cleanup Loan Program)

WHEREAS, the Common Council hereby finds and determines that it is necessary, desirable and in the best interest of the City of West Allis, Milwaukee County, Wisconsin (the "City") to raise funds for the purpose of paying the cost of making payments to assist in the removal or containment of, or the restoration of soil affected by, environmental pollution to eliminate blight (the "Project") on the site located at 9508-10 West Greenfield Avenue, West Allis, Wisconsin, and there are insufficient funds on hand to pay said costs; and,

WHEREAS, the State of Wisconsin Department of Natural Resources (the "State") is authorized to make loans for projects such as the Project for cleanup of a brownfield site under its Ready for Reuse Brownfields Cleanup Loan Program authorized by Section 292.72 of the Wisconsin Statutes (the "DNR Loan"); and,

WHEREAS, the City has or intends to enter into a Recapture Agreement and an Assignment Agreement (collectively, the "Agreements") with Dorothy G., a Wisconsin corporation (the "Developer") under which the City will loan the proceeds of the DNR Loan to the Developer to undertake the Project; will require the Developer to pay the City amounts it receives pursuant to a grant the Developer expects to receive from the Dry Cleaner Environmental Remediation Fund ("DERF") in connection with the Project; and will further require the Developer comply with the covenants and agreements the City will make pursuant to the agreement the City will enter into with the State (the "Loan Agreement"); and,

WHEREAS, the DERF amounts are not currently available; and,

WHEREAS, the Common Council hereby finds and determines that it is necessary, desirable and in the best interest of the City to enter into the Loan Agreement and to obtain a DNR Loan for the Project in anticipation of receiving amounts from the Developer pursuant to the Agreements; and,

WHEREAS, pursuant to the Loan Agreement, the State requires that a DNR Loan be evidenced by a general obligation security such as a general obligation promissory note; and,

WHEREAS, the Common Council hereby finds and determines that the Project is within the City's power to undertake and serves a "public purpose" as that term is defined in Section 67.04(1)(b) of

the Wisconsin Statutes; and,

WHEREAS, cities are authorized by the provisions of Section 67.12(12) of the Wisconsin Statutes to borrow money and to issue a general obligation promissory note for such public purposes; and,

WHEREAS, due to certain provisions contained in the Internal Revenue Code of 1986, as amended, it is necessary to issue such general obligation promissory note on a taxable rather than tax-exempt basis; and,

WHEREAS, the Common Council now deems it to be necessary, desirable and in the best interest of the City to authorize the Loan Agreement and the issuance of its taxable general obligation promissory note to the State to obtain a DNR Loan.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that:

Section 1. Authorization of the Note and the Loan Agreement. For the purpose of paying the cost of the Project, there shall be borrowed pursuant to Section 67.12(12) of the Wisconsin Statutes, the principal sum of up to ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000); and a fully registered general obligation promissory note of the City is authorized to be issued and evidenced thereof and sold to the State of Wisconsin Department of Natural Resources Ready for Reuse Brownfields Cleanup Loan Program in accordance with the terms and conditions of the Loan Agreement, in substantially the form attached as Exhibit A and incorporated herein by this reference. The Loan Agreement is hereby approved with such changes as the City Attorney approves, and the Mayor and City Clerk of the City are hereby authorized, by and on behalf of the City, to execute the Loan Agreement from the State in accordance with the terms and conditions of the Loan Agreement.

Section 2. Terms of the Notes. The Note shall be designated "Taxable General Obligation Promissory Note (DNR Ready for Reuse Brownfields Cleanup Loan)"; shall be dated as of the date of its issuance but no sooner than July 25, 2007; shall be in the denomination of \$0.01 or any multiple thereof; shall be numbered 1 and upward; shall bear interest at the rate of 0% per annum and shall mature on July 25, 2017.

Section 3. Optional and Mandatory Redemption Provisions. The Note shall be subject to redemption prior to maturity at the option of the City, on any date as a whole or in part, at the principal amount thereof.

Further, the Note shall be subject to mandatory redemption prior to maturity, as a whole or in part, within 30 days after any date amounts are received by or on behalf of the City pursuant to the Agreements with respect to the Project.

Section 4. Form of the Note. The Note shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit B and incorporated herein by this reference.

Section 5. Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of the

Notes as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City a direct annual irrepealable tax in the year 2016 for the payment due in the year 2017 in the amount sufficient to repay the outstanding balance of the Note.

The direct annual irrepealable tax hereby levied shall be carried onto the tax roll and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said year is collected. So long as any part of the principal of the Note remains unpaid, the tax hereinabove levied shall be and continues irrepealable except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus in the Debt Service Fund Account created below.

Section 6. Segregated Debt Service Fund Account. There is hereby established in the City treasury a fund account separate and distinct from all other funds or accounts of the City designated "Debt Service Fund Account for \$150,000 City of West Allis Taxable General Obligation Promissory Note (DNR Ready for Reuse Brownfields Cleanup Loan)", which fund account shall be used solely for the purpose of paying the principal of the Note. Said fund account shall be maintained for such purpose until such indebtedness is fully paid or otherwise extinguished.

Section 7. Borrowed Money Fund. The proceeds of the Note (the "Note Proceeds") shall be deposited into an account separate and distinct from all other funds and disbursed solely for the purposes for which borrowed or for the payment of the principal of the Note.

Section 8. Execution of the Note. The Note shall be issued in typewritten or printed form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk, authenticated, if required, by its fiscal agent, if any, sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the State upon payment to the City of the purchase price thereof. In the event that either of the officers whose signatures appear on the Note shall cease to be such officers before the delivery of the Note, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery. The aforesaid officers are hereby authorized to do all acts and execute and deliver all documents as may be necessary and convenient to effectuate the Closing.

Section 9. Payment of the Note. The principal of the Note shall be paid in lawful money of the United States of America by the City Clerk/Treasurer.

Section 9A. Persons Treated as Owners; Transfer of Note. The City shall keep books for the registration and for the transfer of the Note. The person in whose name any Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of principal on any Note shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

The Note may be transferred by the registered owner thereof by surrender of the Note at the office of the City Clerk, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the Mayor and City

Clerk shall execute and deliver in the name of the transferee or transferees a new Note or Notes of a like aggregate principal amount, series and maturity and the City Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The City Clerk shall cancel any Note surrendered for transfer.

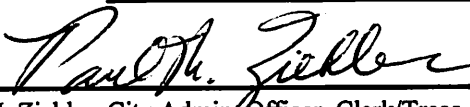
The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Note or Notes necessary to effect any such transfer.

Section 10. Continuing Disclosure. The continuing disclosure requirements of SEC Rule 15c2-12, as amended, are not applicable to the Notes because the Notes are a primary offering of less than \$1,000,000.

Section 11. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

cc: Department of Development  
Chris Phinney, Grants Accounting Specialist

DEV-R-476-7-3-07\q&b

ADOPTED JUL - 3 2007  
  
Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

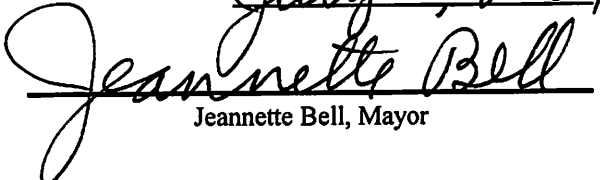
APPROVED July 5, 2007  
  
Jeannette Bell, Mayor

EXHIBIT A

Loan Agreement

Notice: Completion of this Agreement is required to obtain a Ready for Reuse Brownfields Cleanup Loan under s. 292.72, Wis. Stats. Personally identifiable information included on this form will be used to process your application and may be made available to requests under Wisconsin's Open Records law [ss. 19.31 - 19.69, Wis. Stats.].

<b>Borrower</b>  City of West Allis		<b>Loan Number</b>  RRL - 002								
<b>Site Name or Title and Address</b>  Dorothy G, Inc. 9508-9510 W. Greenfield St. West Allis, WI 53215										
<b>Period Covered by This Agreement</b>  The date of the DNR Signature on page 10 of this Agreement until November 1, 2016.	<b>Borrower's Authorized Representative</b>  John F. Stibal, Director of Development									
<b>Scope and Description of cleanup activities funded by this loan</b>  Soil Excavation Soil Transportation, Treatment & Disposal In-Situ Soil Treatment Soils Confirmation Testing Groundwater remediation operation and maintenance Finalization of RAP Health and Safety Site Monitoring Environmental Consulting Fees DNR Fees										
<b>LOAN COSTS:</b>	<b>The following documents are hereby incorporated into and made part of this Agreement:</b>									
<table> <tr> <td>Loan Amount:</td> <td>\$150,000</td> </tr> <tr> <td>Borrower Match Amount:</td> <td>\$33,000</td> </tr> <tr> <td>Borrower Match %:</td> <td>22%</td> </tr> <tr> <td>Total Project Cost:</td> <td>\$183,000</td> </tr> </table>	Loan Amount:	\$150,000	Borrower Match Amount:	\$33,000	Borrower Match %:	22%	Total Project Cost:	\$183,000	<ol style="list-style-type: none"> <li>2004 US EPA Revolving Loan Fund Terms and Conditions</li> <li>Section 292.72, Wisconsin Statutes</li> <li>DNR-approved Interim Remedial Action Plan (RAP)</li> <li>Signed application and all attachments and exhibits</li> </ol>	
Loan Amount:	\$150,000									
Borrower Match Amount:	\$33,000									
Borrower Match %:	22%									
Total Project Cost:	\$183,000									

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## I. Definitions

Hereafter, the following terms used throughout this document will meet the following definitions:

- A. LENDER or DEPARTMENT: The State of Wisconsin Department of Natural Resources
- B. BORROWER: The party receiving the loan –City of West Allis
- C. PROJECT: The project receiving the loan – remediation at Dorothy G, Inc., 9508-9510 W. Greenfield, West Allis, WI 53215

## II. General Provisions

- A. The DEPARTMENT acts as the financial agent for the Wisconsin Brownfields Coalition, a recipient of U.S. EPA Brownfields Revolving Loan Fund Cooperative Agreement, and is authorized to make certain loans from these funds.
- B. The term of this loan shall be the Loan Approval Date, which is the date of the DNR's signature on page 10 of this Agreement, until no later than **November 1, 2016** with interest to be charged on the loan at a rate of **zero (0) percent** per annum.
- C. These funds are to be used to pay for the cleanup of **Dorothy G, Inc.**, a brownfields site with a release of a hazardous substance defined by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), at **9508-9510 W. Greenfield, West Allis, WI 53215**. In general, the hazardous substances at the site include **perchloroethylene**.
- D. The Property is not listed, or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency (EPA).
- E. The brownfield site is owned by **Dorothy G, Inc.**, and BORROWER has full access to site.
- F. The BORROWER is not a generator or transporter of the contamination at the site.
- G. The BORROWER has enrolled the Property in Wisconsin Department of Natural Resources (WDNR) Remediation and Redevelopment Program (Exhibit A: BRRTS Printout for the Property).
- H. This Agreement and the General Obligation Resolution have been duly authorized, executed and delivered, and are valid and binding agreements of BORROWER.
- I. The BORROWER is not and has never been subject to any penalties resulting from environmental non-compliance at or on the property nor is the BORROWER, or its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds.
- J. The making and performance by BORROWER of this Agreement does not violate any provision of law, or 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.
- K. This Agreement has been duly authorized, executed and delivered, and is a valid and binding Agreement. This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the loan is outstanding and unpaid.
- L. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement which can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.

- M. Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.
- N. The BORROWER does not own the property, and did not own the property during or after the time of disposal or placement of hazardous substances and has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from that property.
- O. The BORROWER is not the current owner of the site, and is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607. The BORROWER had full access to the site to complete the PROJECT. (Exhibit G)
- P. The BORROWER erected a sign on the Project site stating that the PROJECT was being financed in part by DEPARTMENT and the Ready for Reuse Program, and provided the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Project site complied with the requirements of 40 C.F.R. Part 35, Subpart O (35.6105(a)(2)(ii)) and all requirements of the state and local laws applicable to on-premise outdoor advertising, and was posted on the Property during the interim action. The sign was posted in a publicly visible location.
- Q. The BORROWER, through the Contractor, has performed or obtained copies of all Phase I and Phase II Environmental Assessments of the Property performed according to the American Society for Testing and Materials (ASTM) standards, or equivalent assessment procedures in conformance with the Wisconsin Department of Natural Resources which verifies the presence of hazardous substances present in the soil, sediments and/or groundwater of the property. The BORROWER shall be responsible for the payment of all costs and expenses related to the Assessment. The BORROWER agrees that grant funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment did include, but was not limited to site background, the threat posed by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.
- R. The DEPARTMENT and the BORROWER mutually agree to perform this Agreement in accordance with the Wisconsin Ready for Reuse Brownfields Loan & Grant Program and with the project description, application, terms, conditions, plans, specifications, estimates, procedures, maps and assurances attached hereto and made a part hereof. In general, the work to be done at the site includes soil excavation and soil transportation and disposal.
- S. The BORROWER is an independent contractor for all purposes, not an employee or agent of the DEPARTMENT.
- T. This Agreement, together with any referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to the subject matter of this Agreement are hereby superseded. Any revisions, including cost adjustments, must be made by an amendment to this Agreement or other written documentation, prior to the end date of the Agreement.
- U. Any cost adjustments must be made by a written amendment to this Agreement, signed by both parties, prior to the expenditure of funds or the termination date of the Agreement. Adjustments for time of performance or scope of work may be granted to the BORROWER by the DEPARTMENT in writing without the requirements of the BORROWER'S signature.
- V. The BORROWER may decline this offer of financial assistance in writing at any time prior to expending any funds. After the funds have been expended, this Agreement may be terminated, modified, or amended only by mutual agreement of both parties in writing.
- W. Failure by the BORROWER to comply with the terms of this Agreement shall not cause the suspension of all obligations of the DEPARTMENT hereunder if, in the judgment of the Secretary of the DEPARTMENT, such failure was due to no fault of the BORROWER. In such cases, any amount required to settle at minimum costs any

irrevocable obligations properly incurred shall be eligible for assistance under this Agreement, at the DEPARTMENT'S discretion.

**III. The BORROWER agrees:**

1. To notify the DEPARTMENT, in writing, of acceptance of this offer by delivering to the DEPARTMENT'S Ready for Reuse program manager two original loan Agreements duly signed by Fond du Lac City Manager and City Clerk. This action must take place within 30 days of receipt of this Agreement. Once signed by all parties, the Agreement is binding.
2. And understands that all loan funds provided by LENDER shall be used solely to pay for PROJECT costs.
3. That any and all work performed on the PROPERTY for which loan funds are used and the receipt of any loan funds under this Agreement is conditioned upon the BORROWER'S full compliance with this Agreement, all project documents and attachments, and the attached 2004 USEPA Revolving Loan Fund Terms and Conditions (Exhibit E).
4. To provide a match funds, in cash or in-kind services, of at least 22% of the loan amount.
5. To ensure environmental cleanups have been protective of human health and the environment.
6. To comply with all applicable Wisconsin Statutes and Wisconsin Administrative Codes in fulfilling the terms of this Agreement. In particular, the BORROWER has conducted environmental response actions in accordance with the NR 700 series, Wis. Adm. Code.
7. To have carried out the PROJECT activities in accordance with all applicable state, local and federal laws, regulations, orders, writs, judgments, injunctions, decrees or awards, including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et. seq.) (CERCLA); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 C.F.R. Part 31; the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300; all applicable 'cross-cutting requirements', including those federal requirements agreed between the USEPA and the DEPARTMENT defined by their Cooperative Agreement No. BF-96560601; MBE/WBE requirements found at 40 C.F.R. 31.36(e) or 40 C.F.R. 30.44(b); OSHA Worker Health & Safety Standard 29 C.F.R. 1910.120; the Uniform Relocation Act; Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333); the Anti Kickback Act (40 U.S.C. 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. Failure to comply with this provision shall not be a breach of this covenant if such failure does not have, or is not reasonably expected to have a materially adverse effect on the properties, business prospects or condition (financial or otherwise) of BORROWER and BORROWER is acting in good faith and with reasonable dispatch to cure such noncompliance.
8. To have carried out the PROJECT in accordance with the Davis-Bacon Act of 1931 (40 U.S.C. 276a-276a-5 and 42 U.S.C. 222). CERCLA compliance with Davis-Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with project funds. The BORROWER must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.
9. To have complied with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to Federally-assisted construction contracts.
10. To have complied with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the BORROWER has undertaken good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The BORROWER shall submit a report of such efforts.

11. To save, keep harmless, defend and indemnify the DEPARTMENT and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Agreement or omissions of the BORROWER'S employees, agents or representatives.
12. To have complied with all applicable local and state contract and bidding requirements.
13. To have submitted, or submit reports and copies of other studies, reports, contracts, or documents relating to the project in accordance with the 2004 US EPA Revolving Loan Fund Terms and Conditions (Exhibit E), including, but not limited to:
  - (a) The prepared community relations plan which received DEPARTMENT review and approval on August 23, 2006. The BORROWER implemented the approved community relations plan that included providing a copy of all public mail notices and agendas of all meetings or public information hearings to the DEPARTMENT.
  - (b) The prepared 'analysis of cleanup alternatives' document that contains information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives included effectiveness, ability to be implemented, and the cost of the interim action proposed. The BORROWER made the analysis of brownfields cleanup alternatives document available for review and public comment on August 25, 2006 for a period of not less than fifteen (15) days from the date of publication of a public notice which announced the availability of the document for public review. BORROWER also submitted copies of the draft analysis of brownfields cleanup alternatives to the DEPARTMENT for review and approval and to US EPA and the DEPARTMENT'S designated environmental project manager. After the public comment period, the DEPARTMENT incorporated all appropriate comments into a decision document and prepared a written response to the public comments on September 8, 2006. The decision document was issued by the DEPARTMENT on September 13, 2006 and was the BORROWER'S authorization to undertake the work.
  - (c) To prepare remedial design and engineering documents and submit them to the DEPARTMENT for review and approval and to the DEPARTMENT'S designated environmental project manager, if applicable, for review and comment.
  - (d) Any confirmatory samples collected by the BORROWER, through the Contractor, during cleanup activities to document the completeness of the cleanup were collected pursuant to a Quality Assurance Project Plan, or its equivalent, which sets forth the manner and method of collecting and analyzing samples and was submitted to the DEPARTMENT for review and approval, and which was approved on August 23, 2006.
  - (e) To complete EPA Property Profile Forms for DEPARTMENT review and approval, as necessary.
  - (f) The DEPARTMENT is responsible for the completion of the community relations plan, the analysis of cleanup alternatives, and EPA Property Profile Forms referenced in (a), (b) and (e) above. However, pursuant to this Agreement, these activities are delegated to the BORROWER.
14. To submit a written affirmative action plan to the DEPARTMENT within 15 business days after the Agreement commences if an acceptable plan is not already on file with the State of Wisconsin. (BORROWERS with an annual work force of fewer than twenty-five (25) employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the termination of this Agreement by the DEPARTMENT or withholding of payment.
15. To reimburse the DEPARTMENT for any and all funds the DEPARTMENT deems appropriate in the event the BORROWER fails to comply with the conditions of this Agreement or project proposal as described, or fails to provide public benefits as indicated in the project application, proposal description, or this Agreement. In addition,

should the BORROWER fail to comply with the conditions of this Agreement, fail to progress due to nonappropriation of funds, or fail to progress with or complete the project to the satisfaction of the DEPARTMENT, all obligations of the DEPARTMENT under this Agreement may be terminated, including further project cost payment.

16. Not to have discriminated against any employee or applicant for employment because of age, race, religion, color, disability, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation, arrest or conviction record or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the BORROWER has taken affirmative action to ensure equal employment opportunities. The BORROWER posted in a conspicuous place available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.
17. To cooperate fully with an audit of the Loan and the Work, if so required.
18. To have documented all the uses of the loan proceeds, and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. BORROWER shall permit any representative of LENDER, at any reasonable time, to inspect, audit and examine such books and inspect the properties of BORROWER. BORROWER shall maintain documentation on the use of the loan proceeds for a minimum of three (3) years after the completion of remediation activities supported by the loan, or for the length of the loan, whichever is greater, except that records that are subject to audit findings shall be retained three (3) years after such findings have been resolved and all such records and supporting documents shall be made available, upon request, for inspection or audit by the LENDER or its representatives.
19. To maintain documentation until the completion of any litigation, claim, negotiation, audit or other action involving those documents or for the record retention period set above, whichever is longer. BORROWER shall seek the written approval of the LENDER prior to disposing of records.
20. To have notified the DEPARTMENT when the PROJECT was complete. The notice contained certification or documentation that the eligible activities were completed and have been performed in accordance with the terms of this Agreement. This loan closeout documentation shall summarize the actions taken, the resources committed, the problems encountered in completion of the project, if any, identify any institutional controls required, and document that the cleanup is complete and is protective of human health and the environment. This documentation shall be submitted to the DEPARTMENT designated environmental project manager for review and comment.
21. To obtain a close out letter under ch. NR 726, Wisc. Adm. Code, or a Certificate of Completion under s. 292.15, Wis. Stats., for the Property or other approved liability assurance letter acceptable to the LENDER.
22. That it is expressly understood that a failure or delay on the part of the BORROWER in the performance, in whole or in part, for any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement, however, the BORROWER shall use its best effort to insure that the PROJECT is completed in a reasonable time without unnecessary delay.
23. And understands that any use of the Property or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.

#### IV. The LENDER agrees:

1. To loan to BORROWER a sum not to exceed \$150,000 at 0% interest to be used for cleanup of the PROPERTY. The BORROWER shall evidence its obligation to repay the Loan Funds by execution of a GENERAL OBLIGATION NOTE (Exhibit F), attached hereto and made a part hereof.

2. To supply the BORROWER with all necessary state and federal reporting forms.
3. That the BORROWER shall have sole control of the method, hours worked, and time and manner of any performance under this Agreement other than as specifically provided herein. The DEPARTMENT reserves the right to inspect the job site or premises for insuring that the performance is progressing or has been completed in compliance with the Agreement. The DEPARTMENT takes no responsibility of supervision or direction of the performance of the Agreement to be performed by the BORROWER or the BORROWER'S employees or agents. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the BORROWER'S employees or agents.
4. That **Binyoti Amungwafor, DNR Milwaukee office**, has been designated by DEPARTMENT as the Environmental Project Manager, who reviewed and approved the proposed interim action, approved Sep. 11, 2006, and coordinate the work to be performed using Ready for Reuse funds.

#### V. Loan and General Obligation Conditions

1. The BORROWER agrees that 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 LENDER in writing.
2. The obligations of BORROWER under this Agreement and the GENERAL OBLIGATION will not be further subordinated in right of payment to any obligation of BORROWER, other than that which may be provided under this Agreement, unless otherwise acknowledged or agreed to by LENDER in writing.
3. The obligation of LENDER to make this loan contemplated hereunder is subject to the fulfillment of the following conditions:
  - A. All legal matters incidental to LENDER's commitment to issue the loan hereunder shall be satisfactory to counsel of LENDER, including the form, validity and enforceability of this Agreement and Exhibits hereof.
  - B. The representations and warranties contained herein shall be true on and as of the date of the signing of this Agreement with the same effect as though such representations and warranties had been made on and as of such date, and on such date no event of default as defined in Article V of the EPA RLF Cooperative Agreement "Terms and Conditions," herein EVENTS OF DEFAULT, and no condition, event or act which, with the giving of notice or the lapse of time or both, would constitute an EVENT OF DEFAULT, shall have occurred and be continuing or shall exist.
    - (1) The following shall constitute EVENTS OF DEFAULT:
      1. Default by BORROWER in any payment when due of principal or interest under the PROMISSORY NOTE.
      2. Any representation or warranty made by BORROWER hereunder or in the Loan Documents proven at any time false or misleading in any material respect.
      3. Use of the proceeds of the LOAN for a purpose other than that stated in this Loan Agreement.
    - (2) **ACCELERATIONS.** If an Event of Default shall occur, the LENDER shall give notice to the BORROWER within 60 days of the date of the Event of Default that the outstanding balance of the GENERAL OBLIGATION issued by the BORROWER will become due and payable in full within 120 days of such notice. The obligations, if any, of the LENDER to permit further borrowings under this Agreement shall immediately cease and terminate.
4. The General Obligation shall contain specific terms for the repayment of the Loan Funds
5. Any forbearance by the LENDER with respect to any of the terms and conditions of this Agreement or the GENERAL OBLIGATION shall in no way constitute a waiver of any of LENDER'S rights or privileges granted hereunder.

6. This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the Loan Obligation is outstanding and unpaid.

## VI. Special Conditions

### 1. Loan Reimbursement

The BORROWER may request a maximum of one reimbursement payment per month, on forms provided by the DEPARTMENT and shall include documentation of work completed and eligible costs and match incurred by the BORROWER.

The BORROWER or another Local Governmental Unit must provide the match percentage indicated on the first page of this contract at each payment request. Loan payments are contingent upon review by the DEPARTMENT and may be adjusted if costs are determined to be ineligible.

The DEPARTMENT may withhold ten percent of the total loan amount stated in this contract for final payment. The final payment request shall be made on forms provided by the Department no later than three months after the end date of the loan period stated in this loan Agreement.

The Loan Funds shall be payable to the BORROWER as reimbursement for allowable expenses incurred based upon the progress of the work and in accordance with the approved Project Budget (Exhibit B) attached hereto and made a part hereof. No reimbursement shall be made to the BORROWER without the written approval of the LENDER through the LENDER'S designated Environmental Project Manager; however, the LENDER shall not advance nor be obligated to advance any Loan Funds to the BORROWER prior to the receipt of properly executed Lien Waivers.

#### ***Final Report***

The BORROWER shall complete a Final Report on forms available from the DEPARTMENT documenting the activities completed with the funds awarded under this Agreement. The BORROWER shall submit a copy of any Site Investigation (SI) reports or Remedial Action Plans (RAPs) funded by this loan as a component of the final report on loan activities required by the DEPARTMENT. The report shall be submitted to the DEPARTMENT along with the final request for reimbursement under this loan Agreement.

#### ***Retention of Records***

Supporting documentation of loan expenditures shall be maintained in sufficient detail to show that loan funds were used for the purpose for which the loan was awarded. All financial records, including invoices and canceled checks or bank statements that support all loan costs claimed by the BORROWER shall be kept and made available for inspection for three years after final payment is made.

### 2. Quarterly Progress Reports

The BORROWER shall furnish brief written progress reports on forms furnished by the DEPARTMENT to the Project Manager on a quarterly basis during the cleanup. The reports are due on April 15, July 15, October 15 and January 15 of each year.

### 3. Changes to Project Scope or Budget

The BORROWER shall conduct all the activities listed in the "Scope and Description of Loan Activities" section of this Agreement. If the BORROWER requests a modification to the scope and description of the loan activities to be conducted, the BORROWER shall submit a request for an amendment to this Agreement in writing to the Department before the end date of this Agreement. Such a request must be submitted before any activities are conducted that are different than those listed in this Agreement. Amendments are subject to department approval and availability of funds. No additional work or expense may be undertaken until approval is received, in writing, for the scope or budget change.

If the BORROWER determines that they will not need to use the full amount of their loan award, the BORROWER shall notify the DEPARTMENT in writing as soon as possible such that excess funds may be allocated to another project.

#### **4. BORROWER In-Kind Cost Documentation**

This loan may be used to pay the actual costs of loan eligible activities if the work was conducted directly by the local government who received the loan. In order for in-kind costs to be reimbursed or count as matching funds, the BORROWER shall provide adequate documentation of staff time, equipment use, and other costs. Any staff overtime charges were approved by the DEPARTMENT prior to the work being conducted. The BORROWER made any request in writing that included a justification as to why overtime was necessary and a private company estimate for the work. Any equipment rental rates did not exceed the county machinery rates established annually by the Department of Transportation.

#### **5. Site Access**

The BORROWER had legal and physical access to the site or facility to conduct all the activities described in the "Scope and Description of Loan Activities" section of this Agreement before this Agreement is executed immediately in writing.

#### **6. Site Investigation and Remedial Action Plan**

A ch. NR 716, Wis. Adm. Code, site investigation and an interim action were approved by the DEPARTMENT before the BORROWER obtained reimbursement for this loan. Costs incurred to conduct site investigation activities shall not be reimbursed by this loan. Costs to prepare the remedial action plan can be reimbursed by this loan if included in the "Scope and Definitions of Loan Activities" section of this Agreement.

#### **7. Assessment and Investigation Activities**

Lead surveys are not reimbursable under this loan as part of a Phase II ESA.

All investigative wastes, as defined in s. NR 716.03(4), Wis. Adm. Code, will be properly stored and disposed of in accordance with applicable regulations in chs. NR 500 to 590 and chs. NR 600 to NR 690, Wis. Adm. Code. Disposition of investigative wastes by the BORROWER must occur within six (6) months of generation of wastes.

Abandonment of any wells or drillholes must be completed in accordance with s. NR 812.26 or s. NR 141.25, Wis. Adm. Code. Abandonment forms (Form 3300-005 and/or 3300-5B) must be submitted within sixty (60) days after the wells or drillholes have been abandoned. The date and recipient of the forms shall be noted in the final report.

#### **8. Remedial Actions**

All investigation and remedial actions conducted as part of this loan shall follow the procedures and requirements included in s. 292.11, Wis. Stats., and ch. NR 140, Wis. Adm. Code and the NR 700 rule series. Remedial actions eligible for funding are those consistent with the definition in s. NR 700.03(48), Wis. Adm. Code, and those described in the "Scope and Definitions of Loan Activities" section of this Agreement. Nothing in this Agreement shall entitle the BORROWER or any other party involved with the project to any special rights, privileges, liability exemptions, or obligations regarding their responsibility to undertake remedial actions under s. 292.11, Wis. Stats., or any other state or federal environmental laws.



**9. Fees**

If the BORROWER requests the DEPARTMENT to conduct any technical reviews of reports, including the Site Investigation Report, Remedial Action Plan, and other reports, letters or approvals, the review is subject to the fee schedule described in chs. NR 749 or NR 750, Wis. Adm. Code. These fees are eligible for reimbursement if incurred during the loan agreement period.

**10. Hazardous Substances**

Hazardous substances shall be analyzed and disposed of in accordance with all applicable requirements in ch. NR 700 series, Wis. Adm. Code.

**11. Petroleum or Hazardous Substance Storage Tank Removal**

All petroleum or hazardous substance storage tank removal(s) shall be conducted in accordance with ch. COMM 10, Wis. Adm. Code.

Any wastes generated during the removal and cleaning of the tanks shall be analyzed and managed in accordance with all applicable requirements in the ch. NR 500 and ch. NR 600 series, Wis. Adm. Code. The Borrower shall submit a copy of any report that summarizes work done with regards to petroleum or hazardous substance storage tank removal(s) as a result of loan activities to the Department as a component of the final report.

**VII. Signatures**

The person signing for the BORROWER represents that he or she is authorized to execute this Agreement and bind the BORROWER, either by a duly adopted resolution or otherwise. The foregoing offer is hereby accepted on behalf of the BORROWER. The BORROWER promises to execute the purchases and activities funded in part by this loan in strict accordance with the terms and conditions of this Agreement.

CITY OF WEST ALLIS (BORROWER)

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
FOR THE SECRETARY

By \_\_\_\_\_

By \_\_\_\_\_

*John Stibal*  
*Director of Development*

*Mark F. Giesfeldt, P.E., Director*  
*Bureau for Remediation and Redevelopment*

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

LIST OF EXHIBITS

- A. BRRTS Printout for the Property
- B. Project Budget Sheet Summary
- C. Projected Loan Repayment Schedule
- D. Project Manager Summary Page
- E. US EPA Revolving Loan Fund (RLF) Terms and Conditions for 2004
- F. General Obligation Documentation
- G. Access Agreement

DRAFT

EXHIBIT A  
BRRTS PRINTOUT FOR THE PROPERTY

DRAFT

EXHIBIT B

PROJECT BUDGET SHEET SUMMARY

City of West Allis  
Dorothy G., Inc.  
RRL-002

Approved Activity Name	Eligible Costs	Matching Costs	Total Cost
<b>TOTAL</b>	\$150,000	\$33,000	\$183,000

DRAFT

EXHIBIT C

PROJECTED LOAN REPAYMENT SCHEDULE

City of West Allis  
Dorothy G., Inc.  
RRL-002

INTEREST RATE: 0%

Anticipated dates of direct payment to Ready for Reuse by Dry Cleaning Environmental Response Fund (in lieu of payments from DERF to City and subsequent loan repayments to Ready for Reuse by City):

PAYMENT DATE	PRINCIPAL PAYMENT
July 15, 2008	\$50,000
July 15, 2009	\$50,000
July 15, 2010	\$50,000
<b>TOTAL</b>	<b>\$150,000</b>

DRAFT

EXHIBIT D

PROJECT MANAGER SUMMARY PAGE

City of West Allis  
Dorothy G., Inc.  
RRL-002  
WDNR Project Manager – Binyoti Amungwafor in SER (Milwaukee)

1. PROJECT DESCRIPTION
2. ELIGIBLE ACTIVITIES
3. INELIGIBLE ACTIVITIES
4. ADDITIONAL NOTES

DRAFT

EXHIBIT E

US EPA Revolving Loan Fund (RLF) Terms and Conditions for 2004

DRAFT

Exhibit F  
General Obligation Documentation

DRAFT



Exhibit G  
Access Agreement

DRAFT

EXHIBIT B

NO. R-1  
UNITED STATES OF AMERICA  
STATE OF WISCONSIN  
MILWAUKEE COUNTY  
CITY OF WEST ALLIS  
TAXABLE GENERAL OBLIGATION PROMISSORY NOTE  
(DNR Ready for Reuse Brownfield Cleanup Loan)

ORIGINAL DATE OF ISSUE: \_\_\_\_\_, \_\_\_\_\_

REGISTERED OWNER: WISCONSIN DEPARTMENT OF NATURAL RESOURCES -  
BROWNFIELDS REVOLVING LOAN PROGRAM

KNOW ALL MEN BY THESE PRESENTS, that the City of West Allis, Milwaukee County, Wisconsin (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the registered owner (or to registered assigns) the principal sum of an amount not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) (but only so much as shall have been drawn hereunder, as provided below) on July 25, 2017. No interest will accrue or be paid on this Note.

The principal amount evidenced by this Note may be drawn upon by the City in accordance with the Loan Agreement entered by and between the City and the State of Wisconsin Department of Natural Resources (the "State"). The principal amounts so drawn shall be repaid on or before July 25, 2017. The State shall record such draws on a cumulative basis in the format shown on the attached Schedule A.

The principal of this Note is payable in lawful money of the United States by the City Clerk/Treasurer. Payment of principal shall be made to the registered owner of this Note recorded on the registration books of the City upon presentation and surrender hereof to the City Clerk/Treasurer.

For the prompt payment of this Note and for the levy of taxes sufficient for that purpose, the full faith, credit and resources of the City are hereby irrevocably pledged.

This Note is issued by the City pursuant to the provisions of Section 67.12(12), Wisconsin Statutes, for the purpose of paying the cost of making payments to assist in the removal or containment of, or the restoration of soil affected by, environmental pollution to eliminate blight, as authorized by a resolution of the Common Council duly adopted by said governing body at a meeting held on July 3, 2007. Said resolution is recorded in the official minutes of the Common Council for said date.

The installments of the Note are subject to redemption prior to maturity at the option of the City on any date. Said installments are redeemable as a whole or in part by lot, at the principal amount thereof.

Further, the Note shall be subject to mandatory redemption prior to maturity, as a whole or in part, within 30 days after any date amounts are received by or on behalf of the City pursuant to the Agreements with respect to the Project as set forth in the aforesaid resolution.

This Note is transferable by a written assignment duly executed by the registered owner hereof or by such owner's duly authorized legal representative. Upon such transfer a new registered Note, in the same aggregate principal amount, shall be issued to the transferee in exchange hereof.

The City may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes, and the City shall not be affected by notice to the contrary.

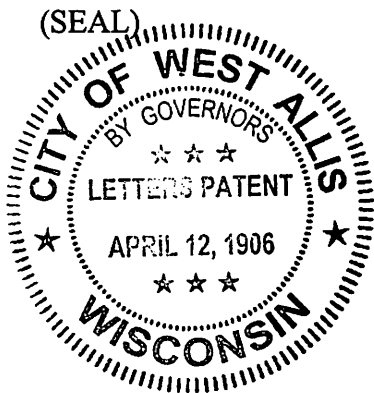
It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this Note have been done, have existed and have been performed in due form and time; that the aggregate indebtedness of the City, including this Note and others issued simultaneously herewith, does not exceed any limitation imposed by law or the Constitution of the State of Wisconsin; and that a direct annual irrevocable tax has been levied sufficient to pay this Note, when and as payable.

IN WITNESS WHEREOF, the City of West Allis, Milwaukee County, Wisconsin, by its governing body, has caused this Note to be executed for it and in its name by the manual or facsimile signatures of its duly qualified Mayor and City Clerk; and to be sealed with its official or corporate seal, if any, all as of the 5<sup>th</sup> day of July, 2007.

CITY OF WEST ALLIS,  
MILWAUKEE COUNTY, WISCONSIN

By: Jeannette Bell  
Jeannette Bell  
Mayor

By: Paul M. Ziehler  
Paul M. Ziehler  
City Administrative Office, Clerk/Treasurer



FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
(Social Security or other Identifying Number of Assignee)

the within Note and all rights thereunder and hereby irrevocably authorizes the City of Westfield to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
(e.g. Bank, Trust Company (Registered Owner)  
or Securities Firm)

NOTICE: This signature must correspond with the name of the Registered Owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

\_\_\_\_\_  
(Authorized Officer)

Section 67.09 of the Wisconsin Statutes provides that the City Clerk of the City when acting as the registrar shall record the registration of each note or bond in its bond register. Therefore, if this Note is to be assigned, the City Clerk of the City should be notified and a copy of this Assignment should be sent to the City Clerk of the City for his or her records.