



**BROWNFIELD OR REVITALIZATION LOAN AGREEMENT
BETWEEN THE
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AND THE BORROWER NAME**

This Loan Agreement ("Agreement") is made between the Michigan Department of Environmental Quality, Environmental Science and Services Division (hereafter "State") and the Borrower Name (hereafter "Borrower").

The purpose of this Agreement is to provide funding for the project named below. The State is authorized to provide Loan funding pursuant to Part 196, Clean Michigan Initiative Implementation, of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended (NREPA). Legislative appropriation of funds for the loan program is set forth in PA 309 of 2004 (CMI). This Agreement is subject to the terms and conditions specified herein.

Project Name: Name Project #: 000000-00 Tracking Code: 2006-0000

Amount of Loan: \$000000 Loan Rate: 2.0%

BORROWER'S REPRESENTATIVE:

STATE'S REPRESENTATIVE:

Xxxxx
Name/Title
Xxxxx
Project Contact
Xxxxx
Address
xxxxx
Address
00000
Telephone number
00000
Fax number
xxxxx
E-mail address
38-60000000
Federal ID number

Steven E. Chester, Director
Name/Title
Name
State Project Administrator
XXXXX
Address
XXXXX
Address
XXXXX
Telephone number
XXXXX
Fax number
xxx@michigan.gov
E-mail address

The individuals signing below certify by their signatures that they are authorized to sign this Loan Agreement on behalf of their respective organizations, and that the parties will fulfill the terms of this Agreement, including the attached appendices.

Signature of authorized official

Date

Name and title (typed or printed)

AUTHORIZED BY:

Steven E. Chester, Director
Michigan Department of Environmental Quality

Loan Execution Date
This agreement expires two years from the Loan Execution Date

Project End Date: Loan Execution Date + two years
Interest Start Date: Loan Execution Date + five years

First Payment Due: Loan Execution Date + five years
Loan Payoff Date: Loan Execution Date + fifteen years

1. PROJECT SCOPE

This Agreement and its appendices constitute the entire agreement between the State and the Borrower and may be modified only by written agreement between the State and the Borrower.

(A) The scope of this project is limited to the activities specified in Appendix A, and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Borrower commits to complete the project identified in Appendix A within the time period allowed for in this Agreement.

2. AGREEMENT PERIOD

This Agreement shall take effect on the date of signature by the State (the Loan Execution Date). The Project End Date of this agreement shall be exactly two years following the Loan Execution Date specified on page one. The Borrower shall complete the project specified in Appendix A in accordance with all the terms and conditions specified in this Agreement no later than the Project End Date shown on page one. The State shall have no obligation to provide financial assistance to the Borrower for project work performed except between the Loan Execution Date and the Project End Date specified on page one.

3. CHANGES

Any changes to the Agreement or to its appendices, including any increase or decrease in the amount of the Borrower's loan, changes to the Project Scope, or extension of the project deadline, which are mutually agreed upon by and between the State and the Borrower, shall be requested by the Borrower in writing, and approved in writing by the State. Changes to the Agreement or appendices must be approved in advance. The State reserves the right to deny requests for changes to the Agreement or to the appendices made without 30 days notice.

4. BORROWER DELIVERABLES AND REPORTING REQUIREMENTS

(A) The Borrower must complete and submit Quarterly Progress Reports during the Project Implementation Period, defined as time between the Loan Execution Date and the Project End Date.

1. A Quarterly Report form will be provided by the State that will include instructions on its use.
2. Quarterly progress reports shall include documentation of project funds spent during the quarter and appropriate financial support documentation for the previous quarter's expenditures.
3. Financial support documentation shall include all invoices, receipts, and proof of payment for all expenditures made from the loan funds. Proof of payment shall be shown by providing cancelled checks or a copy of the grantees ledger showing payment was made.
4. Quarterly progress reports shall be submitted to the State's Project Administrator at the address on page 1 according to the following schedule:

Quarter	Time Period	Report Due Date
1	October 1 to December 31	January 31
2	January 1 to March 31	April 30
3	April 1 to June 30	July 31
4	July 1 to September 30	1 st week in October

(B) The Borrower shall provide a final project report in a format described in Appendix A of this Agreement no later than three (3) months after the Project End Date. At the same time,

the Borrower shall provide a project fact sheet and project summary in a format provided by the State. The Borrower shall provide three (3) copies of these documents, one of which shall be in an electronic format.

(C) The Borrower must provide all deliverables and reports required in Appendix A of this Agreement.

(D) All correspondence to the State regarding this Agreement or this project shall be addressed to the State's Project Administrator listed on page 1 of this agreement. All formal notices and other formal communications concerning this Agreement shall be in writing, shall contain the Project Number and Tracking Code, and shall be considered given when delivered in person or mailed by first class registered or certified mail or received by an overnight delivery service and addressed to the State or Borrower at the addresses specified on page 1 of this Agreement. Informal correspondence may be sent by regular mail, facsimile, or electronic mail. Each party will provide changes of address or project management personnel in writing.

5. BORROWER RESPONSIBILITIES

(A) The Borrower understands that it is a crime to knowingly and willfully file false information with the State for the purpose of obtaining this Agreement or any disbursement under the Agreement, and that any such filing may subject the Borrower, its agents, and/or employees to criminal and civil prosecution and/or termination of the Loan.

(B) The Borrower agrees to abide by all local, State, and federal laws and regulations in the performance of this Agreement, including Parts 196, 201, 211, 213, and 215 of the NREPA, the administrative rules promulgated pursuant to these acts, and any other State or federal law, rule, or regulation that applies to the project, including local ordinances.

(C) All local, State, and federal permits, if required, are the responsibility of the Borrower. Award of this Loan is not a guarantee of a permit approval by the State.

(D) The Borrower shall secure all personnel necessary to complete the project. All personnel shall be under the direct supervision of the Borrower. The Borrower shall make all payments required by law for workers' compensation insurance, social security, income tax, unemployment compensation, and all other taxes or payroll deductions as required by law.

(E) The Borrower shall be solely responsible to pay all taxes, if any, that arise from the Borrower's receipt of this loan.

(F) The Borrower shall purchase and use recycled materials and products to the maximum extent possible in performing the project. At the Borrower's request, the State will provide information and assistance to the Borrower regarding the use of recycled products in the project. The Borrower shall document any use of recycled materials and/or green building materials in the quarterly progress reports.

(G) The Borrower is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by the Borrower or its subcontractor under this Agreement. The Borrower or its subcontractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in designs, drawings, specifications, reports, or other services as required by the State.

(H) The State's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Borrower of responsibility for the technical adequacy of the work. The State's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. ASSIGNABILITY

The Borrower shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party. The State does not assume responsibility regarding the contractual relationships between the Borrower and any consultant or contractor.

7. SUBAGREEMENTS

The Borrower shall not use any consultant or subcontractor to perform the project unless specifically authorized by the State. The Borrower will be required to assume responsibility for all contractual activities offered in this proposal whether or not the Borrower performs them. Further, the State will consider the Borrower to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Loan. All subcontractors used by the Borrower in performing the project shall be subject to the provisions of this Agreement and shall be professionally qualified to perform the duties required.

8. NON-DISCRIMINATION

The Borrower shall not discriminate against an employee or applicant for employment with respect to their hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The Borrower further agrees that any sub-agreement shall contain a nondiscrimination provision identical to this provision and binding upon any and all subcontractors. This covenant is required pursuant to the Elliott Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, *et seq*, and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, *et seq*, and any breach thereof may be regarded as a material breach of the contract or purchase order.

9. UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, *et seq*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to Section 2 of the Act. The Borrower shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any contract if, subsequent to award of the contract, the name of the Borrower as an employer, or the name of the subcontractor, manufacturer, or supplier of the Borrower appears in this register.

10. LIABILITY

(A) All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities to be carried out pursuant to the obligations of the Borrower under this Agreement shall be the responsibility of the Borrower, and not the responsibility of the State, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the Borrower, any subcontractor, anyone directly or indirectly employed by the Borrower, provided that nothing herein shall be construed as a waiver of any governmental immunity the Borrower has as provided by statute or modified by court decisions.

(B) All liability, loss, or damage as a result of claims, demands, costs, or judgments arising

out of activities to be carried out by the State in the performance of this agreement shall be the responsibility of the State and not the responsibility of the Borrower if the liability, loss, or damage is caused by or arises out of, the action or failure to act on the part of any State employee or agent, provided that nothing herein shall be construed as a waiver of any governmental immunity by the State, its agencies or employees as provided by statute or court decisions.

(C) In the event that liability, loss, or damage arises as a result of activities conducted jointly by the Borrower and the State in fulfillment of their responsibilities under this Agreement, such liability, loss, or damage shall be borne by the Borrower and the State in relation to each party's responsibilities under these joint activities, provided that nothing herein shall be construed as a waiver of any governmental immunity by the Borrower, the State, its agencies, or their employees, respectively as provided by statute or court decisions.

11. GRATUITIES

If the State finds, after a notice and hearing, that the Borrower or any of the Borrower's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State, in an attempt to secure a sub-agreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement, the State may, by written notice to the Borrower, terminate this Agreement.

12. CONFLICT OF INTEREST

No government employee or member of the legislative, judiciary, or executive branches of local, State, or federal government shall benefit from any part of this Agreement.

13. AUDIT AND ACCESS TO RECORDS

The Borrower will be required to maintain all pertinent financial and accounting records and evidence pertaining to the Loan project in accordance with generally accepted accounting principles and other procedures specified by the State. The State or any of their duly authorized representatives shall have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Borrower will provide proper facilities for such access and inspection. All records shall be maintained by the Borrower for a minimum of three (3) years after the Loan Payoff Date.

14. INSURANCE

(A) The Borrower shall maintain insurance that will protect it from claims that may arise from the Borrower's actions under this Agreement or from the actions of others for whom the Borrower may be held liable.

(B) The Borrower shall comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement.

15. LOAN TERMS

(A) Loans are required to be secured by a commitment of the local government's full faith and credit, through submission of a resolution with the Loan application, and attached to this agreement as Appendix C. If the Borrower is a Brownfield Redevelopment Authority established pursuant to the Brownfield Redevelopment Financing Act, 1996 PA 381, MCL 125.2651 to 125.2672, the commitment shall come from the entity that created the authority. Payments on loans in default may be withheld from the local government's state revenue sharing payment.

(B) Loan repayments are made in equal annual installments of principal and interest beginning not later than five (5) years after execution of this Agreement and concluding not later than 15 years after the Loan Execution Date. Appendix B contains the amortization schedule for this Loan. There is no penalty for early repayment of the loan. If the loan is repaid in full prior to the Interest Start Date, no interest shall be charged on the loan principle.

(C) Interest rates will not exceed 50 percent of the Federal Reserve's Prime Lending Rate. The interest rate established when the loan is executed will remain in effect throughout the term of the loan.

(D) Interest on approved loans is fixed and is calculated under simple interest terms, based on a 360-day year. Interest is charged on the remaining principle beginning five years from the Loan Execution Date. See attached amortization schedule in Appendix B of this Agreement.

16. DISBURSEMENTS:

(A) The State shall disburse to the Borrower a total amount not to exceed the amount on page one of this Agreement, in accordance with Appendix A of this Agreement.

(B) A breakdown of eligible project costs funded by the loan and covered under this Loan is identified in Appendix A. All other costs necessary to complete the project are the sole responsibility of the Borrower.

(C) Loan funds will only be released based on the State's receipt and approval of work plans and budgets. See Section VIII, Project Implementation/Work Plans. The entire loan amount will not be disbursed at one time unless a single work plan for the full Loan amount is approved. After the work plan and budget are approved, the Borrower will receive payment for the amount of the approved budget only. Each payment is called a "draw."

(D) Loan funds remaining at the end of a phase of work (for example, an investigation) may be carried over to the next phase of State approved project activities (for example, a due care plan) when the final costs for that phase come in under budget. Any remaining funds in the Borrower's account at the completion of all project work must be returned to the State immediately upon the project completion or 30 days of the Project End Date, whichever comes first.

(E) All draws must be completed within two (2) years of the Loan Execution Date.

1. If the entire amount of the approved Loan is not drawn after two (2) years and project work remains, the Borrower may request in writing an extension to the project period so that work may be completed and the remaining Loan funds used. Any request must be received by the State's Project Administrator 30 days prior to the Project End Date .
2. If the entire amount of the approved loan is not drawn after two (2) years and the project work is completed, a new amortization schedule will be prepared reflecting the total amount drawn. The Loan Agreement will be amended to incorporate the new repayment schedule.
3. If no draws are made within two (2) years of the Loan Execution Date, the Loan is automatically cancelled on the Project End Date .

17. PROJECT CLOSEOUT

(A) A determination of project completion shall be made by the State upon satisfactory completion of the activities, and submission of all deliverables and reports described in

Appendix A of this Agreement, and a site inspection conducted by the State.

(B) The Borrower shall provide the State, within 90 days of the Project End Date, with all financial, performance, and other reports available and required in Section V and Appendix A of this Agreement.

(C) The Borrower shall immediately refund to the State any funds disbursed to the Borrower in excess of approved project work or funds disbursed for activities deemed to be ineligible upon invoice review, according to Section VII (D) of this agreement.

18. REPAYMENTS/DELINQUENCY/DEFAULTS

(A) A Borrower may pay off a portion or the entire amount of the loan within the first five (5) years without interest or penalty. Any partial payments made during the first five (5) years of the term of the Loan will reduce the principal amount of the Loan subject to interest beginning in year (six) 6. If partial repayments are made during the first five (5) years, a new amortization schedule will be provided by the State to the Borrower reflecting those transactions and the new balance no later than 60 days prior to the sixth year anniversary of the loan agreement. No prepayment shall relieve the Borrower's obligation to make subsequent scheduled annual payments when due.

(B) The Borrower shall remit annual payments by check made payable to: "State of Michigan." Checks shall be mailed to: **Department of Environmental Quality, Office of Financial Management, Cashier's Office, P.O. Box 30657, Lansing, MI 48909**. Checks shall be identified by project number and tracking code.

(C) Annual payments unpaid 30 days after the annual due date shall be considered delinquent.

(D) A loan shall be considered in default when the annual payment remains unpaid 90 days after the annual due date.

(E) Upon default, the Department of Treasury shall withhold from the Borrower state payments in amounts consistent with the repayment schedule of the Loan Agreement until the Loan is repaid. If the amount of the delinquent payment exceeds the quarterly revenue sharing payment, the Department of Treasury will be asked to reduce subsequent revenue sharing payments until the annual payment is paid in full.

19. CANCELLATION

This Agreement may be cancelled by the State, upon thirty (30) days written notice, due to Executive order, budgetary reduction, or other lack of funding.

20. TERMINATION

(A) This Agreement may also be terminated by the State for any of the following reasons upon 30 days written notice to the Borrower:

1. The State may terminate a Loan or withhold a draw if the Borrower fails to comply with the terms and conditions of this Agreement. If a Loan is terminated, the State may recover all funds awarded.
2. The State will terminate a Loan if the recipient fails to draw on the loan within the first two (2) years after the Loan Execution Date.
3. If the Borrower knowingly and willfully presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement, the State may terminate this Agreement with no further penalty whatsoever to the Borrower, and the Borrower, upon demand by the State, shall reimburse the State for all money received

under this Agreement.

4. If the Borrower uses the Loan for any purpose other than those described in Appendix A or otherwise approved by the State, the State may terminate the Loan and require immediate repayment from the Borrower of all disbursed funds.

(B) The State may immediately terminate this Agreement without further liability if the Borrower, or any agent of the Borrower, or any agent of any sub-agreement, is:

1. Convicted of a criminal offense incident to the application for or performance of a State, public, or private contract or subcontract;
2. Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;
3. Convicted under State or federal antitrust statutes; or
4. Convicted of any other criminal offense which, in the sole discretion of the State, compromises the Borrower's ability to implement the project or repay the loan.

In the event this Agreement is terminated under this subsection (B), the Borrower or its contractor may be compensated for all satisfactorily completed documents, data, studies, surveys, drawings, maps, models, photographs, and reports, or reasonable compensation for unfinished work products.

21. ACCESS AGREEMENT

The Borrower, if not the owner of the property, shall secure an enforceable agreement with the property owner that commits the property owner to cooperate with the Borrower, including a commitment to allow access to the property to complete the eligible activities approved under Appendix A to this Agreement.

22. BIDS, CONTRACTORS

(A) The Borrower shall provide, or cause to be provided, to the State, qualifications of the selected professional service contractor(s) to be utilized for the project. The State reserves the right to object to the selected contractor(s) or their qualifications. If the State has objections, it will inform the Borrower in writing within thirty (30) days of receipt of the selected contractor's qualifications.

(B) For any contract over \$20,000, the Borrower shall solicit, or cause to be solicited, bids from at least three (3) qualified vendors. Professional services, e.g., environmental consultants, do not need to be bid out. The Borrower shall provide to the State copies of a bid tabulation sheet listing the names of the bidders and the bid amounts. If the contractor that submitted the lowest bid is not the contractor selected, the Borrower must submit written justification for the selection.

(C) Any contractor(s) retained for corrective action on regulated underground storage tanks shall be approved in accordance with Part 213, Leaking Underground Storage Tanks, and Part 215, Underground Storage Tank Financial Assurance, of the NREPA.

(D) The Borrower assumes responsibility for all contractual activities described in Appendix A of this Agreement whether or not the Borrower performs them. Further, the State will consider the Borrower to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Loan project. All contractors used by the Borrower to implement the project shall be subject to the provisions of this Agreement.

23. PROJECT IMPLEMENTATION AND WORK PLANS

(A) Prior to conducting any activities under this Agreement, the Borrower or its contractor, shall submit a work plan to the State for its approval, including a detailed description of the proposed activities, a budget and schedule for conducting the activities under Appendix A. The Borrower and its contractor shall not proceed with Loan-funded activities until the State approves the work plan, budget, and schedule in writing. The State may approve, modify and approve, or require amendments to the work plan. For projects using a phased approach, the Borrower shall submit a work plan for the first phase with a schedule for the remaining phases. A work plan, budget, and schedule are required for each subsequent phase of work.

(B) All work plans or submittals of any type requiring State approval pursuant to this project, including schedules and budgets, shall be incorporated into Appendix A of this Agreement and subject to the terms of this Agreement, upon written approval by the State.

(C) The Borrower or its contractor shall implement the work plan upon the State's written approval in accordance with the schedules contained therein. Changes or additions to the work plan must be submitted in writing and are subject to written approval by the State prior to implementation. Changes to the work plan without prior written approval from the State, or performance of activities that are not part of an approved work plan, amendment to a work plan or budget are considered ineligible expenses and may result in the Borrower being responsible for payment of unapproved activities.

24. ELIGIBLE EXPENSES

(A) Loan funds may be used for costs associated with environmental response activities as identified in Appendix A and defined in Part 201 of the NREPA.

(B) Loan funds may not be used for the following expenses: office equipment; software; insurance, except liability insurance required pursuant to this Agreement; taxes, except sales taxes; registrations, including registration of an underground storage tank; replacement or purchase of equipment; fees, including late fees and permit fees; drinking water supply replacement, as defined in 1990 AACS Rule 299.5401; operation and maintenance, as defined in 1990 AACS Rule 299.5103(a); restoration of property, unless included in Appendix A; fees for attorneys or legal advice; costs incurred for activities outside a State-approved work plan; labor overtime; and training. Other expenses may be determined ineligible in the course of invoice reviews.

(C) Unless otherwise approved by the director, only activities carried out and costs incurred after the Loan Execution Date are eligible.

25. SUCCESSOR PARTIES

At any time, the Borrower may substitute any affiliate or successor in interest after a merger or consolidation or other legal act that transfers fiduciary responsibility of the Borrower through receivership, etc. for this Agreement and all other documents related to the Loan. Similarly, any statutory successor or successor agency named in an Executive Order of the Governor may be substituted for the Department of Environmental Quality in this Agreement and all other documents related to the Loan. Each party shall notify the other in writing of a substitution under this section.

26. ACKNOWLEDGEMENT

All deliverables shall acknowledge that the project was supported in whole or in part by the Brownfield Grant and Loan Program, Department of Environmental Quality.

APPENDIX A

**APPENDIX B
AMORTIZATION SCHEDULE**

APPENDIX C
LOCAL UNIT OF GOVERNEMENT RESOLUTION

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Date: Fri, 18 Aug 2006 16:54:38 -0400

From: "Susan Erickson" <ericksos@michigan.gov> [Add To Address Book](#) | [This is Spam](#)

Subject: Re:

To: "Ed Anzek" <anzeke@rochesterhills.org>

Cc: <barnettb@rochesterhills.org>, <delacourd@rochesterhills.org>, <rosenj@rochesterhills.org>

Sorry, my mistake, the meeting is on Wed., 8/23/08.

Susan Erickson, Chief
Environmental Stewardship Grants and Loans Unit
517-241-8707
Environmental Science and Services Division, DEQ

>>> Ed Anzek <anzeke@rochesterhills.org> 08/18/06 4:26 PM >>>

Susan:

Mayor Barnett has forwarded on the mtg announcement.

I will have the bulk of the meeting minutes for you on Monday morning.

A question... today when we spoke you advised that the meeting was scheduled fo Tuesday at 1:00 and the announcement states August 23 (Wednesday) from 3:00 to 4:30pm. Can you please clarify.

Thanks for the informative phone conversation today.

Ed

Ed Anzek

City of Rochester Hills Michigan

anzeke@rochesterhills.org

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