

12.



# City of West Allis

## Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
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R-2007-0177

Resolution

In Committee

Resolution approving a Loan Agreement by and between the City of West Allis and the Wisconsin Department of Natural Resources in the amount of \$150,000 for the soil remediation activities at the Redi Quick Dry Cleaners located at 9508-10 W. Greenfield Ave.

Introduced: 7/3/2007

Controlling Body: *Adm. + Fin.* Safety & Development CommitteeSponsor(s): *Adm. + Finance* Safety & Development Committee

### COMMITTEE RECOMMENDATION

*Adopt*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
JUL - 3 2007			Barczak	✓			
			Czaplewski	✓			
			Dobrowski				
			Kopplin				
		✓	Lajsic	✓			
			Narlock				
			Reinke	✓			
			Sengstock				
			Vitale				
	✓		Weigel	✓			
			TOTAL	5			0

### SIGNATURE OF COMMITTEE MEMBER

Chair

Vice-Chair

Member

### COMMON COUNCIL ACTION

**ADOPT**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
JUL - 3 2007	✓		Barczak	✓			
			Czaplewski	✓			
		✓	Dobrowski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Sengstock	✓			
			Vitale <i>ere</i>				✓
			Weigel	✓			
			TOTAL	9	-	-	1



**STANDING COMMITTEES OF THE  
CITY OF WEST ALLIS COMMON COUNCIL  
2004**

**ADMINISTRATION & FINANCE**

Chair: Michael J. Czaplewski  
Vice-Chair: Martin J. Weigel  
Gary T. Barczak  
Thomas G. Lajsic  
Rosalie L. Reinke

**PUBLIC WORKS**

Chair: Richard F. Narlock  
Vice-Chair: Linda A. Dobrowski  
Kurt E. Kopplin  
Vincent Vitale  
James W. Sengstock

**SAFETY & DEVELOPMENT**

Chair: Thomas G. Lajsic  
Vice-Chair: Vincent Vitale  
Gary T. Barczak  
Martin J. Weigel  
Rosalie L. Reinke

**LICENSE & HEALTH**

Chair: Kurt E. Kopplin  
Vice-Chair: James W. Sengstock  
Linda A. Dobrowski  
Richard F. Narlock  
Michael J. Czaplewski

**ADVISORY**

Chair: Rosalie L. Reinke  
Vice-Chair: Gary T. Barczak  
Linda A. Dobrowski  
Vincent Vitale  
Martin J. Weigel





# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2007-0177**

**Final Action:**

**Sponsor(s):** Safety & Development Committee

JUL - 3 2007

Resolution approving a Loan Agreement by and between the City of West Allis and the Wisconsin Department of Natural Resources in the amount of \$150,000 for the soil remediation activities at the Redi Quick Dry Cleaners located at 9508-10 W. Greenfield Ave.

WHEREAS, the Community Development Authority of the City of West Allis ("Authority") has approved on April 11, 2006 under Resolution No. 607 a Wisconsin Ready for Reuse Brownfield Program ("Program") Loan application ("Loan") for the property at 9508-10 W. Greenfield Ave., for Dorothy G., Inc., ("Owner"); and,

WHEREAS, the Program requires the City of West Allis to distribute loan funds to the Owner to assist with site investigation and environmental remediation activities; and,

WHEREAS, the City will enter into Recapture and Assignment Agreements with the Owner to secure the City interests; and,

WHEREAS, the Owner has pledged under the Assignment Agreement, to assign all future Dry Cleaner Environmental Response Fund (DERF) Program reimbursements to the City as repayment of the Loan; and,

WHEREAS, the Owner will reimburse the City for all costs associated with the administration of the loan.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of West Allis approves the Loan Agreement by and between the City of West Allis and the Wisconsin Department of Natural Resources in the amount of \$150,000 for the soil remediation activities at the Redi Quick Dry Cleaners located at 9508-10 W. Greenfield Ave.

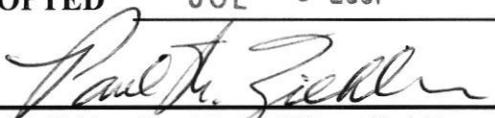
BE IT FURTHER RESOLVED that the Director of Development, or his designee, be and is hereby authorized to execute and deliver the aforesaid Agreement on behalf of the City.

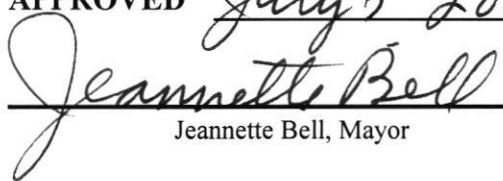
BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the contract, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and

supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

cc: Department of Development

Dev-R-475-7-3-07\bjb

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

APPROVED July 5 2007  
  
Jeannette Bell, Mayor

**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>  <b>City of West Allis</b>		<b>Loan Number</b>  <b>RRL - 002</b>
<b>Site Name or Title and Address</b>  <b>Dorothy G, Inc.</b> <b>9508-9510 W. Greenfield St.</b> <b>West Allis, WI 53215</b>		
<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>	
<b>Loan Amount:</b> \$150,000 <b>Borrower Match Amount:</b> \$33,000 <b>Borrower Match %:</b> 22% <b>Total Project Cost:</b> \$183,000	<ol style="list-style-type: none"><li>1. 2004 US EPA Revolving Loan Fund Terms and Conditions</li><li>2. Section 292.72, Wisconsin Statutes</li><li>3. DNR-approved Interim Remedial Action Plan (RAP)</li><li>4. Signed application and all attachments and exhibits</li></ol>	

DRAFT

## 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 US EPA 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 CFR 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. 3222). 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, or 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)

By

John Stibal  
Director of Development

(Date)

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
FOR THE SECRETARY

By

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

(Date)

## LIST OF EXHIBITS

- A. BRTS 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
TOTAL	\$150,000	\$33,000	\$183,000

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
TOTAL	\$150,000

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

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EXHIBIT E

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

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Exhibit F

General Obligation Documentation

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Exhibit G  
Access Agreement

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