

Attachment C: Draft Loan Documents

Because this is a Revolving Loan Program, the City of Rockford is required to loan it's USEPA RLF funds from USEPA to a not for profit Development Corporation to implement the project. The RLDC has been chosen because of their previous experience at Barber Colman/ Invensys. For additional information, contact Wayne Dust at 815-987-5636 or e-mail wayne.dust@rockfordil.gov

DRAFT

(8/30/2011)

BROWNFIELD REVOLVING LOAN FUND LOAN AGREEMENT BETWEEN THE ROCKFORD LOCAL DEVELOPMENT CORPORATION AND THE CITY OF ROCKFORD

This Loan Agreement (the "Agreement") is made and entered into on this day , by and between the Rockford Local Development Corporation, an Illinois not-for-profit corporation, ("RLDC") and the City of Rockford, an Illinois municipal corporation "City").

RECITALS

WHEREAS, the City is the recipient of a grant (the "Grant") to establish the Revolving Loan Fund ("RLF") from the U.S. Environmental Protection Agency ("USEPA") and is authorized to make loans pursuant to the Small Business Liability Relief and Brownfields Revitalization Act, Section 104(k) of CERCLA, 42 U.S.C. 9604(k), and as a condition of awarding the Grants, the EPA has placed requirements on the use of the Grants as documented in Cooperative Agreements numbered BF-00E45801, as amended, (the "CA"); and

WHEREAS, the City is the fee simple owner of real property located in the City of Rockford, Illinois, at 502 South Main Street and 222 Cedar Street, the "Tapco Building" and site, legally described in Attachment A (the "Property"); and

WHEREAS, it is the mission of the RLDC to perform activities which assist in the economic redevelopment of the Rockford area; and

Whereas, the RLDC has developed real property on South Main Street in Rockford, Illinois, and is willing to coordinate and conduct the demolition and remedial environmental actions on this Property, which is owned by the City, as part of the economic development of the South Main Corridor; and

WHEREAS, a determination of Site Eligibility was prepared for Hazardous Substances and Petroleum by Fehr-Graham and Associates. These documents were approved by the EPA on 9-11-2007 and 9-1-2009, respectively. The determinations demonstrated qualification of the Property for consideration of funding through the U.S. Environmental Protection Agency (EPA) Brownfields Revolving Loan Fund (RLF). The eligibility determinations are appended to this loan document as Attachment B; and

WHEREAS, the Property is contaminated with hazardous substances, including, without limitation, the following substances:

The primary soil contaminants of concern include: benzo(a) anthracene, benzo (b) flouranthene, benzo (k) flouranthene, benzo (a) pyrene, carbazole, indeno (1,2,3-cd) pyrene, 2 methylnapthalene, lead, arsenic and iron.

The primary groundwater contaminants of concern are tetrachloroethene, trichloroethene, vinyl chloride, aluminum, antimony, iron, lead, magnesium and vanadium.

Asbestos is present within the Building; this contaminant requires abatement prior to building demolition.

WHEREAS, the City has enrolled the Property in the Voluntary Site Remediation Program (SRP) of the Illinois Environmental Protection Agency (IEPA); and

WHEREAS, the City has obtained approval of the Comprehensive Site Investigation Report (SIR) for the Property, to Residential Standards, from the IEPA in a letter dated [redacted], and

WHEREAS, City and the RLDC have entered into this Agreement to provide for the disbursement and repayment of a loan as part of a project (the "Project") consisting of pre-demolition building cleanup, building demolition and soil cleanup of the Property in the manner described in the RAP, described in IIIA, below; and

WHEREAS, the Project will be undertaken by a general contractor ("Contractor") and overseen by an environmental consultant ("Consultant") to be selected by the City; and

NOW, THEREFORE, the City and RLDC agree as follows:

I. FUNDING

- A. **Promissory Note.** Contemporaneously with the execution of this Agreement, the City shall execute a promissory note (the "Note") in favor of the City in the form attached as Attachment E hereto.
- B. **Disbursements.** The City shall disburse to the RLDC up to the total aggregate principal sum of up to Seven Hundred Thousand and no/100 Dollars (\$700,000) (the "Loan") as follows: Seven Hundred thousand and no/100 Dollars (\$700,000) in payment of Demolition and Hazardous Substances Project Costs, as defined in Section III. Each disbursement hereunder shall be referred to as a "Disbursement" and, collectively, as the "Disbursements."
- C. **Maturity Date.** All Disbursements shall be payable in accordance with the terms of the Note, no later than [redacted], 2021 (the "Final Maturity").
- D. **Source of Repayment.** Repayment of the Note will come from one or more or any combination of the following: (a) state or local (non-federal) grants that RLDC is able to obtain for the Project, (b) proceeds realized from the sale of some or all of the Property, (c) annual Tax Increment Finance (TIF) receipts received from the Property, (d) proceeds from the sales of TIF bonds on the Property, (e) proceeds realized from other loans that may be made to the Project and (f) general

funds budgeted specifically by, in its annual budget, and approved by City of Rockford.

II. CONTRACT AND PROJECT OVERSIGHT

The City shall review and approve the contract between the RLDC and the Contractor for the Project prior to execution, which review shall include confirmation that the contract includes such cross-cutting requirements as may be required by the EPA.

III. PERMITTED USES

A. **Use of Proceeds.** Disbursements made pursuant to this Agreement shall be used to pay for *approved* Project Costs actually incurred during the period from , 2011 to (the “Funding Period”) in connection with the completion of the Project in accordance with the following (items 3 through 6 are, collectively, “the RAP”):

1. The project schedule (the “Project Schedule”, Attachment C).
2. The project budget (the “Project Budget”, Attachment D), which shall include but not be limited to the Project Costs.
3. Remedial Objectives Report and Master Remedial Action Plan for the Tapco site, 502 S. Main Street and 222 Cedar Street, to be prepared by Fehr-Graham and Associates.
4. Additional Investigation & Remedial Action Plan Addendums, Tapco Site, 502 S. Main Street and 222 Cedar Street to be prepared by Fehr-Graham and Associates
5. Project Manual Specifications and Contract Documents For: Tapco Building and Site Demolition, Remediation and Earthwork , 2011.
6. Pre-Demolition Asbestos and Hazardous Materials Survey, Tapco Building 2011; prepared by Fehr-Graham and Associates

B. **Project Costs.** Hazardous Substances Project Costs (individually or collectively referred to as “Project Costs”) shall be defined as costs and expenses incurred during the Funding Period in connection with the Project, including, but not limited to, the costs of labor, supplies, materials, program costs and services and Brownfield’s oversight fees associated with the Project. Project Costs shall be further specified in the Project Budget.

C. **Funding Procedure.** All Disbursements under this Agreement shall be made pursuant to a Draw Request (the “Draw Request”) approved by the RLDC consisting of invoices coded to the EPA RLF funding source RLDC and reviewed

and compiled by the City. Each draw request shall reference invoices that have been reviewed and approved by RLDC, and/or such other information as the City may require. On the date specified in the Draw Request, if all the terms and conditions of this Agreement have been complied with by RLDC, if no default exists under this Agreement, the City shall, as promptly as possible thereafter, disburse the amount of the draw to RLDC, which amount shall be re-disbursed by RLDC to each of the contractors and/or consultants entitled to receive any of such proceeds, by check or wire transfer, the amounts set forth in such Draw Request.

- D. **Project Budget and Project Changes.** RLDC will obtain the City's written approval of any material changes in the Project Budget. RLDC will provide the City with all bid requests, project bids, and information regarding costs of the Project as the City shall require.
- E. **Project Matching Funds.** RLDC agrees that at least 20% of the total Project Budget for the Project shall be obtained as matching funds from any non-federal source to be spent for Project Costs.

IV. ACCOUNTING AND PROJECT MANAGEMENT RECORDS.

- A. **Accounting and Project Management Records.** The RLDC will document the use of Disbursements, and maintain adequate records consistent with industry standard accounting. The RLDC shall thereafter maintain documentation on the uses of Disbursements, including bid information, executed contracts, on-site inspection reports, Draw Requests, accompanying invoices and information sufficient to evidence in proper detail the nature of expenditures and other information as deemed appropriate by the RLDC or the City. The documents required hereunder shall be maintained for a period of three (3) years following completion of the Project, except records that are subject to audit findings, which shall be retained for three (3) years after such findings have been resolved.

V. PROJECT REQUIREMENTS.

- A. RLDC agrees to erect a sign on the Property, approved by the City, stating that the Project is being financed in part by U.S. EPA RLF Funds, the City and State of Illinois, and providing the appropriate contacts for obtaining information on activities being conducted at the Property and for reporting suspected criminal activities. The sign erected on the Property shall comply with 40 CFR Part 35, Subpart O (Section 35.6105 (a)(2)(ii)).
- B. RLDC certifies that it is not and has not and, to its knowledge, any Contractor(s):
 - i. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local (hereinafter "public") transactions; and

- ii. Have not within the preceding three years had a public transaction terminated for cause or default.

- C. The Project shall be carried out 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 City defined by the Cooperative Agreement Number (B F-00E45801), 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.

- D. RLDC shall comply (and cause Contractor and any subcontractor employed in connection with the Project to comply) with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts.

- E. RLDC shall carry out (and cause Contractor and any subcontractor employed in connection with the Project to carry out) the Project in accordance with the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 U.S.C. § 276a to 276a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104(g)). Compliance with the Davis-Bacon Act requires payment of federal prevailing wage rates. Contractor must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

- F. RLDC shall keep in full force and effect commercially reasonable insurance, including, without limitation, general liability insurance with respect to the Property with a minimum of \$1,500,000 coverage per accident or claim, property insurance, worker’s compensation insurance as required by any applicable law or regulation, for all phases of construction of the Project. Insurance coverage shall be primary in relation to any other insurance or self-insurance available to RLDC. Insurance shall be placed with an insurer with a rating of no less than B plus in the current edition of Best’s Insurance Guide. Policies shall be endorsed to provide that RLDC shall be provided with written notice of thirty (30) days for any cancellation, suspension or reduction in limits.

- G. RLDC shall keep Project in good repair and condition, and from time to time make necessary repairs, renewals, and replacements so that Project shall be fully and efficiently preserve and maintained.
- H. RLDC shall comply (and cause Contractor and any subcontractor employed in connection with the Project to comply) with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, Contractor shall undertake good faith efforts in compliance with 40 C.F.R. 31.36(e) to give opportunities to qualified Small Business Enterprises, Minority Business Enterprises and Women-Owned Business Enterprises to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. Contractor shall submit a report of such efforts at the request of RLDC.
- I. RLDC shall commence the Project on or before , 2011, and shall complete the Project on or before , 2012, subject only to force majeure or a written extension agreed to and signed by Finance. RLDC shall notify the City when the Project is complete.
- J. The contractor(s) retained to conduct the Project have not, within a three year period preceding this Agreement, been convicted or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- K. The contractor(s) retained to conduct the Project, are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offences enumerated under the section above.

VI. EVENTS OF DEFAULT

The following shall constitute Events of Default:

- A. Default by RLDC in any payment when due of principal or interest under the Promissory Note;
- B. Any representation or warranty made by RLDC hereunder or in the Loan Documents proves false or misleading in any material respect;
- C. Use of the Loan Proceeds for purposes other than those stated in Section III.A. or approved in writing by the City; and
- D. Default by RLDC in the performance of any other term, covenant or agreement contained herein, or in the Loan Documents, which default is not cured within thirty (30) days of receipt of a notice of default (or such longer period as shall be

reasonably necessary to cure such default provided RLDC promptly commences such cure and thereafter diligently pursues such cure to completion).

VII. FINANCE REMEDIES

In the event of a default by RLDC in the payment or performance of any obligation hereunder, the City may accelerate payment of the remaining balance of the Note and terminate any obligation to make additional Disbursements hereunder.

VIII. REPRESENTATIONS AND WARRANTIES

A. Environmental Representations and Warranties. The City represents and warrants that:

1. The Property is not listed or, to the City's knowledge, proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency.
2. The City did not generate hazardous substances, pollutants or contaminants at or to the Property.
3. The City is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607.
4. The City acquired the Property after the disposal or placement of hazardous substances, pollutants and contaminants on the Property and has not caused, contributed to, permitted or exacerbated the release of such substances, pollutants or contaminants on or from the Property. The City is not otherwise a responsible person as defined in Illinois Statutes.
5. The Property is not subject to a unilateral administrative order, court order, and administrative order on consent or judicial consent decree issued to or entered by parties under CERCLA.
6. The Property is not subject to the jurisdiction, custody or control of the United States government.
7. The Property satisfies the definition of a Brownfield site as defined in Section 101(39) of CERCLA, 42 U.S.C. 9601(39).
8. The City certifies that it, the RLDC, the Contractor and the Consultant are not now, and have not in the past, been subject to any penalties resulting from environmental non-compliance at the Property.

- B. **No Violation.** The execution and performance by RLDC of this Agreement does not violate any provision of federal, state or local law, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which the RLDC is a party or by which the RLDC may be bound.
- C. **Authorization.** The City Council of the City of Rockford and the Board of Directors of the RLDC have authorized the execution and delivery of this Agreement.
- D. **Litigation.** There are no pending or, to RLDC's knowledge, threatened actions or proceedings before any court or administrative agency that may adversely affect the financial condition or operation of RLDC.
- E. **Not Excluded from Public Transactions.** RLDC is not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state, or local (hereinafter "public") transactions.
- F. **No Termination for Cause or Default.** RLDC has not within the preceding three years had a public transaction terminated for cause or default.
- G. **No Civil Judgments.** Neither RLDC nor its respective officers or contractor(s) retained to conduct the Project have, within a three year period preceding this Agreement, have been convicted or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- H. **No Criminal or Civil Indictments:** Neither RLDC, nor its respective officers or contractor(s) retained to conduct the Project, are presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offences enumerated under the section above.
- I. **Acknowledgement.** RLDC acknowledges that a Cooperative Agreement with the USEPA is the source of the Loan and that the City is under no obligation to lend any of its own funds.
- J. **Survival of Representations:** All representations and warranties shall survive the execution of this Agreement.

IX. MISCELLANEOUS

- A. **Successors.** This Agreement shall be binding upon the permitted assigns or successors of RLDC and the City. This Agreement shall not be assigned or transferred by RLDC without the written consent of the City and any purported assignment or transfer without such prior written consent shall be void.

B. **Notices.** Any notice, consent, waiver, request or other communication required or permitted to be given under this Agreement shall be in writing and shall be given as follows:

To RLDC

Rockford Local Development Corporation

To the City:

City of Rockford

C. **Attachments.** All attachments mentioned herein shall be deemed incorporated herein by reference as though fully set forth herein.

D. **Entire Agreement.** This Agreement shall supersede any prior loan agreements, oral or written, regarding the subject matter of this Agreement between the City and RLDC. This Agreement may not be amended or modified without the written consent of the parties hereto.

E. **Inconsistency.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this Agreement shall control, except where federal statutes or regulations are controlling.

F. **Severability.** If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

G. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois except where superseded by federal statutes or regulations.

H. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

City of Rockford		Rockford Local Development Corporation
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Department of Law		
By (print):		By (print):
By (sign):		By (sign):
Its:		Its:

ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY

ATTACHMENT B
ELIGIBILITY DETERMINATION AND AMENDMENTS

ATTACHMENT C
PROJECT SCHEDULE

ATTACHMENT D
PROJECT BUDGET

ATTACHMENT E
PROMISSORY NOTE

Promissory Note

\$700,000

City of Rockford
2011

FOR VALUE RECEIVED, the undersigned promises to pay to the order of the City of the Rockford , or it assigns, the sum of **Four Hundred Twenty Thousand And No/100 Dollars (\$420,000)** in accordance with a certain Brownfield Cleanup Revolving Loan Fund – Intergovernmental Loan Agreement dated as of even date herewith (the "Loan Agreement").

This Note shall bear interest at an annual rate equal to 0.00 %. The Full Principal on this Note shall be payable on the tenth anniversary of this Note, at which time this Note shall become immediately due and payable in full. The undersigned may prepay this note in part or in whole at any time without penalty.

This Note is issued under and is governed by the Loan Agreement, the terms and conditions of which are hereby incorporated herein by reference.

Protest and notice of demand and protest are hereby waived. This Note shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of the day and year set forth above.

Rockford Local Development Corporation
(RLDC)

By _____
Its _____

Attachment D: Comprehensive Site Investigation Report- Executive Summary

The attachment is the two- page executive summary for this report. For additional information, contact Wayne Dust at 815-987-5636 or e-mail

wayne.dust@rockfordil.gov

COMPREHENSIVE SITE INVESTIGATION REPORT

FORMER TAPCO PROPERTY
502 South Main Street / 222 Cedar Street
Rockford, Illinois 61101
Winnebago County

Prepared For:

City of Rockford
425 East State Street
Rockford, Illinois 61104

Prepared By:

Fehr-Graham & Associates, LLC
1920 Daimler Road
Rockford, Illinois 61112

FGA Project Number: 10-462H-A03A

April 22, 2011



FEHR-GRAHAM & ASSOCIATES
Engineering and Science Consultants

1.0 EXECUTIVE SUMMARY

This Comprehensive Site Investigation Report (CSIR) is being completed as part of an enrollment of the Former Tapco Property, located at 502 South Main Street / 222 Cedar Street, Rockford, Illinois, herein referred to as the Remediation Site, into the Illinois Environmental Protection Agency's (IEPA) Site Remediation Program (SRP). The intent in completing this CSIR is to assess and characterize the extent of contamination associated with previously identified Recognized Environmental Conditions (RECs) at the Remediation Site. To comply with the requirements as set forth per 35 IAC, Part 740, a systematic approach was used to characterize the magnitude and extent of the contaminant plume(s).

An October 26, 2009 Phase I ESA and an updated September 10, 2010 Phase I ESA were completed by Fehr-Graham & Associates, LLC (FGA) as part of a property transaction between Mr. John Cotton and the Remediation Site's current owners, the City of Rockford. The Phase I ESAs identified a number of RECs at the Remediation Site. Subsequent site investigation activities confirmed the presence of contaminants at concentrations greater than Tiered Approach to Corrective Action Objectives (TACO) Tier I Remediation Objectives (ROs) in site soils and groundwater. As potential future use of the Remediation Site may include recreational, residential, and commercial redevelopment, both Residential and Industrial/ Commercial ROs are being adopted for this enrollment.

Constituents of concern identified in Remediation Site soils include several semi-volatile organic compounds (SVOCs) and inorganic compounds including: Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(k)fluoranthene, Benzo(a)pyrene, Carbazole, Indeno(1,2,3-cd)pyrene, 2-Methylnaphthalene, Lead, Arsenic, Mercury, and Iron. These constituents were detected at concentrations greater than the most stringent Tier I Residential Ingestion,

Industrial/Commercial Ingestion, Construction Worker Ingestion and Inhalation, and Class I and Class II Soil Component to Groundwater Ingestion Exposure Pathway ROs at one (1) or more sample location. In general, the exceedences were observed in shallow soils and unconsolidated urban fill that extends from the ground surface to approximately three (3) to four (4) feet below ground surface (bgs) throughout the Remediation Site. Remediation Site groundwater was found to be impacted by several volatile organic compounds (VOCs) and inorganic compounds including: Tetrachloroethene, Trichloroethene, Vinyl Chloride, Aluminum, Antimony, Iron, Lead, Manganese, and Vanadium. These constituents were detected at concentrations greater than a Tier I Class I and/or Class II Groundwater RO at one or more sample location.

Off-site soils in the city right-of-way were sampled prior to learning the exact property boundary of the Remediation Site and found to be impacted with several VOCs, SVOCs, and an inorganic compound above select Tier 1 ROs. These include Tetrachloroethylene, Trichloroethene, Benzo(a)pyrene, Benzo(b)fluoranthene, Dibenzo(a,h)anthracene, and slightly elevated levels of Mercury.

The City of Rockford, Illinois is serving as the Remedial Applicant for the Remediation Site. United States Environmental Protection Agency (US EPA) Brownfields Hazardous Substance Assessment Grant Funds were used to investigate and assess the Remediation Site. The primary goal of this enrollment into the SRP is to ultimately receive a Comprehensive No Further Remediation (NFR) Letter, which will serve to reduce future environmental concerns and help to spur redevelopment at the Remediation Site. Upon receipt of the NFR Letter, this project will be considered a successful Brownfields redevelopment venture between the USEPA, IEPA, and the City of Rockford.