

CITY OF DETROIT BROWNFIELD REDEVELOPMENT AUTHORITY

Amended and Restated Guidelines for Brownfield Plan Proposals
Effective May 9, 2018

Introduction

The City of Detroit Brownfield Redevelopment Authority (“DBRA”) will consider each Brownfield Plan or Combined Brownfield Plan (generally referred to as the “Plan” or collectively, the “Plans”, which is submitted to it on a case-by-case basis, based upon the merits of the particular Plan(s). However, in order to provide general guidance for the preparation of Plans, the DBRA has developed the following generic guidelines relating to certain aspects of Plans and Reimbursement Agreements entered into by the DBRA to authorize the capture and use of tax increment revenues (TIF).

Each Plan and Reimbursement Agreement shall be subject to these guidelines; however, the DBRA of course reserves the right to depart from these guidelines as it deems necessary if the DBRA determines that such departure would further the purposes for which the DBRA was established. Factors the DBRA may consider in its decision to depart from these guidelines may include, but are not limited to: the scope of investment proposed, the potential additional investment generated by the project, whether the project would otherwise occur without the financial incentive available from the DBRA, the remediation of contaminated property and other environmental benefits, the demolition or renovation of blighted or obsolete facilities, job creation or retention, tax base protection, improvement and diversification, and neighborhood improvement.

Guidelines

1. Project Evaluation

- a. In order to initially evaluate support for a Plan, the following lists the steps that shall occur prior to submittal of a Plan to the DBRA Board of Directors:
 - i. Preliminary meeting with DBRA staff and the developer. DBRA staff to inform the developer that the following documents are required:
 - a) Brownfield Plan details including project specifics such as type of development, number of units, square footage, total investment, and cost of eligible activities.
 - b) Project pro forma, cash flow analysis, sources and uses and internal rate of return (IRR) calculation.
 - ii. Initial Brownfield Plan Review Team Meeting.

- iii. Developer to provide additional information requested as a result of the Initial Brownfield Plan Review Team Meeting.
 - iv. Three (3) weeks prior to the brownfield plan being placed on the DBRA Board agenda, developer must submit the Brownfield Plan in final form-- including all attachments and approvals, including a letter of support from the City of Detroit Planning and Development Department.
 - v. Final Brownfield Plan Review Team meeting, if necessary, scheduled immediately following receipt of the final Brownfield Plan to determine if the Brownfield Plan will be supported.
- b. Reimbursement of Eligible Costs shall be made pursuant to an approved Brownfield Plan, Reimbursement Agreement and a Michigan Strategic (“MSF”) and/or Michigan Department of Environmental Quality (“MDEQ”) work plan. In order to qualify for TIF, applicants must demonstrate that the project will not have sufficient funds to be completed without TIF reimbursement as TIF reimbursement is not intended to unduly enrich a developer or business, or to create an unfair advantage.
- c. In determining whether to approve eligible activity reimbursement, the DBRA shall review the projected IRR provided by the developer. In no event shall eligible activity cost reimbursement be approved by the DBRA if the projected IRR for the approved Plan exceeds fifteen-percent (15%) to twenty-percent (20%) depending on the industry and market conditions at the time of the approval of the brownfield plan.
- d. The DBRA shall not use TIF capture to reimburse a Developer for eligible activity costs that were funded through a grant.
- e. If additional incentives are requested after approval of a Plan, the Developer shall recalculate the IRR factoring the additional incentives. If the revised projected IRR exceeds fifteen-percent (15%) to twenty-percent (20%), the DBRA has the right to reduce the amount of Eligible Cost reimbursement to where the IRR does not exceed fifteen-percent (15%) to twenty-percent (20%).

2. Pre-Brownfield Plan Expenditures

- a. Unless agreed to by the DBRA in writing, Pre-Plan eligible activity costs incurred more than 240 days prior to Plan approval by Detroit City Council will not be eligible for reimbursement. If a developer desires to incur eligible activity costs prior to approval of a Plan, the developer must inform the DBRA, the MSF and/or the MDEQ of these activities and their timing in writing.

- b. Reimbursement of Pre-Plan expenditures is subject to completion of the eligible activities pursuant to the approved Plan. Pre-Plan expenditures that are eligible for reimbursement may include: reasonable costs of developing and preparing brownfield plans and work plans; baseline environmental assessment activities; preparation of a due care plan; and non-environmental activities, per Michigan Public Act 381 of 1996, as amended (“Act 381”).
- c. Any eligible activity cost incurred prior to approval of the Plan shall be incurred at the risk of the developer.
- d. Reasonable costs of developing and preparing the Plan and any necessary work plans for MSF or MDEQ approval are eligible for reimbursement; however, such costs shall not exceed \$30,000.00.
- e. The owner of a property for which a Plan is adopted that includes reimbursement of past expenditures shall be required to indemnify, defend and hold harmless the DBRA for the recapture of any reimbursement payments made to, or on behalf of, the developer in excess of the amount of tax increment revenues the DBRA is permitted by law to use for such reimbursement as determined by the State, any agency thereof or by a court of relevant jurisdiction.

3. Brownfield Plan Expenditures

If a proposed use of tax increment revenues attributable to K-12 and State levies (“School Taxes”) is not permitted by law or are denied by MDEQ or MSF, the use of tax increment revenues attributable to all other levies (“Local Taxes”) may be approved, as included in the Plan, subject to the following:

- a. The chart attached hereto as Attachment A provides a general outline of eligible activities, the funding sources, and the approvals required for the same.
- b. The total amount of tax increment revenues attributable to Local Taxes that is used for the costs of all eligible activities for an eligible property for which School Taxes are not permitted by law or are denied by MDEQ or MSF, shall not be greater than that amount of tax increment revenues attributable to Local Taxes for such eligible activities that would be used if School Taxes were permitted or approved. Any exceptions are subject to DBRA Board approval.

4. Interest on Brownfield Plan Payments

- a. If the DBRA determines that subject to 1(b) and 3(b) above, the Plan qualifies for reimbursement of interest for expenditures on eligible activities, interest shall be calculated on the principal balance, applying simple interest, at a rate not to exceed 5%. Interest shall accrue annually from the date when costs for eligible activities are certified by the DBRA and shall not exceed the term stated in the Brownfield Plan. In no event shall the DBRA reimburse for interest accrued as a result of non-payment of taxes. Notwithstanding the above, a) reimbursement for interest will occur after the costs of eligible activities are reimbursed in full and b) should reimbursement of interest with School Taxes not be permitted by the MSF or the MDEQ, the calculation of interest will occur only on the Local portion of the unreimbursed eligible activities.
- b. If the Plan qualifies for reimbursement of interest for expenditures on eligible activities (as described in 4(a) above) AND the project will also will be receiving a tax abatement, then interest shall not accrue during the abatement period.
- c. After five (5) years of tax increment financing (TIF) capture, the DBRA shall have the right to have the IRR projection recalculated. To the extent that such recalculations exceed an IRR of fifteen percent (15%) to twenty percent (20%), then the DBRA may eliminate or reduce the interest rate to a rate where the IRR does not exceed fifteen percent (15%) to twenty percent (20%).

5. Brownfield Plan Bonding

Unless otherwise agreed upon between the Developer, the DBRA and the State of Michigan, the DBRA shall not incur nor issue any note or bonded indebtedness to finance the purposes of the Plan.

6. Displacement/Relocation of Individuals on Eligible Property

If there are persons or businesses residing on the eligible property within six (6) months of the Developer's initial contact with DBRA staff to discuss a Brownfield Plan, the Developer shall comply with any and all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, Public Law 91-646 (the "URA"). Furthermore, the Developer must provide a relocation plan to the DBRA stating how the requirements of the URA will be met. Finally, upon completion of the eligible activities and prior to any TIF reimbursement, the developer must provide evidence that the requirement of the URA have been met.

7. Brownfield Plan Duration

- a. Unless otherwise agreed to in writing by the DBRA, all eligible activities shall be completed within three (3) years after approval of the Michigan Strategic Fund work plan, if applicable, or three (3) years after execution of the Reimbursement Agreement.
- b. Subject to Section 13(22) of Act 381, the beginning date and duration of capture of tax increment revenues for each eligible property shall occur in accordance with the TIF table attached to an approved Plan. In no event, however, shall a Plan extend beyond the maximum term allowed by Section 13(1)(f) of Act 381.
- c. The Detroit City Council may abolish a Plan (or any subsequent amendment thereto) when it finds that the purposes for which the Plan was established have been accomplished.
- d. The Detroit City Council may terminate a Plan (or any subsequent amendment thereto) if the project for which eligible activities were identified in the Plan (or any subsequent amendment thereto) fails to occur with respect to the eligible property for at least five (5) years following the date of the governing body resolution approving the Plan (or any subsequent amendment thereto) or any such date as allowed in Act 381.
- e. In no event, however, shall the Plan be extended beyond the maximum term allowed by Section 13(1)(f) of Act 381.

8. Environmental Condition Disclosure and Acknowledgement

- a. An ASTM Standard 1527-05 Phase I Environmental Site Assessment (“ESA”) is required to be submitted to the City of Detroit Buildings, Safety Engineering and Environmental Department (“BSEED”) with all Plans, for all parcels included in the Plan. BSEED will submit to the DBRA an acknowledgement, attached hereto as Attachment B, that the project documents submitted to BSEED satisfy Brownfield Guidelines.
- b. Based on the results of the Phase I ESA, a Phase II ESA may be required to determine the degree and impact of possible environmental contamination on the eligible property.

- c. Developer will provide a Response Activity Plan, if applicable, to the DBRA demonstrating how the eligible property will be remediated.
- d. At the time of submission of request for TIF reimbursement, the developer will provide verification by qualified environmental professional, to the DBRA that the remediation activities identified in the Response Activity Plan have been completed and approved by MDEQ.

9. Brownfield Plan Notice

- a. Developer will provide a copy of the proposed Plan to Community Development Organizations and/or groups in the project area.
- b. DBRA will send public hearing notices to Community Development Organizations and/or community groups as identified by the City of Detroit Planning Commission staff, the City of Detroit Planning and Development Department and other relevant sources.

10. Department of Civil Rights, Inclusion and Opportunity Clearance

- a. All projects with approved Plans are subject to all applicable City of Detroit Executive Orders, which include but are not limited to, City of Detroit Executive Order No. 2016-1 and 2014-5 (the “Executive Orders”).
- b. Upon approval of a Plan by City Council, Developer must contact the City of Detroit Department of Civil Rights, Inclusion and Opportunity (the “CRIO”) to establish a process for Compliance with the Executive Orders
- c. In conjunction with any reimbursement request made by Developer to DBRA and upon completion of the project, the Developer will provide DBRA with written confirmation from CRIO confirming that the Project is in compliance with the Executive Orders.
- d. The developer must participate in the Detroit Economic Growth Corporation D2D Pre-Rehabilitation Opportunities Sessions program and a City Council Skilled Trades Task Force meeting.

11. Annual Reporting

- a. The developer shall provide an annual report to the DBRA due on June 1 of each year subsequent to Plan approval. The report shall be submitted with an

affidavit executed by the Developer substantiating the facts in the annual report and shall include progress updates on state and local mandated items and other such information that the DBRA may request in writing. (See attachment C).

- b. Failure to submit an annual report may result in the withholding of TIF reimbursement until the report or proper waiver is submitted.

12. Local Site Remediation Revolving Fund

All Plans will provide for the maximum capture authorized by law for the Local Site Remediation Revolving Fund.

13. Administrative Expenses

- a. All Plans shall authorize the use of tax increment revenues for administrative and operating expenses to the maximum extent permitted by law unless otherwise agreed to in writing pursuant to a Reimbursement Agreement.
- b. An initial annual amount of 15% shall be retained from annual tax increment revenues for use for administrative and operating expenses of the DBRA, not to exceed \$100,000.00, (hereinafter referred to as, the “DBRA Administrative Fee”) and such percentage may be adjusted upward or downward by the DBRA based upon the Plan’s proportionate share of all tax increment revenues available.
- c. In the event that the actual amount of tax increment revenues captured annually for a Plan is not sufficient to allow DBRA to collect the entire DBRA Administrative Fee, then an amount equal to not more than ten percent (10%) of the outstanding DBRA Administrative Fee shall be deferred and accrue until eligible tax increment revenues are sufficient to pay the accrued and deferred DBRA Administrative Fee as well as the current DBRA Administrative Fee. Notwithstanding anything to the contrary in this Section 13, in no instance shall DBRA receive less than 5% of the DBRA Administrative Fee annually and, to the extent, that the actual amount of tax increment revenues captured annually for a Plan is not sufficient to allow DBRA to collect at least 5% of the DBRA Administrative Fee, then the Developer shall be required to pay up to 5% of the DBRA Administrative Fee directly to DBRA (the “Direct Payment”). Failure by the Developer to make this Direct Payment within thirty (30) days of when requested by DBRA in writing shall constitute a default under the Reimbursement Agreement.

14. Fees

A request for approval of a Plan must be accompanied by the following fees, per the attached schedules, (attached hereto as Attachment D):

- a. A nonrefundable initial application fee upon submission of the proposed Plan or Amended Plan to the DBRA.
- b. Upon approval of the proposed Plan or Amended Plan by the DBRA, a processing fee equal to a certain percent of the amount of payments authorized under the Plan or Amended Plan, not to exceed a certain amount, as indicated in Attachment D. In the event that the City Council does not subsequently approve the Plan or Amended Plan, the processing fee may be refunded to the developer.

15. Determination of Taxable Value and Beginning Date of Tax Capture

For Plans in which tax increment revenues will be captured, the Developer shall identify the following in each Plan:

- a. The base year as shown either by the most recent assessment roll for which the equalization has been completed at the time the resolution approving the Plan is adopted or by the next assessment roll for which the equalization will be completed following the date of the resolution adopting the Plan.
- b. The beginning date of tax capture which shall not be later than 5 years following the date of the resolution adopting the Plan.

16. Insurance

The Developer, and its contractors, shall each obtain and maintain throughout the term of performing eligible activities adequate insurance, including, but not limited to general liability insurance in the amount of \$1,000,000 per incident and \$2,000,000 in the aggregate. The Developer shall name the City of Detroit and the DBRA as additional insureds and to the extent obtainable, be accompanied by a commitment from the insurer that such policies shall not be cancelled or reduced without at least thirty (30) days prior notice to the DBRA. As to the additional insureds, the insurance provided shall be primary and non-contributory, and the developer shall provide the DBRA a certificate evidencing such insurance coverage. Notwithstanding the

foregoing, the DBRA may request such additional insurance as it deems necessary to effectuate the Project and the Plan.

17. Detroit Brownfield Redevelopment Plan Approval Process

- a. The list below describes the steps typically followed for approval of a Plan:
 - i. Submit and present the Plan to the DBRA Board of Directors and the DBRA Community Advisory Committee (DBRA-CAC).
 - ii. Public Hearing held in a location nearby the eligible property as described in the Plan.
 - iii. Present the results of the DBRA-CAC meeting and the local public hearing to the DBRA Board of Directors.
 - iv. DBRA Board of Directors resolves to send the Plan to Detroit City Council for its review, to set a public hearing, and its approval.
 - v. Public hearing at the Detroit City Council's Planning and Economic Development Standing Committee.
 - vi. Detroit City Council Plan approval.
 - vii. MSF work plan approval for school TIF capture on non-environmental eligible activities.
 - viii. MDEQ work plan approval for school TIF capture on environmental eligible activities.

- b. The DBRA-CAC may approve a resolution holding a DBRA and DBRA-CAC joint public hearing. In the event that the DBRA-CAC decides to hold a DBRA and DBRA-CAC joint public hearing, the DBRA-CAC will deliberate regarding support for the Plan subsequent to the joint public hearing.

Attachments

Attachment A – Approval Required for Selected Reimbursable Eligible Activities Chart

Attachment B – B&SEED Acknowledgement of Submitted Environmental Documents

Attachment C – DBRA Plan Information Form

Attachment D – DBRA Fee Schedule

Attachment E- Documents Required for TIF Reimbursement

Approval Required For Selected Reimbursable Eligible Activities (By Tax)
Attachment A

Eligible Activities	Local (Non-School Taxes)	School Taxes	
		Local	State
1. Baseline environmental assessment activities			
a. Site investigation activities associated with BEA and evaluation of due care obligations	No prior MDEQ or MEGA work plan approval necessary if costs are included in Plan (even if incurred before Plan approval)	No prior MDEQ or MEGA work plan approval necessary, however activity must take place after Plan approval	No prior MDEQ or MEGA work plan approval necessary, however activity must take place after Plan approval
b. Completion of baseline environmental assessment report	No prior MDEQ or MEGA work plan approval necessary if costs are included in Plan (even if incurred before Plan approval)	No prior MDEQ or MEGA work plan approval necessary, however activity must take place after Plan approval	No prior MDEQ or MEGA work plan approval necessary, however activity must take place after Plan approval
2. Due care activities	No prior MDEQ or MEGA work plan approval necessary if costs are included in Plan (even if incurred before Plan approval)	MDEQ work plan approval	MDEQ work plan approval
3. Preparation of a due care plan	No prior MDEQ or MEGA work plan approval necessary if costs are included in Plan (even if incurred before Plan approval)	No prior MDEQ or MEGA work plan approval necessary, however activity must take place after Plan approval	No prior MDEQ or MEGA work plan approval necessary, however activity must take place after Plan approval
4. Additional response activities (please specify)	No prior MDEQ or MEGA work plan approval necessary if costs are included in Plan	MDEQ work plan approval	MDEQ work plan approval
5. Infrastructure improvements that directly benefit the eligible property		MEGA work plan approval	MEGA work plan approval
6. Demolition of structures that is not a response activity under 20101 of NREPA		MEGA work plan approval	MEGA work plan approval
7. Lead or Asbestos Abatement		MEGA work plan approval	MEGA work plan approval
8. Site preparation that is not a response activity under 20101 NREPA		MEGA work plan approval	MEGA work plan approval
9. Assistance to a land bank fast track authority in clearing or quieting title to or selling its property		MEGA work plan approval	MEGA work plan approval
10. Relocation of public buildings or operations for economic development purposes		MEGA work plan approval	MEGA work plan approval
11. Reasonable costs of developing and preparing brownfield plans and work plans	No prior MDEQ or MEGA work plan approval necessary if costs are included in Plan	No MDEQ or MEGA work plan approval necessary if costs are included in Plan	No MDEQ or MEGA work plan approval necessary if costs are included in Plan
12. Acquisition of property by land bank fast track authority if acquisition of the property is for economic development purposes		MEGA work plan approval	MEGA work plan approval
13. Reasonable costs of environmental insurance		MDEQ work plan approval	MDEQ work plan approval
14. Interest costs associated with the financing of eligible activities		MEGA approval is required for all activities approved in a work plan by the MEGA. DEQ approval is not required for activities approved in a work plan by the DEQ.	MEGA approval is required for all activities approved in a work plan by the MEGA. DEQ approval is not required for activities approved in a work plan by the DEQ.

Attachment B

TO: THE DETROIT BROWNFIELD REDEVELOPMENT AUTHORITY
FROM: DETROIT OF BUILDINGS, SAFETY ENGINEERING AND
ENVIRONMENTAL DEPARTMENT

PROJECT:

DATE:

The undersigned, from the City of Detroit Buildings, Safety Engineering, and Environmental Department acknowledges the receipt of the environmental documents listed below, which have been submitted by _____, as developer and or on behalf of the developer, as part of its Brownfield Plan submittal to the Detroit Brownfield Redevelopment Authority (DBRA), for the _____, project.

- _____ Phase I Environmental Site Assessment, pursuant to USEP All Appropriate Inquiry using American Society of Testing Materials (ASTM) Standard 1527-05.
- _____ Phase II Environmental Site Assessment, pursuant to ASTM Standard 1903 (if appropriate).
- _____ Baseline Environmental Assessment, pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended . (if appropriate).
- _____ Based upon the results of the Phase II Environmental Site Assessment, we recommend the submittal of a Baseline Environmental Assessment, and a Response Activity Plan (RAP). The RAP shall be submitted to the Michigan Department of Environmental Quality (MDEQ) for approval.

Based upon its review of the above environmental documents and the representations of the develop, the City of Detroit Buildings, Safety Engineering, and Environmental Department has determined that the documents received for this project satisfy the “Environmental Disclosure and Acknowledgement” section of the DBRA Guidelines

Attachment B

City of Detroit, Buildings, Safety
Engineering, and Environmental Department

By: _____

Its: _____

ATTACHMENT C

DETROIT BROWNFIELD REDEVELOPMENT AUTHORITY ANNUAL ACTIVE PROJECT REPORT

DATE	
PROJECT NAME	
STATUS OF PROJECT	
TOTAL CAPITAL INVESTMENT	
SQUARE FEET OF REHABILITATED RESIDENTIAL	
NUMBER OF RESIDENTIAL UNITS	
SQUARE FEET OF RETAIL	
SQUARE FEET OF COMMERCIAL	
SQUARE FEET OF INDUSTRIAL	
*LINEAR FEET OF PUBLIC INFRASTRUCTURE INSTALLED (ex. sewer, water, curb, etc.)	
* SQUARE FEET OF PUBLIC INFRASTRUCTURE INSTALLED (ex. sidewalk, road, alley, etc.)	
NUMBER OF CONSTRUCTION JOBS CREATED	
NUMBER OF CONSTRUCTION JOBS WITH DETROIT RESIDENTS	
NUMBER OF PERMANENT JOBS CREATED	
NUMBER OF PERMANENT JOBS CREATED WITH DETROIT RESIDENTS	
NUMBER OF JOBS RETAINED	
*only if costs are part of tax increment financing reimbursement request	

DETROIT BROWNFIELD REDEVELOPMENT AUTHORITY

Brownfield Plan Fee Schedule	
Application Fee*	\$1,000
Environmental Review Fee*	\$500 minimum to \$1,500 maximum per Plan based upon City of Detroit Buildings, Safety Engineering & Environmental Department determination.
Processing Fee**	1% of projected TIF reimbursement to the developer.
Minimum Payment of Processing Fees	\$3,000
Maximum Payment of Processing Fees	\$30,000
Transformational Brownfield Plan Fee Schedule - calculated on a per project basis***	
Application Fee*	\$1,000
Environmental Review Fee*	\$500 minimum to \$1,500 maximum per Plan based upon City of Detroit Buildings, Safety Engineering & Environmental Department determination.
Processing Fee**	1% of projected TIF reimbursement to the developer.
Minimum Payment of Processing Fees	\$3,000
Maximum Payment of Processing Fees	\$50,000
*Application Fee and Environmental Review Fee payable to DBRA prior to submission of Brownfield Plan to DBRA Board	
** Processing Fee payable to DBRA prior to submission of Brownfield Plan to Detroit City Council. Should the Plan include a Michigan Business Tax (MBT) Credit Amendment, the processing fee will also include 1% of the projected credit not to exceed the maximum payment of the processing fee cited above.	
***For Brownfield Plans that include a series of developments as defined in Michigan Public Act 381 of 1996, Section 13C.(1)	

Attachment E

Documents required in order to certify TIF eligible activity costs:

1. Certificate of Completion, attached hereto as Exhibit A.
2. Certificate for Reimbursement, attached hereto as Exhibit B.
3. Clearance letter from the City of Detroit Civil Rights, Inclusion & Opportunity (CRIO) Department stating that the developer of the Plan is in compliance with the City of Detroit Executive Orders.
4. If the Plan included remediation activities, verification from a qualified environmental consultant stating that the remediation activities identified in the Plan have been completed.
5. Project completion information such as total investment, number of units and/or jobs created, number of square footage developed by use.
6. Invoices for eligible activity costs that can be tied directly to the project
7. Proof of payment for those invoices (such as copies of checks or waivers).
8. Please note that if the developer did not make the payments directly, then verification is required of the relationship that the developer has with the entities that made the payment in order to tie the costs to the developer.
9. A table outlining the approved eligible activities and the costs for those activities that are included in the reimbursement request.

Please note that the DBRA reserves the right to require additional items not described on this checklist, in its sole and absolute discretion, and this checklist may be amended by the DBRA or its legal counsel during the course of the transaction.