

2/1/2012

**8-R-12**

**A RESOLUTION**

**Authorizing the City Manager to Execute a TIF Construction Loan Agreement for the Improvement of 2117 Greenleaf Street**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

**SECTION 1:** The City Manager is hereby authorized and directed to sign the TIF Construction Loan agreement ("Agreement") between the City and IRMCO, attached hereto as Exhibit A and incorporated herein by reference.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

**SECTION 3:** This Resolution 8-R-12 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: January 13, 2012

**EXHIBIT A**

**TIF Construction Loan Agreement  
Between the City and IRMCO**

## TIF CONSTRUCTION LOAN AGREEMENT

THIS TIF CONSTRUCTION LOAN AGREEMENT [Agreement] is entered into on this 23 day of February, 2012 ["Effective Date"], by and between the City of Evanston ["City"], and IRMCO ["Borrower"], regarding the rehabilitation and occupation of property located at 2117 Greenleaf Street, Evanston, Illinois, legally described in Exhibit "1", which is attached hereto and incorporated herein by reference ["Property"].

### RECITALS

WHEREAS, the City desires to foster local businesses and jobs as part of its economic revitalization efforts throughout Evanston and in accord with the TIF Guidelines, as defined herein; and

WHEREAS, the City has authorized Economic Development Division Staff to manage and administer this Agreement on behalf of the City including, without limitation, authorizing the City Manager to execute this Agreement with Borrower, thereby establishing the terms, conditions, and requirements for participation in this Agreement in accordance with the TIF Guidelines; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual obligations of the parties as herein expressed, the City and Borrower agree as follows:

### AGREEMENT

#### I. DEFINITIONS

The following terms shall have the following meanings whenever used in this Agreement, except where the context clearly indicates otherwise. Any ambiguity as to the intended meaning or scope of the terms set forth below will be resolved solely by the City through its designated representative.

- a. **"Completion Date"** means the date that the contractor has finished the Project pursuant to the plans approved by City Council, the City Manager or his/her designee, and to the satisfaction of Borrower, as evidenced by final payment to the contractor from Borrower.
- b. **"Director"** means the City's Director of Community & Economic Development, who is responsible for managing and administering this Agreement on behalf of the City.

- c. **“Loan”** means the total amount of the City’s loan of TIF monies to Borrower for purposes of funding TIF eligible activities of the Project, which shall not exceed \$63,000, the amount approved by City Council.
- d. **“Project”** means the improvements on the Property as proposed by Borrower and approved by the City Council. Specifically, Borrower desires to rehabilitate its existing industrial lubricant plant.
- e. **“TIF Eligible Activities”** means activities determined to be eligible for reimbursement from TIF funds by the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended.
- f. **“TIF Guidelines”** means the regulations found in the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended. All terms not defined herein shall have the meanings set forth in the TIF Guidelines.
- g. **“Total Allowable Expenses”** means the actual costs incurred, paid for, and documented by Borrower and approved by the Director or his/her designee for the proper performance of the improvement work required by the plans and specifications and/or architectural/design renderings for the Project. Such allowable expenses must be TIF Eligible Activities.
- h. **“Total Project Expenditure”** means the total actual Project costs incurred by and paid for by Borrower including costs of construction, materials, & supplies.

## II. TERMS OF LOAN - FORGIVABLE WITHIN 2 YEARS

- a. City shall lend Proprietor moneys not to exceed \$63,000.00 (the **“Loan Amount”**) from the City’s West Evanston TIF Fund for the purposes of rehabilitating the fire sprinkler system and the R&D space floor on the Property. The Rebate paid by the City pursuant to this Agreement shall not be made until all of the improvement work comprising the Project has been completed, all of the improvement work comprising the Project has been inspected and approved by the City Manager, Director, or his designee, and all payments for said work have been made to contractors, materials suppliers, and vendors. Thus, Borrower shall finance the Project, with owner funds and/or private funding. During construction, Borrower shall submit to the Director or his designee itemized invoices detailing the work completed and materials purchased. Such invoices shall include proof of payment to all contractors, suppliers, and vendors. Borrower shall be responsible for all payments to the contractors, materials suppliers, and vendors, and for providing true and correct copies of unconditional lien releases to the City.

- b. The moneys paid by the City to Borrower pursuant to this Agreement shall constitute a loan with a 3-year repayment period at 0% interest. Said loan shall be forgiven in its entirety on condition that Borrower (or a successor-in-interest that has assumed the Borrower's obligations hereunder, pursuant to a City-approved assignment and assumption agreement) satisfies its responsibilities set forth in Article III-b of this Agreement no later than twenty-four (24) months after City disburses any Loan funds to Borrower. If the Loan is not forgiven as described herein, Borrower shall repay the City in twelve (12) equal monthly payments of \$5,250, the first of which shall be due twenty-four (24) months after City disburses any Loan funds to Borrower.
- c. If Borrower sells the Property or fails to occupy the Property, as the case may be, prior to the end of the aforementioned twenty-four (24) month period, the entire loan, shall be due and payable to the City by Borrower within thirty (30) calendar days, unless the succeeding property owner and/or business owner assumes Borrower's obligations herein pursuant to a City-approved assignment and assumption agreement.

### III. BORROWER'S RESPONSIBILITIES

- a. Before Borrower may receive any Loan funds pursuant to this Agreement:
  1. Borrower shall create no fewer than two (2) full-time equivalent positions ("FTE's") on the Property, with at least one (1) of which shall be involved in manufacturing.
  2. Borrower shall be responsible for contacting the Director or his/her designee to arrange for obtaining all City and other approvals and/or permits required for construction and completion of the Project.
  3. Borrower shall be responsible for hiring licensed contractors to complete the Project. The Director or his/her designee may require submission of proof of the State License issued to the selected contractors.
  4. Borrower shall be fully responsible for managing, monitoring, and scheduling the construction of the Project, for ensuring compliance with the payment of prevailing wages, if applicable, and for ensuring that all improvements are completed properly and in conformance with the approved project.
  5. Borrower shall solicit no fewer than three (3) bids for all purchases of materials and services for the Project, at least one (1) of which must be from an Evanston-based business ("EBE").
  6. Borrower shall select the bid of a responsive and responsible EBE if the EBE's bid does not exceed the lowest responsive and responsible bid by more than five percent (5%).

7. Borrower shall complete the Project no later than twenty-four (24) months after receiving any building permit related to the Project.
8. Upon completion of the Project, Borrower shall notify the Director and request inspection of the Project by the Director or his/her designee(s).
9. After completion of the Project, Borrower shall submit to the Director or his/her designee a report that includes the following:
  - a) Cover letter indicating the Project is completed and the Total Cost Expenditures for the Project;
  - b) All contractor invoices detailing the specific tasks completed in accordance with approved Project;
  - c) Proof of payment of all invoices for all expenditures for the Project;
  - d) Unconditional lien releases; and
  - e) Any additional material requested by the Director or his/her designee.
- b. If, no later than twenty-four (24) months after City disburses any Loan funds to Borrower, Borrower creates no fewer than two (2) additional FTE's, one (1) skilled chemist position and one (1) production position, the Loan shall be forgiven. Said FTE's shall be in addition to those already created pursuant to Section III-a-1, thereby yielding a total of no fewer than four (4) new FTE's.
- c. Until the expiration of this Agreement:
  1. Borrower shall comply with all terms and conditions of this Agreement and all applicable requirements of Federal, Illinois and City of Evanston law.
  2. Borrower shall ensure that all work done on the Project and paid for with Loan funds are TIF Eligible Activities.
  3. Borrower shall obtain and keep current all certificates of insurance required herein.
  4. Borrower shall maintain the Property in compliance with all applicable provisions of the Evanston City Code of 1979, as amended.
  5. Borrower shall not be more than one hundred twenty (90) days in arrears with regards to any City utility and/or service bills.

#### IV. THE CITY'S RESPONSIBILITIES

- a. Within a reasonable time after Borrower notifies City of the completion of the Project, the Director or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved Project scope.
- b. Within a reasonable time after Borrower submits its contractors' sworn statements and accompanying documents, the Director or his/her designee shall review said documents to determine whether expenditures were made in accordance with approved Project scope, as well as the total costs of rehabilitating the fire sprinkler system and the R&D space floor on the Property
- c. On condition that Borrower has complied with its responsibilities herein and the aforementioned inspection and documents meet all terms, conditions, and obligations under this Agreement and the TIF Guidelines, the Director or his/her designee shall, in the ordinary course of business, disburse Loan funds from the City's West Evanston TIF Fund to Borrower. Said funds shall equal \$63,000.00 or the total costs of rehabilitating the fire sprinkler system and the R&D space floor on the Property, whichever is less (the "Loan Amount").

#### V. TIME OF PERFORMANCE

The Borrower shall complete the project no later than twenty-four (24) months after receiving any building permit related to the Project. Failure to complete the Project within twenty-four (24) months will result in Borrower's breach of this Agreement. Requests for additional time and extensions in project completion time may be granted, but only if submitted in writing prior to the expiration of the agreement.

#### VI. MAXIMUM AMOUNT OF LOAN

The total amount of the City's Loan, for the rehabilitation of the fire sprinkler system and R&D space floor on the Property, to Borrower pursuant to the terms and conditions of this Agreement, shall not exceed \$63,000 as approved by City Council as stated above.

#### VII. INSURANCE

- a. During the entire period in which work on the Project is performed, the Borrower shall obtain and maintain in full force and effect during said period the following insurance policies: (i) Comprehensive General Liability Insurance in a general aggregate amount of not less than \$1,000,000, \$1,000,000 Products and Completed Operations Aggregate, and \$1,000,000 each occurrence and including; (ii) Automobile Insurance or Hired, Non-Owned Automobile Insurance, maintained in full force and effect in an amount of not less than \$1,000,000 per accident.

- b. All insurance policies shall name the City of Evanston, including its respective elected officials, officers, employees, agents, and representatives, as and additional insured and certificate holder.
- c. All deductibles on any policy shall be the responsibility of the primary holder of such policy and shall not be the responsibility of the City of Evanston.
- d. Borrower shall provide evidence of required insurance to the Director before execution of this Agreement.

#### VIII. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Borrower covenants and agrees for itself, its successors and its assigns to the Property, or any part thereof, that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- b. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

#### IX. NO AGENCY CREATED

The Borrower and any contractor, supplier, vendor or any third party hired by Borrower to complete the Project are not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Borrower concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Borrower shall follow the direction of the City concerning the end results of the obligations.

#### X. OWNERSHIP OF DOCUMENTS

All documents prepared and submitted to the City pursuant to this Agreement (including any duplicate copies) shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights thereto.

## XI. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Borrower agrees to and shall defend, indemnify and hold harmless the City, and its respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including expert witness fees, reasonable attorneys' fees, and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or property resulting or arising from or in any way connected with the following, provided Borrower shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the City, or their respective officers, officials, active employees, contractors or agents:

- a. The development, construction, marketing, use or operation of the Property by the Borrower, its officers, contractors, subcontractors, agents, employees or other persons acting on Borrower's behalf [**"Indemnifying Parties"**];
- b. The displacement or relocation of any person from the Property as the result of the development of the Project on the Property by the Indemnifying Parties;
- c. Any plans or designs for the Project prepared by or on behalf of Borrower including, without limitation, any errors or omissions with respect to said documents;
- d. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Borrower, or resulting from any breach or default by Borrower, under this Agreement; and
- e. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the improvements by the City, and their respective officers, officials, employees, contractors or agents.

The foregoing indemnity shall continue to remain in effect after the Completion Date or after the earlier termination of this Agreement, as the case may be.

## XII. DUTY TO DEFEND

Borrower further agrees that the hold harmless agreement in Article XI, and the duty to defend the City, and their respective officers, officials, employees, contractors and agents, require the Borrower to pay any costs that the City may incur which are associated with enforcing the hold harmless provisions, and defending any claims arising from obligations or services under this Agreement.



## XVI. DEFAULT; REMEDIES; DISPUTE RESOLUTION

### a. Notice of Default.

In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required herein identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

### b. Cure of Default

Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within 90 days and shall continuously and diligently prosecute such cure, correction or remedy to completion.

### c. City Remedies; Repayment of Loan.

In the event of a default by Borrower of the terms of this Agreement that has not been cured within the timeframe set forth in Paragraph b above, the City, at its option, may terminate this Agreement or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement. In the event of a default by Borrower that occurs after the City has disbursed any Loan funds, the total of such disbursement(s), plus any accrued interest, shall become immediately due and payable.

All payments shall be first credited to accrued interest, next to costs, charges, and fees which may be owing from time to time, and then to principal. All payment shall be made in lawful money of the United States. Payments shall be made to City at the address set forth in Article XV or at such other address as City may direct pursuant to notice to Borrower delivered per Article XV.

### d. Borrower's Exclusive Remedies.

The parties acknowledge that the City would not have entered into this Agreement if it were to be liable in damages under, or with respect to, this Agreement or any of the matters referred to herein, including the Project, except as provided in this Article. Accordingly, Borrower shall not be entitled to damages or monetary relief for any breach of this Agreement by the City or arising out of or connected with any dispute, controversy, or issue between Borrower and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Borrower's sole and exclusive judicial remedies.

## XVII. APPLICABLE LAW

The internal laws of the State of Illinois without regard to principles of conflicts of law shall govern the interpretation and enforcement of this Agreement.

## XVIII. CONFLICT OF INTEREST

- a. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.
- b. The Borrower warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

## XIX. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Borrower, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Borrower or successor or on any obligation under the terms of this Agreement.

## XX. BINDING EFFECT

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

## XXI. AUTHORITY TO SIGN

The Borrower hereby represents that the persons executing this Agreement on behalf of Borrower have full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

## XXII. COUNTERPARTS

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

### XXIII. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement and the Exhibits and references incorporated into this Agreement express all understandings of the parties concerning the matters covered in this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- b. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Borrower, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Borrower.

### XXIV. NON-ASSIGNMENT

The Borrower shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City's prior written approval, and Borrower and Borrower's proposed assignee's execution of an assignment and assumption agreement in a form approved by the City. Any assignment in violation of this paragraph is grounds for breach of this Agreement, at the sole discretion of the City Manager. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

### XXV. NO WAIVER

No failure of either the City or the Borrower to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect.

[Signature page to follow]

IN WITNESS WHEREOF, the City, and the Borrower have signed this Agreement as of the dates set opposite their signatures.

"CITY"

Dated: 2-28-12

By: Wally Bobkiewicz

Name: Wally Bobkiewicz

Title: City Manager

"BORROWER"

Dated: 2/23/12

By: Jennifer Kalas

Name: Jennifer Kalas

Title: President

ATTACHMENT:

1. Exhibit 1 – Legal Description of Property

Return this form to:  
City of Evanston  
Director of Community & Economic Development  
2100 Ridge Avenue  
Evanston, IL 60201

Approved as to form:

W. Grant Farrar  
W. Grant Farrar  
Corporation Counsel

**Exhibit 1:**

**LEGAL DESCRIPTION OF PROPERTY**

LOTS 13 TO 18 IN NLOCK 2 IN GROVER AND PITNERS ADDITION TO EVANSTON, A SUBDIVISION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY , ILLINOIS.

**PIN:** 10-24-107-006-0000

**Commonly Known As:** 2117 Greenleaf Street, Evanston, Illinois.

