

US EPA ARCHIVE DOCUMENT

NOTE: This sample loan document and its specific provisions may or may not be appropriate to your program. Your own loan documents should be prepared based on your review of this samples in combination with a review of other program guidance, and applicable statutory and regulatory provisions. It is up to the user to review this sample carefully and determine whether it is appropriate for your program.

BROWNFIELDS CLEANUP REVOLVING LOAN FUND
SAMPLE LOAN AGREEMENT #2

THIS AGREEMENT is entered as of the ___ day of _____, 200_, by and between _____, (hereinafter called "BORROWER"), and the CITY OF _____, (hereinafter ("CITY")), as of the date first above written.

WHEREAS, to induce CITY to make the LOAN, BORROWER shall have executed the following instruments or agreements concurrently herewith (collectively known as the LOAN DOCUMENTS):

Promissory Note:	Exhibit A
Deed of Trust:	Exhibit B

WHEREAS, and as further inducement to the making of this LOAN, the following instruments shall have been executed concurrently herewith and are also included with and collectively known as the LOAN DOCUMENTS:

Security Agreement:	Exhibit C
Continuing Guaranty:	Exhibit D
Deed of Trust Securing the Continuing Guaranty:	Exhibit E

WHEREAS, CITY is a recipient of Brownfields Cleanup Revolving Loan Funds (BCRLF) and authorized to make certain loans from these funds; and

WHEREAS, using BCRLF, CITY has established guidelines for the _____ Cleanup Loan Program (Exhibit F) to assist property owners and developers to cleanup properties in _____; and

WHEREAS, the BORROWER is the owner of certain real property located at _____ (the Property) and the CITY has determined that a BCRLF response action is authorized and appropriate at the Property; and

WHEREAS, the CITY has prepared an Engineering Evaluation/Cost Analysis (EE/CA) of BCRLF response action alternatives, has provided the public with an opportunity to review and comment on the EE/CA, has considered and responded to all significant public comments, and has selected a final BCRLF response action; and

WHEREAS, the BORROWER has completed loan pre-qualification and application

requirements for the _____ program (Exhibit G); and

WHEREAS, BORROWER wishes to borrow from CITY, and CITY is willing to lend such sum described in the Promissory Note to BORROWER on the terms and conditions herein contained; and

WHEREAS, BORROWER is currently subject to the terms and conditions of a certain _____
Primary loan dated _____ and Promissory Note dated _____ in
 the principal amount of \$_____.00 ("PRIMARY LOAN"), which shall take priority over the
 LOAN DOCUMENTS described herein;

NOW, THEREFORE, CITY and BORROWER, intending to be legally bound, agree to as follows:

I. LOAN

- A. LOAN. CITY hereby agrees to loan to BORROWER the principal sum of _____ Dollars (\$_____.00) which shall bear simple interest at the rate of _____ percent (___%) per annum on unpaid principal until principal is paid in full (the "LOAN").
- B. PROMISSORY NOTE. The LOAN shall be evidenced by BORROWER's PROMISSORY NOTE dated _____ concurrently with this Agreement substantially in the form of Exhibit A attached hereto ("PROMISSORY NOTE"), all terms of which are incorporated herein by reference. The PROMISSORY NOTE shall mature on the _____ (____) anniversary date following the date of the first payment, which shall be the 1st day of the twelfth (12th) month following execution of the PROMISSORY NOTE, when any remaining balance owed CITY shall be due and payable.
- C. PREPAYMENT WITHIN FIRST TWELVE MONTHS. BORROWER may, without premium, prepay any portion of the principal on the LOAN before twelve months has elapsed, and as allowed for in the PROMISSORY NOTE.
- D. iii PURPOSE. The proceeds of the LOAN shall be used only for the final BCRLF response action selected by CITY for the Property as set forth in the Work Plan (Exhibit __), which includes a Budget and Work Schedule, a Health and Safety Plan, and a Quality Assurance Project Plan.
- E. CONTRACTOR QUALIFICATIONS AND INSURANCE. BORROWER affirms

that Contractor has examined the Property, is fully familiar with local conditions, and is able to execute the Work Plan. Contractor shall perform Work Plan consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. Contractor shall possess a Hazardous Substance Removal and Remedial Action License Certification and the appropriate license from the state's Contractor's State License Board for the past twenty-four (24) months. Contractor shall maintain and keep in force insurance, including, but not limited to pollution and general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation. Insurance shall be placed with an insurer with an AM. Bests' rating of no less than A:VII

F. TRANSACTION FEES AND CLOSING COSTS.

1. BORROWER shall pay all closing costs which are charged to escrow out of the proceeds of the LOAN at the occurrence of escrow closing.
2. Transactions. CITY may, at its option, charge transaction fees for document preparation and recording and all other services related to the Property including, but not limited to subordination, sale or other transfer, demand notices, refinancing, reconveyance, and litigation. BORROWER shall pay or reimburse CITY on demand for all present or future documentary stamp taxes, if any, required by any state as a condition of filing a financial statement covering collateral which is the subject of this Agreement.
3. Loan Collection Services. CITY may, at its option, charge a fee for loan collection services equal to that fee which the contractor providing such services charges to the CITY for the processing of loan payments.
4. Upon Default. Upon default arising from provisions of Section VI, BORROWER promises to pay CITY all collection and attorney's fees and expenses actually incurred by the CITY, whether or not litigation is commenced, including but not limited to attorney's fees and penalties and/or fees due under this Agreement.

G. SECURITY

1. As security for BORROWER's indebtedness to CITY, BORROWER shall execute a Deed of Trust with CITY as a condition precedent to CITY making the LOAN. The Deed of Trust shall be dated prior to, or concurrently herewith, this Agreement, substantially in the form of Exhibit B attached hereto, all terms of which are incorporated herein by this reference.
2. As further security for BORROWER's indebtedness to CITY, BORROWER shall

have executed a Security Agreement for fixtures and equipment, and Continuing Guaranty secured by a Deed of Trust on property additional security, in substantially the form attached hereto as Exhibits C, D and E respectively, in favor of CITY. This Continuing Guaranty and Deed of Trust shall also be executed by any other owners of the property as a guarantor of the indebtedness of BORROWER to CITY.

- H. COST CAP INSURANCE. As part of this Agreement, the CITY is providing the BORROWER with remediation cost cap insurance, issued by AIG Environmental at no additional cost. BORROWER agrees to comply with the responsibilities of the Insured party, as described in the insurance policy, which is attached hereto as Exhibit ____.
- I. III INSPECTION AND RIGHT TO STOP WORK. CITY may inspect work at the Property during and upon completion of the BCRLF response action, with BORROWER to provide notice to City when completion is imminent (not later than five days prior). CITY shall select a Site Manager who shall serve as an On-Scene Coordinator (OSC). The OSC shall perform duties including, but not limited to, coordination, oversight and inspection of the BCRLF Project Response Action. CITY shall, at all times, have the right, but not the obligation, to enter the Property during the execution of the Work Plan. If CITY finds that the work is unsatisfactory or is not substantially in accordance with the Work Plan, CITY shall have to right to stop work, and order work replacement by BORROWER at BORROWER's expense. CITY shall not be obligated to make any disbursements unless or until all work is satisfactory to the CITY.
- J. III LOAN FUNDS. The loan funds shall be disbursed to BORROWER in ____ monthly installments based upon the progress of the work and in accordance with the approved Project Budget and Schedule. No installments shall be advanced to BORROWER from the CITY without the written approval of the Site Manager.
- K. PROGRESS PAYMENTS AND RETENTION. All requests by BORROWER for progress payments will be on a monthly basis and shall be approved by the BORROWER's Licensed Environmental Professional (LEP) and submitted to the CITY before the first day of each month, for review and approval of the Site Manager and CITY. The progress payment will not be available until the 28th of each month. The CITY reserves the right to withhold up to ten percent (10%) of each payment as retention. Any withheld funds will be released after submitting a Site Manager's Report and receipt of a Certificate of Completion, approved by the Site Manager.
- L. III ADHERENCE TO BUDGET. BORROWER agrees to keep all expenditures

from loan proceeds within the approved Budget. Borrower shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Site Manager.

II. **REPRESENTATIONS AND WARRANTIES.** BORROWER makes the following representations and warranties to CITY, which representations and warranties shall survive the execution of this Agreement.

A. **ENVIRONMENTAL WARRANTIES.** Borrower certifies that:

1. The Property is not listed, or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency (EPA);
2. BORROWER is not, and has not been, subject to any penalties resulting from environmental non-compliance at the Property.
3. BORROWER is not a generator or transporter of the contamination at the Property;
4. BORROWER acquired the property 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 the property.

NOTE: The lead agency is responsible for determining whether a particular property and borrower meet the eligibility criteria for participation in the BCRLF program. In this case, the lead agency has chosen to rely on the borrower's "certification" to make its determination. This is an acceptable approach, however, be aware that a borrower certification will not absolve the lead agency if that certification is incorrect or invalid.

- B. **LEGAL STATUS.** BORROWER is a _____ (corporation, partnership or individual).
- C. **NO VIOLATION.** The making and performance by BORROWER of this Agreement does not violate any provision of law, or City of _____ statute or ordinance, 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.
- D. **AUTHORIZATION.** This Agreement and the PROMISSORY NOTE have been duly authorized, executed and delivered, and are valid and binding agreements of BORROWER.

- E. LITIGATION. 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 CITY in writing.
- F. CORRECTNESS OF FINANCIAL STATEMENT. The financial statement dated _____ heretofore delivered by BORROWER to CITY presents fairly the financial condition of BORROWER, and has been prepared by a Certified Public Accountant in accordance with generally accepted accounting principles consistently applied. As of the date of such financial statement, and since such date, there has been no material adverse change in the condition or operation of BORROWER, nor has BORROWER mortgaged, pledged or granted security interest in or encumbered any of BORROWER's assets or properties since such date.
- G. NO ADDITIONAL SUBORDINATION. The obligations of BORROWER under this Agreement and the PROMISSORY NOTE 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 CITY in writing.
- III. CONDITIONS PRECEDENT. The obligation of CITY to make this LOAN contemplated hereunder is subject to the fulfillment of the following conditions:
- A. APPROVAL OF CITY'S COUNSEL. All legal matters incidental to CITY's commitment to issue the LOAN hereunder shall be satisfactory to counsel of CITY, including the form, validity and enforceability of this Agreement and Exhibits A through D hereof.
- B. COMPLIANCE. 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 VI 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.
- C. SUBMISSION OF CONTRACTS. BORROWER shall submit to CITY copies of all bids and contracts for all work required under the Work Plan.
- IV. AFFIRMATIVE COVENANTS. BORROWER covenants that so long as BORROWER is indebted to CITY under this Agreement, and remains indebted to the payment in full of the PROMISSORY NOTE issued hereunder, BORROWER shall do the following:

- A. PUNCTUAL PAYMENT. BORROWER shall punctually pay the principal and any interest of the PROMISSORY NOTE at the times and place and in the manner specified in the PROMISSORY NOTE.
- B. iii ACCOUNTING RECORDS. BORROWER shall document 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 CITY, 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 ten (10) years after the completion of the BCRLF response action supported by the loan, or for the length of the loan, whichever is greater. BORROWER must obtain written approval from CITY prior to destroying any records. All loan related documents are subject to 40 C.F.R. 35.6710.

NOTE: Cooperative Agreement recipients must obtain written approval from EPA prior to destroying, or approving the destruction of, any records.

- C. FINANCIAL STATEMENTS AND ONGOING REPORTING. BORROWER shall furnish CITY, so long as amounts remain due under the PROMISSORY NOTE:
1. Quarterly reports that document that they are in compliance with all relevant Federal and State environmental regulations and that they meet the requirements of _____.
 2. Quarterly financial statements to _____, including basic accounting and control mechanisms to track legitimate use of funds and document that the funds are put to authorized uses. BORROWER's accounting system must track site-specific cost, and track cost activity and operable unit if applicable. Financial statements are considered to be: (i) Income Statements; (ii) Balance Sheet; and (iii) Cash Flow Statement.
 3. From time to time such other information as CITY may reasonably request.
- D. iii COMPLIANCE WITH ALL LAWS. The Borrower will carry out the Project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in (42 USC 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Contingency Plan (NCP) (40 Part 300) and and all other applicable provisions of federal, state or local law.

- E. iii COMPLIANCE WITH E.O. 11246. BORROWER shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to Federally assisted construction contracts.
- F. iii DAVIS-BACON ACT. BORROWER shall carry out the Project in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). Compliance with the Davis-Bacon Act requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with BCRLF Loan Funds. BORROWER must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.
- G. INSURANCE. In addition to contractor's insurance requirements, BORROWER shall maintain and keep in force insurance of the types and amounts necessary to protect the security for BORROWER's indebtedness to the CITY, including, but not limited to general liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation, if applicable, and fire insurance for the value of the property, and coverage for pollution incidents that may be evidenced by pollution legal liability insurance. Insurance coverage shall be primary as respects any other insurance or self-insurance available to the CITY. Insurance shall be placed with an insurer with an AM. Bests' rating of no less than A:VII. The City of _____, its officers, employees and agents, shall be named as "Loss Payee" and "Additional Insured"; and BORROWER shall deliver to CITY from time to time at CITY's request certificates of insurance or policies setting forth all business insurance then in effect. Policies shall be endorsed to provide that the CITY shall be provided with thirty (30) days written notice of any cancellation, suspension or reduction in limits.
- H. COMMUNITY INVOLVEMENT. BORROWER shall cooperate with CITY in carrying out community involvement activities identified in CITY's Community Relations Plan.
- I. iii WORK PERFORMED WITH LOAN FUNDS. The BORROWER understands and agrees 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 the Work Plan and this Agreement.
- J. MAINTENANCE. BORROWER shall keep Property and business operations in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that Property shall be fully and efficiently preserved and maintained.

- K. TAXES AND OTHER LIABILITIES. BORROWER shall pay and discharge when due any and all indebted obligations, assessments, taxes real and personal, including federal and state payroll and income taxes, except such as BORROWER may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of CITY for eventual payment thereof in the event that it is found that the same is an obligation of BORROWER.
- L. LITIGATION. BORROWER shall promptly give notice in writing to CITY of any litigation pending or threatened against BORROWER or Property in excess of Five Thousand Dollars (\$5,000.00).
- M. NON-DISCRIMINATION AND EQUAL OPPORTUNITY. BORROWER will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, BORROWER will undertake good faith efforts in compliance with 40 CFR §35.6580 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. BORROWER shall submit a report of such efforts on the City-provided form.
- N. DEBARMENT AND SUSPENSION. The BORROWER certifies that BORROWER and Contractor:
1. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from Federal, State or local (hereinafter "public) transactions;
 2. Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of Federal or State antitrust or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 3. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under paragraph (IV.J.2); and
 4. Have not within the preceding three years had a public transaction terminated for cause or default.
- O. NOTICE TO CHANGE IN WORK PLANS. BORROWER will immediately report in writing any potential changes to the Work Plan described in Section 1.4 and

the discovery of hazardous substances, pollutants or contaminants not identified in the Work Plan. All changes or modification to the Project or the Project Documents shall be approved in writing by the Site Manager and the CITY prior to such change or modification becoming effective. All additional costs incurred as the result of any Change Orders shall be the responsibility of BORROWER. In the event that unforeseen conditions are discovered during the BCRLF response action, the CITY reserves the right to revise the BCRLF Response Action and the Project Documents.

- P. iii **COMPLETION OF PROJECT.** BORROWER will begin the project within ___ days and will complete all work included in the Work Plan within twelve (12) months following the commencement of work. BORROWER agrees to complete the work in a timely manner in accordance with the Work Plan. Borrower shall notify the CITY when the Project is complete. The notice shall contain certification or documentation necessary to prepare a Site Manager's Report developed in accordance with Section 300.165 of the NCP. This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the Project, if any.
- Q. iii **LOAN ADMINISTRATIVE COSTS.** BORROWER may use no more than ten (10) percent of the loan proceeds for the activities stated under Section I.D.

V. **EVENTS OF DEFAULT.**

A. 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 Section I.D.
4. Default by BORROWER in the performance of any other term, covenant or agreement contained herein, or in the Loan Documents, which default is not cured within 30 days from its occurrence.
5. Default by BORROWER under the terms of any agreement or instrument pursuant to which BORROWER has borrowed money from any person or entity.
6. The failure of BORROWER promptly to pay and discharge any judgment or levy of any attachment, execution or other process against the assets of BORROWER,

and such judgment be not satisfied, or such levy or other process be not removed within 30 days after the entry or levy thereof, or at least 5 days prior to the time of any proposed sale under any such judgment or levy.

7. BORROWER shall be adjudicated as bankrupt or insolvent, or shall consent to or apply for the appointment of a receiver, trustee or liquidator of itself or any of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assessment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization or arrangement in a proceeding under any bankruptcy law, or BORROWER or its directors or majority stockholders shall take action looking into the dissolution, liquidation, or reorganization of BORROWER.
 8. The breach by Guarantors of any of the financial covenants in the Continuing Guaranty.
 9. Sale of the security for the indebtedness to the CITY.
 10. Sale of Property without prior approval of the CITY.
- B. **ACCELERATION.** If an Event of Default shall occur, any indebtedness of BORROWER under this Agreement of the PROMISSORY NOTE, any term of the PROMISSORY NOTE to the contrary notwithstanding shall at CITY's option and without notice, become immediately due and payable without presentment, notice or demand, all of which are hereby expressly waived by BORROWER, and the obligations, if any of CITY to permit further borrowings hereunder shall immediately cease and terminate.
- C. **i i i SECURE SITE.** In the event of default, BORROWER shall secure the site. The cost of securing the site is the responsibility of the BORROWER. If BORROWER fails to secure the site within 24 hours, CITY may do so at the BORROWER's sole cost.

NOTE: If the BCRLF response action is not complete at the time of default, the lead agency is responsible for securing the site. In this case, the lead agency has imposed the requirement on the borrower as a condition of the loan.

- VI. **REMEDIES OF CITY.** Upon the occurrence of any one or more of the Events of Default and at any time thereafter:
- A. CITY may exercise any and all of the rights, power, privileges and remedies provided in the LOAN DOCUMENTS.

- B. Upon the occurrence of any Event of Default, CITY may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Article VII and all other remedies available to the CITY under the Loan Documents, at law or in equity, at any time and from time to time and such exercise shall not constitute a waiver of any of CITY's rights or remedies thereunder whether or not the indebtedness evidenced by the PROMISSORY NOTE shall be due and payable and whether or not CITY shall have instituted any foreclosure proceedings or other actions for the enforcement of its rights under the PROMISSORY NOTE.
- C. CITY shall be entitled to exercise all other remedies provided to CITY under the Deed of Trust, or any other document evidencing or securing the LOAN or otherwise available under California law, including, but not limited to:
1. The appointment of a receiver;
 2. The institution of a suit in equity or other appropriate proceedings for specific performance or an injunction against a violation of this Agreement or the Deed of Trust; and
 3. Taking possession of the Property and performing any and all work and labor necessary to complete the Work Plan in which event expenditures therefore shall be deemed an additional loan to BORROWER, payable on demand, bearing interest at the maximum rate allowed by law.
- D. CITY may, but shall not be obligated to, set-off against any and all BORROWER's property in which it has a security interest.
- VII. **INDEMNIFICATION.** BORROWER shall, at BORROWER's expense, defend, indemnify, and otherwise hold CITY, its officers, employees and agents harmless against any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation, or other entity and arising out of or caused by any of the LOAN DOCUMENTS, or Borrower's actions or inactions with regard to the Property, or by the use of the proceeds of the LOAN. BORROWER shall pay CITY upon demand all claims, judgements, damages, lawsuits or expenses (including legal expenses) incurred by CITY as a result of any legal action arising out of or caused by any of the Loan Documents, or by the use of the proceeds of this LOAN.
- VIII. **MISCELLANEOUS.**
- A. **WAIVER.** No delay or failure of CITY, or any holder of the PROMISSORY NOTE exercising any right, power or privilege hereunder or in the Loan Documents shall affect such right, power or privilege; nor shall any single or partial exercise thereof of

any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of CITY hereunder are cumulative and not exclusive. Any waiver, permit, consent or approval of any kind by CITY, or any holder of the PROMISSORY NOTE, of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

- B. SUCCESSORS. This Agreement shall be binding upon the permitted assigns or successors of BORROWER and CITY. This Agreement shall not be assigned or transferred by BORROWER without the written consent of CITY and any purported assignment or transfer without such prior written consent shall be void.
- C. NOTICES. All notices, requests and demands given to or made upon the respective parties under the Loan Documents shall be deemed to have been given or made when deposited in the mail, first class postage prepaid, and addressed as follows:

BORROWER:

CITY: The City of _____

GUARANTOR:

- D. ATTORNEY'S FEES. BORROWER will reimburse CITY for all costs, expenses and reasonable attorneys' fees expended or incurred by CITY in enforcing this Agreement, in actions for declaratory relief in any way related to this Agreement, or in collecting any sum which becomes due the CITY on the PROMISSORY NOTE.
- E. III SIGN. BORROWER will erect a sign on the property site providing appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the site shall comply with all state and CITY laws applicable to on-premise outdoor advertising and 40 C.F.R. Subpart O §35.6105(a)(2)(ii).
- F. EXHIBITS. All Exhibits mentioned in this Agreement shall be deemed incorporated herein by reference as though fully set forth herein.
- G. RELATIONSHIP. The relationship of CITY and BORROWER is that of lender and borrower. No party hereto intends to create any other relationship hereby, and the

parties disavow and negate any intention to create a partnership or joint venture hereby.

H. ENTIRE AGREEMENT.

1. The terms and conditions of this LOAN AGREEMENT, all exhibits attached and any documents expressly incorporated by reference represents the entire LOAN AGREEMENT between the parties with respect to the subject matter of this LOAN AGREEMENT. This LOAN AGREEMENT shall supersede any prior loan agreements, oral or written, regarding the subject matter between CITY and BORROWER. Any other loan agreement, contract, statement, or promise relating to the subject matter of this LOAN AGREEMENT shall be valid or binding except by a written amendment to this LOAN AGREEMENT.
2. If any conflicts arise between the terms and conditions of this LOAN AGREEMENT and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this LOAN AGREEMENT shall control except where Federal statute or regulation are controlling.
3. 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.

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

CITY OF _____ (“CITY”)

By: _____
City Manager

Attested By:

City Clerk

Approved as to form:

City Attorney

_____ (“BORROWER”)

By: _____

Title: _____

Federal I.D. #: _____

Social Security #: _____

US EPA ARCHIVE DOCUMENT