

## APPENDIX B

### 8.2 ERASE Redevelopment Grant Program (ERG)

#### 8.2.1 Purpose

The purpose of this program is to alleviate a serious financial impediment to brownfield redevelopment efforts, namely the large tax increase that can result when a brownfield property is redeveloped. The intent of the ERG is to encourage environmental remediation, rehabilitation, redevelopment and adaptive re-use of brownfield sites. Therefore, only those brownfield redevelopment projects that result in an increase in property assessment and taxes will be eligible for funding under the ERG. The ERG also leverages public sector investment and encourages development that would otherwise not take place without this incentive program.

#### 8.2.2 Program Description

The ERG is a tax-increment based program that will provide a financial incentive in the form of a grant to help offset the cost of environmental remediation and rehabilitation of brownfield properties where redevelopment results in a re-valuation and tax increase on these properties. The applicant will initially pay for the entire cost of the remediation and redevelopment project. Once the municipality receives the first full calendar year of newly assessed property taxes that result from the development, the municipality will reimburse the applicant in the form of an annual grant equivalent to 80% of the increase in City taxes that result from redevelopment. Each year, the property owner must first pay taxes owing and then the approved applicant will receive the grant. In no case will the total amount of the grant provided under this program exceed the value of the approved eligible program costs. Also, in no case, will the total amount of the grants provided under this program, and the Tax Assistance Program (TAP) (8.3) exceed the estimated eligible program costs as approved by City Council.

The grant provided under the ERG will equal 80% of the increase in the City portion of property taxes. The remaining 20% of the increase in the City portion of property taxes will be dedicated to the ERASE Municipal Acquisition and Partnership Program (MAPP)

The grants may be received by the property owner in conjunction with any other available municipal program except for other tax increment financing programs.

Assignment of a grant under this Program is not permitted except where the grant is to be assigned to the City of Hamilton as payment towards a loan under the Downtown Hamilton/West Harbourfront Remediation Loan Program for the same project.

The grant will be earned by the applicant if they have met all terms and conditions of the Program and the property and property owner are in good standing with the City in terms of all City By-laws that apply to the property and project, all laws that govern the construction and development of the project and the payment of all taxes *during the development stage* and for any portion of the property retained by the property owner after remediation and redevelopment are complete. The annual grant to the applicant will be pro-rated if an appeal has been filed with the Municipal Property Assessment Corporation (MPAC) by any of the condominium unit owners. The grant for condominium units that are under appeal will not be released until the appeals are settled through the Assessment Review Board.

For developments containing condominium units, the first-year grant is payable during the calendar year in which 75% of the condominium units within the project are reassessed by MPAC and the property owner(s) have paid in full the new taxes for one (1) calendar year. For non-condominium developments, the first-year grant is payable during the calendar year in which the redevelopment project is complete, the property has been reassessed by MPAC and the property owner has paid in full the new taxes for one (1) calendar year.

Grant payments under the ERG Program will cease at such time as whichever of the following comes first:

- a) Total grant payments provided under this program equal the approved and accepted eligible costs have been reimbursed; or,
- b) 10 annual payments have been provided.

The ERG is an application-based program. As early as possible in the development approvals process, a property owner will register their intent to participate in the program by filing an ERG Application with the Economic Development Division. Before accepting this application, the Economic Development Division will screen the application to ensure that it is for a property within the designated ERASE Community Improvement Project Area (CIPA) and the application meets the eligibility requirements.

Applications that are not within the ERASE CIPA or applications that clearly do not meet the eligibility requirements will not be accepted. Acceptance of the application by the Economic Development Division in no way implies grant approval.

Applications will be processed and approved on a first come, first serve basis. Review and evaluation of the application and supporting materials against program eligibility requirements will be done by City staff. The applicant participating in the ERG program must enter into an agreement with the City. This Agreement will specify the terms and conditions of the grant and will include terms and conditions in addition to those contained in this Appendix "B" as determined by the City Solicitor and General Manager of Planning and Economic Development. All ERG applications and agreements will be subject to approval by City Council or Council's designate.

The amount of City taxes ("base rate") will be determined before commencement of the project. The increase in the municipal portion of real property taxes (or "municipal tax increment") will be calculated as the difference between the base rate and the amount of City taxes levied as a result of reassessed by the Municipal Property Assessment Corporation (MPAC) following project completion. The municipal tax increment will be used to fund the grant. This program does not exempt property owners from an increase/decrease in municipal taxes due to a general tax rate increase/decrease, or a change in assessment for any other reason.

For eligible sites where environmental remediation is proposed, the applicant shall obtain and submit to the City a Phase II ESA and/or Risk Assessment and a Remedial Action Plan undertaken by a Qualified Person that:

- a) Identifies the extent and provides a cost estimate for the environmental remediation of the eligible property; and,
- b) Contains a detailed work plan and budget for said environmental remediation.

For eligible sites where the removal and/or abatement of designated substances and/or hazardous materials is proposed, the applicant shall obtain and submit to the City:

- a) A Designated Substances and Hazardous Materials Survey which identifies the presence, extent and need for the removal and/or abatement of such substances/materials in accordance with the *Occupation Health and Safety Act*, Ontario Regulation 278/05 (where applicable) and to the City's satisfaction; and,
- b) A detailed work plan and cost estimate.

For eligible sites where the removal, replacement and/or upgrade of capacity for existing on-site infrastructure (water services, sanitary sewers and storm sewers) and/or building demolition is proposed, the applicant shall obtain and submit to the City:

- a) Any applicable engineering/servicing reports identifying the need for the removal, replacement and/or upgrade of on-site infrastructure; and,
- b) A detailed work plan and cost estimate for the demolition and/or removal, replacement and/or upgrade of on-site infrastructure.

The actual component costs for all eligible cost items will be supplied to the City upon completion of the project. Payment of the grant will be based on the City's review, satisfaction and acceptance of all reports, paid invoices and documentation which is submitted outlining the full scope and cost of the work completed. Any and all of these costs may be subject to audit, at the expense of the property owner. The grant may be reduced or cancelled if the eligible work is not completed, not completed as approved and/or where documentation/invoicing of said costs is not provided to the City's satisfaction.

If during the course of the work, the scope of the work changes, or actual costs are greater or less than estimated costs, the City reserves the right to increase or decrease the total amount of the grant. The annual grant payment will be based on the actual increase in property taxes as calculated, based on the actual reassessment by MPAC following project completion and receipt of an RSC.

The City may discontinue the ERG Program at any time. However, participants in the ERG Program with applications and agreements that were approved prior the closing of the program will continue to receive grant payments as determined through their ERG Agreement with the City. The City is not responsible for any costs incurred by the property owner in any way relating to the program, including without limitation, costs incurred in anticipation of a grant.

It should be noted that peer-reviewed Risk Assessments are to be permitted in situations where a RSC is not required by the Ministry of Environment, Conservation and Parks (MOECP) (i.e. not moving to a more sensitive land use).

Regardless of whether or not an Applicant otherwise satisfies the requirements of the Program, the City may reject any application received from an applicant where, in the opinion of Council, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the applicant being involved in litigation with the City. Applicants are individuals; corporate entities and individuals behind the corporation (Officers/Directors/Shareholders).

Finally, for the purposes of clarity a 'project' consists of the redevelopment site. The redevelopment site may include multiple properties with more than municipal address.

### **8.2.3 Eligibility Requirements**

All owners of properties within the ERASE Community Improvement Project Area are eligible to

apply for funding under this program, subject to meeting the general program requirements in Section 8.0, the following eligibility requirements, and subject to availability of funding as approved by Council:

- a) An application for the ERG must be submitted to the Economic Development Department prior to the commencement of any works and prior to application for building permit (Program is not retroactive);
- b) Such application shall include reports, plans, estimates, contracts and other details as may be required to satisfy the City with respect to the eligible costs of the project and conformity of the project with the ERASE CIP;
- c) The applicant shall obtain and submit to the City a Phase II ESA and/or Risk Assessment and Remedial Action Plan undertaken by a Qualified Person that:
  - i) identifies the extent and provides a cost estimate for the environmental remediation of the eligible property; and,
  - ii) contains a detailed work plan and budget for said environmental remediation.
- d) As a condition of the grant application, the City may require the applicant to submit a Business Plan, with said Plan to the City's satisfaction;
- e) The property shall be redeveloped such that the amount of work undertaken is sufficient to at a minimum result in an increase in the assessed value of the property;
- f) The total value of the grant provided under this program shall not exceed the total value of work done under eligible program costs;
- g) Eligible program costs include the following:
  - i) environmental remediation (i.e., the cost of any action taken to reduce the concentration of contaminants on, in or under the eligible property to permit a Record of Site Condition (RSC) to be filed for the proposed use by a Qualified Person, including costs of preparing and filing of an RSC and Certificate of Property Use (CPU), cost of clean fill, grading and compaction to replace contaminated soils;  
**Eligible environmental remediation costs do not include construction/development costs that would be required regardless of the presence of contamination.**
  - ii) Phase II ESAs, Risk Assessments and Remedial Action Plans not covered by the ERASE Study Grant program;
  - iii) installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or CPU;
  - iv) monitoring, maintaining and operating environmental and/or engineering controls/works related to environmental remediation, as specified in the Remedial Action Plan and/or Risk Assessment and/or CPU;
  - v) Industrial/Office Reuse Feasibility Study (Area 2 only)
  - vi) Designated Substances and Hazardous Material Survey and their removal and abatement in accordance with the *Occupational Health and Safety Act* and

- Ontario Regulation 278/05 (where applicable) in the Older Industrial Area (Area 2);
- vii) Designated Substances and Hazardous Material Survey and their removal and abatement in accordance with the *Occupational Health and Safety Act* and Ontario Regulation 278/05 (where applicable) in current/closed Institutional use buildings across the CIPA;
- viii) Designated Substances and Hazardous Material Survey and their removal and abatement in accordance with the *Occupational Health and Safety Act* and Ontario Regulation 278/05 (where applicable) as part of the rehabilitation and restoration of heritage buildings/properties designated under Part IV or V of the *Ontario Heritage Act* across the CIPA; and
- ix) In addition to the above, the following costs may also be considered eligible when incurred on a site requiring remediation/rehabilitation and located in the applicable geographic area:
- A. the following Leadership in Energy and Environmental Design (LEED) Program components up to a maximum of 50% as per the City of Hamilton's LEED Grant Program (LGP) to achieve LEED certification under the LEED rating system by the Canadian Green Building Council – CaGBC:
    - incremental construction costs,
    - consultation costs
    - energy modeling; and
    - certification fees
  - B. demolition costs not covered by demolition charge credits (Areas 2 and 3 only);
  - C. the removal, replacement and/or upgrade of capacity for existing infrastructure (water services, sanitary sewers and storm sewers) up to a maximum of 25% of the cost of said improvement provided the improvement is located on the property and will support the rehabilitation and reuse of the property (Areas 2 and 3 only);
  - D. certain relocation/removal costs for existing and operating industrial manufacturing and transportation uses, where such costs relate to or contribute directly to the actual remediation and rehabilitation of the site (Areas 2 and 3 only).
- h) Notwithstanding 8.2.3 g), costs shall not be considered to be eligible if incurred prior to the date an application has been submitted under this program and accepted by the City with the exception of studies which were the subject of an approved ERASE Study Grant (ESG) Program (8.1) application. The total of the grant provided under this Program in combination with any tax assistance provided under the Tax Assistance Program (TAP) (8.3) shall not exceed the total approved eligible costs. Previous grant payments provided under the ESG Program for studies which are also to be accepted as eligible costs under this program will be deducted from the approved eligible costs;
- i) To be eligible under this program, costs must be incurred by the property owner as identified on the submitted program application accepted by the City;

- j) Actual costs for any or all of the items in eligible program costs above may be subject to audit by the City, at the expense of the property owner;
- k) All property owners participating in this program will be required to enter into an agreement with the City which will specify the terms and conditions of the grant;
- l) All ERG applications must be approved by City Council or City Council's designate;
- m) The property owner shall be required to submit one of the following prior to a grant being paid under this program:
  - i) a Record of Site Condition ("RSC") conforming to the latest Ontario Regulation 153/04 standards and prepared by a Qualified Person to the Environmental Site Registry under section 168.4 of the *Environmental Protection Act* and shall submit to the City an acknowledgement of receipt of the RSC by the MOECP; or
  - ii) where the submission of a signed RSC is not required under the *Environmental Protection Act* to permit the brownfield redevelopment, and provided that the owner of the property within the ERASE Community Improvement Project Area undertakes a Risk Assessment and remediates the property to a standard that would enable the owner to submit a RSC, the property owner may instead provide the City with a Risk Assessment prepared by a Qualified Person for Risk Assessments (as defined in the *Environmental Protection Act* and Ontario Regulation 153/04, as amended), subject to a peer-review by a Qualified Person for Risk Assessment, who is acceptable to the City. This peer-review must certify that the property has been remediated to the appropriate levels for the proposed use in accordance with the Risk Assessment, to the satisfaction of the City. The cost of the peer-review will be an eligible cost under this program.
- n) The City reserves the right to require the submission, to the City's satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use.
- o) If a building(s) erected on a property participating in this Program is demolished before the grant period expires, the remainder of the monies to be paid out under the grant shall be forfeited;
- p) The improvements made to buildings and/or land shall be made pursuant to a Building Permit, constructed in accordance with the Ontario Building Code, and in compliance with all applicable Official Plan, Zoning By-Law and Site Plan Control requirements and approvals; and,
- q) Outstanding work orders and/or orders or requests to comply from the City must be satisfactorily addressed prior to grant approval.
- r) No grant is to be paid out until the project is completed. Alternatively, subject to written approval by the Director of Economic Development, a percentage of the total grant payment may be provided for phased developments based on the number of phases completed and proportional to the eligible costs incurred in each completed phase. Such partial payments shall be limited to those projects where the incremental tax increase for individual development phase can be determined to the City's satisfaction.

- s) Work on the portion of the Project that is at or above grade shall commence no longer than five (5) years from the date an application under this program was approved by City Council (or City Council's designate) and the Project and all eligible works shall be completed and the project capable of being fully occupied within 10 years from the date an application under this program approved by City Council (or City Council's designate). Where a project consists of multiple phases, consideration may be provided for an extended project completion and occupancy period at the sole absolute and unfettered discretion of City Council.

Eighty-percent (80%) of the municipal portion of the tax increment will be reimbursed to the property owner in the form of a grant, while the remaining 20% of the tax increment will be dedicated to the ERASE Municipal Acquisition and Partnership Program (see Section 8.5).

## **8.2.4 Administration**

The Economic Development Division will be responsible for administering the ERG, in consultation with other division/departments as necessary. Applications shall be submitted to the Economic Development Division and shall be accompanied by a Phase II ESA and/or Risk Assessment and Remedial Action Plan undertaken by a Qualified Person (as defined under Ontario Regulation 153/04) and/or Designated Substances and Hazardous Materials Survey (where applicable). For sites undertaking environmental remediation, the work plan and cost estimate shall be in the form of a Remedial Action Plan prepared by a Qualified Person. Said work plan and cost estimate will be supported by a Phase II ESA and/or Risk Assessment undertaken by a Qualified Person. Studies/plans submitted shall:

- a) Identify the extent of the environmental remediation and any installation, monitoring, maintaining and operating environmental and/or engineering controls/works required for the eligible property; and,
- b) Provide a detailed work plan and cost estimate for said environmental remediation which includes the installation, monitoring, maintaining and operating environmental and/or engineering controls/works.

For other non-remediation eligible works under this program, a written contractor's estimate shall be provided which shall be supported by any applicable studies (such as Designated Substances and Hazardous Materials Survey) to the City's satisfaction. The City may also require the submission of a Business Plan for the proposed development.

In addition, a cost estimate for all eligible LEED program component costs by a LEED certified specialist must be provided.

Applicants will be required to have a pre-application consultation meeting with City staff in order to determine program eligibility, proposed scope of work, project timing, etc.

Before accepting an application, City staff will screen the application. If the application is not within the community improvement project area or the application clearly does not meet the program eligibility requirements, the application will not be accepted.

Acceptance of the application by the City in no way implies grant approval.

Program eligibility will be determined by the Economic Development Division, in consultation with other divisions/departments as necessary. Applications will be recommended for approval only if

they meet the criteria specified in this Plan and any other requirements of the City including that the property and property owner are in good standing with the City in terms of all City By-laws that apply to the property and project, all laws that govern the construction and development of the project and the payment of all taxes.

In instances where an applicant cannot satisfy staff with all necessary eligible cost estimates and required back-up documentation, staff reserves the right to consider an application as part of a two-step application and approval process, with the ultimate approval residing with City Council.

Where an ERG application has been submitted by a property owner and accepted by the City but not yet approved by City Council (or City Council's designate), and the subject property(s) are transferred to a new property owner, the City may permit the transfer or assignment of the application, and any eligible costs incurred from the original date of application, to the new owner at the sole, absolute and unfettered discretion of the General Manager of Planning and Economic Development. An assignment or transfer may require the assignee or transferee to submit an application, assignment or transfer agreement and/or such other documents as determined by the General Manager of Planning and Economic Development in their sole, absolute and unfettered discretion.

A recommendation on the ERG Application (including estimated eligible costs) will be forwarded to City Council (or Council's designate) for consideration.

A Program application may be denied by City Council if the development that is the subject of the grant application is not supported by City Council notwithstanding any approval of *Planning Act* applications by any other authority including, but not limited to, the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council's decision on the Program application will not fetter its discretion on *Planning Act* applications.

City Council's approval of a Program application can provide for a reduced grant amount so that no grant is payable in respect of any portion of the development that is the subject of the grant application which City Council does not support notwithstanding any approval of *Planning Act* applications by any other authority including, but not limited to, the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council's decision on the Program application will not fetter its discretion on *Planning Act* applications. In such cases, the applicant shall be required to provide additional supporting documentation, at the applicant's own expense, to support the providing of financial assistance in accordance with City Council's approval/direction, including but not limited to, all MPAC post development assessment estimates required by the City.

The applicant participating in the ERG program must enter into an agreement with the City which will be forwarded to the applicant for signature once City Council (or Council's designate) approves the ERG Application. Once the applicant has signed the agreement, the agreement will then be executed by City officials and a copy will be provided to the applicant. The City may require the applicant to register the agreement on title immediately upon execution of the agreement. This agreement will identify events of default whereby upon its occurrence, and for so long as the default continues, the City shall be entitled to remedies including but not limited to ceasing or delaying the release of grant payments without notice to the owner and any obligation of the City to make a grant payment or provide accommodation under the ERG Agreement shall cease. In addition, the City may declare, by notice to the owner, that any grant payments already made to be forthwith due and payable as determined by the General Manager of Planning and Economic Development in their sole, absolute and unfettered discretion.

For sites subject to environmental remediation, the property owner shall submit to the MOECP a signed Record of Site Condition (RSC) prepared by a Qualified Person, and the property owner shall submit to the City an acknowledgement of receipt of the RSC by the MOECP. The City reserves the right to require the submission to the City's satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use. The RSC filed with the MOECP must conform to the latest Ontario Regulation 153/04 standards. Where the submission of a signed RSC is not required under the *Environmental Protection Act* to permit the brownfield redevelopment and provided that the owner of the property within the ERASE Community Improvement Project Area undertakes a Risk Assessment and remediates the property to a standard that would enable the owner to submit a RSC, the property owner may instead provide the City with a Risk Assessment prepared by a Qualified Person for Risk Assessments (as defined in the *Environmental Protection Act* and Ontario Regulation 153/04, as amended), subject to a peer-review by a Qualified Person for Risk Assessments, who is acceptable to the City. This peer-review must certify that the property has been remediated to the appropriate levels for the proposed use in accordance with the Risk Assessment, to the satisfaction of the City. The cost of the peer-review will be an eligible cost.

Once the development project is complete and the property has been reassessed by MPAC, the property owner will be sent a new tax bill. After the property owner has paid in full the new taxes for one (1) calendar year, the City will check to see that the property is not in tax arrears and that the property is still in conformity with the terms of the ERG Agreement. The City will calculate the actual tax increment and grant payment. The City will then issue payment of the grant in the form of a cheque in the amount specified as per the calculation of the actual grant payment. If the property is severed into multiple parcels or lots or if there is a conveyance of part of the property (all referred to as "severed parcels") prior to the first full year of reassessment resulting from the completion of the project, the property taxes used to calculate the grant shall be the sum of the amount which is the lesser of the post-project municipal property taxes or the municipal property taxes payable for the year for which a grant payment is being made, for all the severed parcels but for the initial grant payment means the amount which equals the sum of the post-project municipal property taxes for the severed parcels.

A grant will not be made unless a written request for the grant payment has been made by the owner in the year in which the grant payment is payable. If a written request has not been made for grant payment in the year in which it is payable but all other conditions for its payment have been satisfied, the grant payment shall accrue and be payable together with any other grant payments for which a written request has not been made until such time as a written request has been made and upon such written request the grant payment shall equal the sum of the accrued and previously unrequested grant payments. If a request for the initial grant payment is not made within three (3) years of the year in which the first-years' grant is payable the agreement shall terminate and without limiting the generality of the foregoing the City shall not be obligated to make any grant payments.

Notwithstanding any other term or condition of this program, where an application has been approved by City Council, the application and the associated approval, including the assignment of any eligible costs incurred by the Council approved applicant since the date of application submission, may be assigned to a future intended owner of the subject site(s) only in such instance where the registered owner of the site(s) at the time of Council approval was the City of Hamilton, CityHousing Hamilton Corporation or any other entity wholly owned by the City of Hamilton and where the assignment will further facilitate the remediation and redevelopment of a site and/or support the achievement of strategic City priorities/objectives. It is understood that one effect of such an assignment shall be that the future intended site owner will assume all requirements and

obligations required under the program and become the recipient of any future grant payments which may be eligible under the Program at such time as they become the registered site owner.

A request to assign the application shall be submitted in writing to the City by the existing site owner and the Council approved applicant with accompanying rationale and be subject to approval by City Council in its sole discretion. The future intended site owner shall be subject to all applicable due diligence required under this program, including, but not limited to, applicable corporate title and litigation searches, to the satisfaction of the City prior to the assignment being considered by City Council. An assignment or transfer may require that the assignee or transferee submit an application, assignment or transfer agreement and/or such other documents as determined by the GM of Planning and Economic Development in their sole, absolute and unfettered discretion.