

## **1.0 Background and Purpose**

The City of Buchanan City Commission established a Brownfield Redevelopment Authority (BRA) in accordance with the Brownfield Financing Act, Act 381 of the Public Acts of the State of Michigan of 1996, as amended (Act 381).

The purpose of the Brownfield Redevelopment Authority (Authority) is to encourage the revitalization, redevelopment, and reuse of eligible property, as defined by Act 381 and the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of the State of Michigan of 1994, as amended (Act 451). The BRA is authorized to administer a Brownfield Redevelopment Program (Program), which provides economic incentives through the use of Tax Increment Financing (TIF) revenues to pay for or reimburse public or private costs of “eligible activities.”

The Program also supports the use of additional economic incentives and financing mechanisms to assist with the redevelopment of eligible property. This may include economic development programs administered by the Michigan Economic Development Corporation (MEDC)/Michigan Strategic Fund (MSF), Michigan Department of Environment, Great Lakes and Energy (EGLE), Michigan State Housing Development Authority (MSHDA), and the United States Environmental Protection Agency (EPA), and other state or federal agencies.

## **2.0 Policies**

### **2.1 Eligible Properties**

The BRA is authorized to consider Brownfield Plans for properties that meet the definition of “eligible property,” under Act 381.

### **2.2 Eligible Activities**

The BRA is authorized to allow the use of Tax Increment Financing (TIF) revenues to pay for or reimburse public or private costs of “eligible activities,” as defined in Act 381

Eligible Activities may include:

- Baseline Environmental Assessment (BEA) activities
- Due care activities (which limit exacerbation of, or exposure to, contamination on a site)
- Additional response activities
- Reasonable costs of preparing a Brownfield Plan, Act 381 Work Plan and actual cost of Work Plan review
- Demolition (above and below ground)
- Lead and asbestos assessment and abatement
- Administrative fees
- Capture for the Local Brownfield Revolving Fund (LBRF)
- Reasonable cost of environmental insurance
- Infrastructure Improvements
- Site Preparation
- Housing Development Eligible Activities may include:
  - Infrastructure improvements that are necessary for housing property and supports housing development activities

- Site preparation that is not a response activity and that supports housing development activities
- Reimbursement provided to owners of rental housing units for qualified rehabilitation.
- Costs for infrastructure available for public use and safety improvements necessary for a housing project.
- Costs of demolition and renovation of existing buildings and site preparation, to the extent necessary to accommodate an income qualified purchaser household or income qualified renting household.
- Temporary household relocation costs for an income qualified household for a period not to exceed 1 year.
- Acquisition cost for blighted or obsolete rental units, to the extent the acquisition would promote rehabilitation or adaptive reuse of the blighted or obsolete rental unit to accommodate an income qualified purchaser household or income qualified renting household.
- Reimbursement provided to a developer to fill a financing gap associated with the development of housing units priced for income qualified households and to assist with costs related to infrastructure improvements and site preparation that are not a response activity and that are necessary for new housing development for income qualified households on eligible property.

Interest costs are generally not considered to be an eligible activity under this policy. Payment of interest from tax increment revenues (TIR) or advances made for eligible activities will be determined by the BRA on a case-by-case basis based on project financial need. The BRA may request additional information to determine the need to include interest as an eligible expense.

The applicant is responsible for keeping detailed records of all eligible expenses and investments, including purchase orders, invoices, waiver of liens, contracts, and records of payment, and for providing these to the City when requesting the incentive. Final reimbursement will be based on the records provided, and the City is not responsible for incomplete or inaccurate records.

### **2.3 Qualification for Incentives**

- 2.3.1** The proposed project site meets the definition of an “eligible property” as defined in Act 381.
- 2.3.2** The BRA supports inclusion of the eligible property in the Brownfield Plan and use of TIF to support the proposed Brownfield Project.
- 2.3.3** The proposed redevelopment for the eligible property is consistent with the master plans, zoning ordinances and community, sustainability, and economic development, and housing goals of the City.
- 2.3.4** The existing character of the eligible property is such that the redevelopment activities would be limited or prohibited without Brownfield assistance provided by Act 381 and/or other Brownfield programs. In addition, the project developer commits to explore all other private and public funding sources, as determined in consultation with the BRA.
- 2.3.5** An analysis demonstrates that the required eligible activities can be satisfactorily completed within the available resources under this program,

or if not, that supplemental funding sources, such as private equity or financing, tax credits, grants, or loans, will be utilized to complement the financial resources available under Act 381 for proposed projects.

- 2.3.6** The developer has provided evidence of a firm commitment to the project and a demonstration of sufficient experience, financial resources, and development capabilities to successfully implement the proposed redevelopment project.
- 2.3.7** The proposed project site has adequate access to the necessary public infrastructure and utilities needed to serve the proposed redevelopment project, as determined by the City's Community Development and Engineering Departments.
- 2.3.8** The BRA reserves the right to consider other factors as applicable to a specific project and its impact on neighboring properties.
- 2.3.9** Completing the project will adequately address the brownfield conditions upon which the need for financial assistance was requested.

#### **2.4 Local-Only Qualification**

The BRA will consider costs of all eligible activities as defined in Act 381 to be reimbursed with both incremental local and school taxes to the extent practical; however, there are circumstances when reimbursement with local-only tax increments will be approved. Each such project and eligible activity for which reimbursement with local only tax increments is proposed will be considered on case-by-case basis and must meet the following criteria:

- 2.4.1** Reimbursement of the costs of eligible activities and interest using local only tax increments will be considered only if the following conditions are met.
  - 2.4.1.1** All activities must be eligible under Act 381.
  - 2.4.1.2** Need and rational for the local-only capture, based on project economics and/or schedule demands, must be demonstrated.
  - 2.4.1.3** Descriptions and costs of activities and interest must be included in an approved Brownfield Plan.
- 2.4.2** Eligible activities completed on an eligible property prior to the approval of the Brownfield Plan may be considered for local only reimbursement.
  - 2.4.2.1** On all eligible activities whether environmental or non-environmental.
- 2.4.3** Activities were conducted no earlier than 90 days prior to City Commission approval of the Brownfield Plan.
- 2.4.4** All criteria described in Section 2.2 above are met.
- 2.4.5** Eligible activities that are conducted after Brownfield Plan approval and are included in a Work Plan Submitted to EGLE, MSF or MSHDA for approval, but are not approved by EGLE, MSF, or MSHDA, or such Work Plan approval is not sought, will be considered if all the following criteria are met:
  - 2.4.5.1** Must be an eligible environmental or non-environmental activity as outlined in section 2.1.
  - 2.4.5.2** All criteria described in Section 2.2 above are met.

## **2.5 Qualification for Eligible Activities Prior to Brownfield Plan Approval**

- 2.5.1** Non-environmental eligible activities completed on an eligible property prior to the approval of the Brownfield Plan will be considered for school and local reimbursement provided these eligible activities are defined in an Act 381 Work Plan may include the following:
  - 2.5.1.1** Only non-environmental activities that are eligible within the City of Buchanan and included in an approved Brownfield Plan,
  - 2.5.1.2** Submitted to and approved by the MSF, and
  - 2.5.1.3** Activities were conducted no earlier than 90 days prior to City Commission approval of the Brownfield Plan.
- 2.5.2** Environmental eligible activities completed on an eligible property prior to the approval of the Brownfield Plan will be considered for school and local reimbursement for Baseline Environmental Assessment activities that include:
  - 2.5.2.1** Phase I Environmental Site Assessments (ESAs)
  - 2.5.2.2** Phase II ESAs
  - 2.5.2.3** Baseline Environmental Assessments (BEAs)
  - 2.5.2.4** Due Care Planning Activities
  - 2.5.2.5** Activities conducted no earlier than 12/31/2012

## **2.6 Administrative Cost Reimbursement**

- 2.6.1** Annual reimbursement of reasonable and actual BRA administrative and operating costs from local taxes is permitted under Act 381 of 1996, as amended. Each Brownfield Plan will include capture of administrative fees to cover actual expenses related to operating of the Brownfield Redevelopment Program.
- 2.6.2** For reimbursement of actual administrative expenses, the BRA will transfer to its Administrative Fund ten percent (10%) of annual TIF capture. Actual administrative expenses will be reimbursed with local-only incremental taxes.
  - 2.6.2.1** As determined by the BRA, a potential addition of minimum capture may be requested for administrative costs if proposed TIR estimates do not account for anticipated administrative costs incurred to administer the Plan.
  - 2.6.2.2** Actual administrative expenses, as defined by Act 381, include the following:
    - 2.6.2.2.1** Assistance provided to consultants and developers to prepare Brownfield Plans and Work Plans.
    - 2.6.2.2.2** Review and approval of Brownfield Plans and Work Plans.
    - 2.6.2.2.3** Preparation, review, and approval of Reimbursement and/or Development Agreements.
    - 2.6.2.2.4** Review and approval of actual eligible activities.
    - 2.6.2.2.5** Managing and accounting tax increment capture and disbursement.

- 2.6.2.2.6** Managing and accounting eligible activity reimbursement.
- 2.6.2.2.7** Managing and distributing funds from the Local Brownfield Revolving Fund (LBRF).
- 2.6.2.2.8** Community education and outreach.
- 2.6.2.2.9** Other reasonable and administrative operating expenses of the Authority.

## **2.7 Local Brownfield Revolving Fund (LBRF) Capture**

It is the intent of the BRA to capitalize the Local Brownfield Revolving Fund (LBRF). The BRA intends to include provisions to capture revenues for deposit into the LBRF in the approved Brownfield Plan for each project. The BRA intends to capture all or a portion of the LBRF funds after the reimbursement period for eligible activities for a period not-to-exceed five years in accordance with Act 381.

LBRF funds will be used in accordance with the LBRF Policy, adopted by the BRA and subject to the restrictions of Act 381. A LBRF application must be completed by the applicant and submitted to staff if BRA LBRF revenues are being considered for a project.

The BRA intends to capture LBRF funds pursuant to the following criteria:

- 2.7.1** The BRA will capture incremental local and school taxes, if applicable, to the extent allowed by Act 381, to fund the LBRF until funds in the following amount have been placed in the LBRF, which is a maximum amount equivalent to five years of capture after eligible activities costs have been reimbursed.
- 2.7.2** The rate and schedule of incremental tax capture for LBRF will be determined on a case-by-case basis. Considerations will include, but not limited to the following: total capture duration, total annual capture, project economic factors, and level of existing LBRF funding, and projected need for LBRF funds.
- 2.7.3** School taxes for EGLE eligible activities can be captured for LBRF deposit, but school taxes for MSF activities cannot be captured for LBRF deposit. The amount of school taxes deposited into the LBRF for EGLE activities cannot exceed the total amount of school taxes used to reimburse eligible activities.
- 2.7.4** If an approved Brownfield Plan does not provide for the capture of incremental school taxes, or provides for reimbursement of only MSF eligible activities, LBRF capture will derive solely from the incremental local taxes. In these circumstances, the impact of LBRF funding on the duration of the local capture will be considered in determining the amount and schedule for LBRF capture.
- 2.7.5** Exceptions to this policy due to extraordinary circumstances will be considered on a case-by-case basis.

## **2.8 Brownfield Plan Termination**

Unless otherwise agreed to in writing by the BRA, a Brownfield Plan may be terminated by the BRA if:

- 2.8.1** The Developer and the BRA have not finalized and executed the Reimbursement Agreement, if required; within one year (365 days) after the date the Brownfield Plan is approved by the City Commission; or,
- 2.8.2** The Eligible Activities have not begun within three (3) years after approval of the Brownfield Plan: or,
- 2.8.3** The developer has not followed the appropriate Reimbursement Process within three and a half years as outlined in section 3.6 below; or,
- 2.8.4** In no event, however, shall the Plan extend beyond the maximum term allowed by Section 13(1)(f) of Act 381, for the duration of the Plan.

## **3.0 Procedures**

The City of Buchanan and the BRA recognize the importance of development project schedules and will expedite the Brownfield Plan review and approval process to the greatest extent practical.

The following summarizes the typical steps for accessing available Brownfield incentives in Buchanan. The procedure may be adjusted if the applicant proposes completing a combined Brownfield Plan and Act 381 Work Plan.

All documents which are to be reviewed and/or acted on by the BRA must be distributed to the Chairman and BRA Board members at least one week prior to the meeting date or the item will be removed from the agenda.

### **3.1 Pre-Application: Project Concept Application Submittal**

- 3.1.1** The applicant must complete a Project Concept Application (Application) and submit it to the City of Buchanan to initiate the Brownfield process with the BRA. Please refer to the Application for details on the requested information. Applications will be considered only when accompanied with a non-refundable application fee based on the total project investment. Additional fees may be required based on the complexity of the project, see Section 4 for further information.
  - 3.1.1.1** \$0 – 5 Million: \$1,000
  - 3.1.1.2** \$5 – 10 Million: \$2,500
  - 3.1.1.3** \$10 Million and above: \$4,000
- 3.1.2** Staff and the BRA will review the information and work with the developer if revisions are necessary.
- 3.1.3** Following administrative review, information will be forwarded to the BRA for formal review and consideration at a public meeting. It is recommended that the applicant attend the meeting to present the project.
- 3.1.4** If the applicant's Application is supported by the BRA, the BRA will recommend the developer proceed with a formal Brownfield Plan. If the

BRA approves a project Application, it is not obligated to approve the Brownfield Plan.

### **3.2 Brownfield Plan Development**

- 3.2.1** The applicant must develop a Brownfield Plan which must include all sections identified in Act 381, Section 13(1) (MCL 125.2663 Brownfield Plan; Provisions). The site must be an eligible property, and all activities must be eligible activities as defined in Act 381. The plan must also be consistent with the BRA policies outlined in Section 2.0 above.
- 3.2.2** If the applicant is seeking school tax reimbursement, the applicant must meet with staff, EGLE and/or the MEDC, and/or MSHDA to determine the level of support for the project.
- 3.2.3** Staff will review the Brownfield Plan and work with the developer if revisions are necessary.

### **3.3 Brownfield Plan Approval**

The Brownfield Plan must be approved by the BRA and City Commission. The Brownfield Plan approval process consists of the following activities:

- 3.3.1** Staff will provide the Brownfield Plan (produced as described in Section 3.2) above to the BRA for their consideration.
- 3.3.2** It is the intention of the BRA that all meetings be conducted as Open Meetings. However, at times the Board may have reason to conduct closed meetings in accordance with the law.
- 3.3.3** If the BRA approves the Brownfield Plan, a Public Hearing will be established by the City Commission.
- 3.3.4** Following the Public Hearing, the City Commission considered the Brownfield Plan for approval.
- 3.3.5** If the Brownfield Plan is approved by the City Commission, a resolution shall be executed, and staff and the BRA will proceed with a reimbursement agreement.

### **3.4 Reimbursement Agreement Execution**

Following the approval of the Brownfield Plan, a reimbursement agreement must be executed. The reimbursement agreement must be approved by the BRA, then fully executed in accordance with the City Contract Procedures.

### **3.5 Act 381 Work Plan Approval**

If the Brownfield Plan includes the capture of school taxes for eligible activities, an Act 381 Work Plan (Work Plan) must be completed in accordance with the requirements of Act 381 and guidance published by EGLE/MEDC/MSHDA and submitted to staff. Staff will review the Work Plan and work with the Applicant and the Applicant's representative to finalize it. Staff then will coordinate with the appropriate agency(s) for the submission and review of the Brownfield Plan, Act 381 Work Plan, and other necessary documents as follows:

- 3.5.1** If the TIF includes capture of school taxes for environmental activities, staff will submit a completed Work Plan to EGLE. The Work Plan must include

the approved Brownfield Plan, which will be evaluated during the Work Plan review.

- 3.5.2** If the TIF includes capture of school taxes for non-environmental eligible activities, staff will submit a completed Work Plan to the Michigan Economic Development Corporation (MEDC) to review on behalf of the Michigan Strategic Fund (MSF). The Work Plan submission must include the approved Brownfield Plan, a signed Development Agreement or Reimbursement Agreement and other documents and information as required by the MEDC.
- 3.5.3** If the TIF includes capture of school taxes for housing development eligible activities, staff will submit a completed Work Plan to the Michigan State Housing Development Authority (MSHDA) to review. The Work Plan submission must include the approved Brownfield Plan, a signed Development Agreement or Reimbursement Agreement, Potential Rent Loss (PRL) & Total Housing Subsidy (THS) used to establish the reasonableness of certain housing activities for which tax capture is planned, and any other documents required by MSHDA.
- 3.5.4** City staff and its consultants are authorized to review and work with the Applicant and Applicant's consultants to finalize and submit all Act 381 Work Plans and Grant Work Plans to the appropriate state agencies and shall provide the BRA Board with copies of all Act 381 Work Plans and Grant Work Plans after submission to the appropriate state agencies to be filed and included in the agenda packet for the next BRA meeting.

### **3.6 Reimbursement Process**

The following outlines the conditions that must be met before reimbursement will occur.

- 3.6.1** The BRA will begin the reimbursement process after the following have been completed:
  - 3.6.1.1** The Brownfield Plan has been approved.
  - 3.6.1.2** The Reimbursement Agreement has been executed.
  - 3.6.1.3** The Act 381 Work Plan has been approved by EGLE, and/or MSF, and/or MSHDA as appropriate.
  - 3.6.1.4** The approved eligible activities have been completed and/or initiated.
  - 3.6.1.5** All the appropriate invoices and documentation for actual costs incurred to conduct the approved eligible activities have been submitted and reviewed by the BRA, subject to the conditions outlined in the reimbursement agreement.
- 3.6.2** TIF capture begins subject to the following:
  - 3.6.2.1** All taxes and special assessments due or owing to the City and/or County are paid in full.
  - 3.6.2.2** The tax year is within TIF capture period specified in the Brownfield Plan and Act 381.



- 3.6.3** The BRA will only reimburse the actual costs to conduct approved eligible activities. The BRA uses only the incremental taxes generated by the redevelopment project to reimburse approved eligible activities, and the yearly reimbursement amount is based on the actual yearly incremental taxes collected.
- 3.6.4** Invoices, eligible activity documentation and proof of payment must be submitted to the BRA. The actual eligible activity cost should be summarized in a form similar to the Eligible Activity Tracking Table provided in the Reimbursement Agreement.
- 3.6.5** If invoices, eligible activity documentation and proof of payment are not provided, the plan shall expire and no longer be valid as outlined in Section 2.7 above.

The actual amount of TIF reimbursement in any year may be reduced by the amount of TIF allocated for the reimbursement of BRA administrative expenses, funding the LBRF and reimbursement of 3 mills of SET, as provided in the approved Brownfield Plan, Reimbursement Agreement, and Act 381.

## **4.0 Associated Costs and Fees**

### **4.1 Brownfield Plan Preparation Agreement**

The developer is responsible for payment of all invoices, legal and professional fees associated with the preparation of the Brownfield Plan, any amendments to that Plan, the Reimbursement Agreement and review and tracking of eligible expenses.

### **4.2 Fees\***

- 4.2.1** There is a non-refundable Application fee based on level of investment as detailed in Section 3.1 of the Policies and Procedures.
- 4.2.2** The City may charge a Brownfield Plan Review fee through escrow. This escrow fee may include technical, legal, and administrative review of the Plan, as well as review of all corresponding environmental reports requested by the City and/or the BRA and will be based on the complexity of the documents submitted. If required, the applicant shall provide an escrow payment in an amount to be determined by City Staff, for the Brownfield Plan review prior to being placed on the BRA Meeting Agenda.
- 4.2.3** The City may charge a Work Plan review fee through escrow for the Act 381 Work Plan. This escrow fee may include technical, legal, and administrative review and will be based on the complexity of the selected remedy and the extent of the Work Plan.
- 4.2.4** The City may require a reimbursement review fee through escrow for legal, financial, and administrative review, in order to verify expenses when submitting a Reimbursement Request package. This escrow fee will be based on the complexity of the request.

\*Escrow account balance will be drawn down based upon the actual invoices and hourly rate of consultants, administrative professionals, and/or attorneys. This may be reimbursed through TIR in an approved Plan.



**4.2.5** If required, the Applicant will provide additional escrow for the Work Plan review and/or Reimbursement Request at the time of submittal if there are not enough funds available to complete the review. If escrow is below \$1,000, the City shall collect additional escrow funds.

**5.0 Contact Information**

Those interested in the Brownfield Redevelopment Program are encouraged to contact the City Manager at 269-695-3844. The office mailing address is 302 N. Redbud Trail, Buchanan, MI 49107.

**Adopted by Brownfield Redevelopment Authority** \_\_\_\_\_

**Approved by City Commission** \_\_\_\_\_

**Amended** \_\_\_\_\_