

ERASE REDEVELOPMENT GRANT (ERG) PROGRAM



A. PROGRAM DESCRIPTION

The ERASE Redevelopment Grant (ERG) Program (the Program) is intended to provide tax increment-based Grants towards costs required to remediate historical environmental contamination on brownfield sites in support of their redevelopment/reuse. By providing Grants to mitigate these financial impediments, the Program enables brownfield sites to be viable candidates for redevelopment relative to non-contaminated sites, supports the intensification/infill of existing vacant and underutilized sites, reduces the need for greenfield lands to accommodate future population and employment growth, and generates new municipal property tax revenue through increased property assessments.

As a tax increment-based program, the ERG Program provides Grants relative to the actual increase in municipal property taxes that are generated as a result of a site being remediated and redeveloped. Grants are provided after development completion over a maximum term as described in Table 1 herein or until eligible Program costs contained in Section C have been recovered, whichever comes first.

Grants under the Program may be provided through one of two streams based on consideration of the project as a Brownfield Development or an Enhanced Brownfield Development. For the purposes of this Program, a Brownfield Development is one that remediates the environmental condition of a site and increases the municipal property taxes generated as a result of remediation and redevelopment. An Enhanced Brownfield Development is the same as a Brownfield Development, but which also achieve one of the following additional priorities:

- Successfully obtains a certification for the achievement of environmental sustainability standards from an eligible organization/program;
- Will connect to (or be designed to allow for future connection to) a district energy system where a current or future connection is deemed feasible by the City;
- Is approved for financial assistance under a Canada Mortgage and Housing Corporation (CMHC), Federal, Provincial or City program for the purposes of incorporating new residential rental housing that supports housing affordability within the city.

The prescribed Grant terms under the Brownfield Development and Enhanced Brownfield Development streams are described in Table 1 below:

**Table 1 – Prescribed Grant Parameters:
Brownfield Developments and Enhanced Brownfield Developments**

| | | Brownfield Development | Enhanced Brownfield Development |
|---|--|------------------------|---------------------------------|
| Maximum Eligible Costs Permitted For: | the transportation and disposal of contaminated soil at a licensed landfill facility | 80% | 80% |
| | *In-situ or Risk Assessment remediation methods or the transportation and treatment of contaminated soil so as to enable reuse | 100% | 100% |
| | all other environmental remediation and DSHM eligible costs unless otherwise specified | 80% | 100% |
| Maximum Potential Annual Grant Payments | | 10** | 13** |
| Maximum Annual Grant as a Percentage of Actual Tax Increment Realized | | 80%*** | 100% |

** Eligible remediation methods will demonstrate a reduced overall environmental impact versus dig and dump remediation with such determination being at the sole discretion of the City.*

*** Or until eligible remediation costs have been recovered, whichever comes first.*

****The remaining 20% increase in the annual municipal tax increment not provided to the Applicant under the Brownfield Development stream shall be directed to a City fund for use in the provision of grants and other initiatives under the ERASE Municipal Acquisition and Partnership (EMAP) and/or ERASE Affordable Housing Grant (EAHG) Programs for the duration of the Applicant’s Grant term up to a maximum of 20% of the value of the total Grant to be provided.*

This Program will apply within the Historically Developed Area as defined through the Environmental Remediation and Site Enhancement Community Improvement Project Area (ERASE CIPA) By-law.

Applications under this Program are subject to approval at the absolute discretion of City Council and subject to the availability of funds.

Grants under this Program shall be provided to the Applicant who is the registered owner and who incurred eligible Program costs except where provided for in Section B, paragraph 29.

The City retains the right to assess the reasonableness of costs via audit as well as the determination of cost eligibility under the terms of this Program.

All costs associated with the development and the requirements of this Program are to be borne by the Applicant including construction, design, community benefit charges, development charges, administration fees, appraisals, inspections, Municipal Property Assessment Corporation (MPAC) post development assessment estimates, legal and registration fees, where applicable.

For the purposes of this Program:

- A 'site' shall mean all properties forming part of the development;
- A 'Qualified Person' shall have the same meaning as defined under Ontario Regulation 153/04, as amended; and
- A 'not-for-profit housing development' shall mean the development of a building or structure intended for use as a residential premise developed by:
 - a corporation to which the *Not-for-Profit Corporations Act*, 2010 applies, that is in good standing under that *Act* and whose primary object is to provide housing;
 - a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that *Act* and whose primary object is to provide housing;
 - a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*, 2022, c. 21, Sched. 3, s. 4; or
 - CityHousing Hamilton Corporation.

The Economic Development Division will periodically review the terms and availability of this Program and undertake updates from time to time subject to City Council approval and/or direction.

B. PROGRAM ELIGIBILITY AND GRANT CRITERIA

1. Applications to this Program must meet the goals of the Environmental Remediation and Site Enhancement Community Improvement Plan (ERASE CIP).
2. This Program will apply within the Historically Developed Area as defined through the ERASE CIPA By-law.
3. Notwithstanding paragraph two (2), this Program shall not apply to a site where a designated heritage building has been demolished, on agricultural lands which have been the subject of normal farm practices or where remediation is being undertaken for the purposes of a self-storage facility
4. This Program shall not apply and any grant pursuant to the Program shall not be paid where the development does not generate an increase in municipal property taxes.
5. An Applicant to this Program must be the registered owner of the site with grants only payable to the successful Program Applicant and cannot be assigned or directed to any other payee unless otherwise provided for in the Program Administration section herein.
6. Prior to any application approval and/or Grant payment being provided:

- a. Any outstanding Building Code, Fire Code or property standards orders or any other order applicable to the site by any judicial, governmental or regulatory authority shall be rectified; and
 - b. Any tax arrears on the subject site shall be paid.
7. Environmental sustainability certifications eligible under this Program for consideration of a development as an Enhanced Brownfield Development are: Canadian Home Builders Association (CHBA) Net Zero Home Labelling where Net Zero or Net Zero Ready levels of efficiency are achieved; Passive House Canada; Natural Resources Canada (NRCAN) R2000; Built Green to a Gold or higher standard in the Energy and Envelope category; or Leadership in Energy and Environmental Design (LEED) to a Gold or higher standard or Canada Green Building Council (CaGBC) Zero Carbon Building Standards.
8. The required building components with respect to achieving District Energy Readiness for consideration as an Enhanced Brownfield Development, where such a connection is deemed feasible by the City, shall consist of the following:
 - a. Provision of space for the sole purpose of future equipment and thermal piping;
 - b. Securement of an easement between the mechanical room and the property line to allow for thermal piping; and
 - c. Inclusion of two-way pipes in the building to carry the thermal energy from the district energy network to the section in the building where the future energy transfer station will be located.

The inclusion of such building components shall be subject to confirmation by a Building Inspector or other means at the discretion, and to the satisfaction of, the General Manager of Planning and Economic Development (GM).

9. With respect to remediation of contaminated soil/groundwater, as a condition of Grant payment, the Applicant shall be required to:
 - a. Successfully file a Record of Site Condition (RSC) to the Ministry of Environment, Conservation and Parks (MECP), prepared by a Qualified Person, that conforms to Ontario Regulation 153/04 and applicable Site Condition Standards (SCS) required for the development/use and submit to the City an Acknowledgement of receipt of the RSC by the MECP; or
 - b. Where the filing of an RSC is not required under the *Environmental Protection Act* to permit the development/use notwithstanding the confirmed presence of contamination that would not otherwise meet the applicable SCS for the planned development/use, and provided the Applicant undertakes a Risk Assessment and remediates the site to a standard that would have otherwise enabled the Applicant to submit a RSC, the Applicant may instead provide the City with a Risk Assessment prepared by a Qualified Person which shall be subject to a peer-

review by a Qualified Person for Risk Assessment, chosen by the City and at the Applicant's expense (permitted as an eligible cost). This peer-review must certify that the site has been remediated to the applicable SCS for the planned development/use in accordance with the Risk Assessment and Ontario Regulation 153/04, to the satisfaction of the City.

The City reserves the right to require that the submission of the RSC, MECP Acknowledgement, Risk Assessment and supporting environmental reports and documentation be submitted to the City's satisfaction.

10. The Applicant will be required to enter into a Grant Payment Agreement with the City that sets out the conditions of the Grant. Before any Grant is provided, the Applicant and site shall be in compliance with the Program's requirements and conditions and all additional requirements as set out in the Grant Payment Agreement as determined by the GM.
11. Subject to compliance with the terms and conditions of the Grant Payment Agreement the first-year payment of the Grant is payable when the development is deemed complete by the City in accordance with paragraph 16, the site has been reassessed by the MPAC, after one full calendar year of taxes reflecting the reassessed value have been paid and in accordance with the following (subject to municipal property taxes being paid in full and no pending appeal or confirmation that the assessment will not be appealed):
 - a. For non-condominium residential, commercial and industrial developments, the first year Grant payment shall be regardless of the number of units/floor area occupied; or
 - b. For condominium and mixed-use condominium developments (including commercial, residential or industrial condominiums):
 - i. the first year Grant payment shall require 100% of the condominium units within the development to have been fully assessed. At the Applicant's initiation, a request may be submitted to the City requesting that the first year of the Grant be payable during the calendar year in which 75% of the condominium units have been assessed;
 - ii. the post-development municipal property taxes are calculated by taking the sum of the municipal property taxes of each of the assessed condominium units within the development. The Grant is calculated as a whole, and not calculated on a per condominium unit basis. Where the City has accepted a request that the first year of the Grant be payable during the calendar year in which 75% of the condominium units have been assessed, the Grant payments shall be calculated based only on the 75% of units fully assessed and shall continue to be paid only on these units over the duration of the Grant term without future amendment; and

- iii. If the one-year period following the date of registration of the Plan of Condominium for the development expires after December 31 of the year in which condominium units within the development are fully assessed in accordance with 11.b.i. herein, the Grant will be payable to the Applicant by the end of the first quarter of the year following the year in which the applicable condominium units within the development are fully assessed.
12. Notwithstanding paragraph 11, and subject to written approval by the Director of Economic Development, a percentage of the total Grant payment may be provided for phased/comprehensive/subdivision developments where a portion of the development will meet the aforementioned requirements with such Grant payments being apportioned based on the number of phases completed and the actual accepted eligible costs incurred in each completed phase. Such partial Grant payments shall be limited to those developments where the incremental tax increase for individual phases can be determined to the City's satisfaction.
13. If the Applicant, third party or the municipality has appealed the change in the site's assessment, the Grant will not be advanced until the appeal has been finally determined through the Assessment Review Board or any other permitted means and revised property taxes have been calculated and adjusted. However, in the case of a condominium development or mixed use condominium developments (including commercial, residential or industrial condominiums), the annual Grant may, as determined by the GM in their sole, absolute and unfettered discretion, continue to be payable to the Applicant but reduced on a pro-rated basis if an appeal has been filed with the MPAC by any of the condominium unit owners, whether such owner is the initial purchaser or a subsequent purchaser. The pro-rated holdback will not be released until the appeals are finally determined through the Assessment Review Board or other permitted means, and the revised property taxes have been calculated.
14. In the event of an appeal of assessment/taxes, the total value of the Grant provided under the Program will be reduced by:
 - a. the amount by which municipal property taxes have been cancelled or reduced for the site pursuant to any other City programs and/or tax appeals under Sections 357 and 358 of the *Municipal Act*;
 - b. the amount by which municipal property taxes have been cancelled or reduced for the site pursuant to a Request for Reconsideration; and
 - c. the amount by which municipal property taxes have been reduced or cancelled for the site pursuant to any relief or reduction permitted under any legislation or order of any court or the Assessment Review Board.

15. The pre-development municipal property taxes used for determining the actual municipal property tax increment are those from the most recent tax year which represents the pre-development condition of the site, as determined by the City.
16. For the purposes of this Program, a development shall be deemed to be complete where:
 - a. Required environmental remediation site works and/or mitigation measures have been completed;
 - b. A RSC has been successfully filed with MECP or where a Risk Assessment has been successfully peer-reviewed and accepted by the City in accordance with paragraph nine (g.) b. herein; and
 - c. Occupancy of the development has been approved permitted by the City subject to tenant improvements and, in the case of a condominium development, the Plan of Condominium has been registered.
17. The eligible amount of the increase in municipal property taxes shall exclude special charges, including Business Improvement Area levies and any other charge identified within the Grant Payment Agreement, from the calculation.
18. An annual Grant payment shall not exceed the first year's Grant payment regardless of future increases in the municipal property taxes levied for each year that a Grant payment is to be provided. An annual Grant payment may be less than the first year's Grant payment where municipal taxes levied in a year in which a Grant payment is to be provided results in a lower Grant being paid than that provided in the first year in which case the lesser amount shall be that year's Grant amount.
19. For residential condominium developments, the units must be assessed as residential condominiums. If the development is assessed as multi-residential or new-multi-residential, no Grant will be payable without City Council approval.
20. The annual Grant will be calculated by taking the difference between the post-development municipal taxes (for each year the Grant is payable) and the pre-development municipal taxes as determined in accordance with paragraph 15 herein and applying the percentage based on the applicable application stream and year of the Grant as described in Section A, Table 1.
21. If an Applicant is redeveloping a portion of the site, the Grant will be based on that portion of the site only. The Applicant will be required to provide an estimate of the annual property assessment valuation for the portion of the site subject to the Program application from the MPAC for each year in which a Grant payment is to be provided for calculation purposes.

22. Work on the portion of the development that is at or above grade shall commence no longer than five (5) years and be completed and capable of being fully occupied within 10 years from the date an application under this Program was approved by City Council , and if the development is a condominium development it shall also have a Plan of Condominium registered within 10 years from the date the application under this Program for the condominium development was approved by City Council.

Extensions may be granted for phased/comprehensive developments or due to development specific extenuating circumstances outlined in a formal request submitted by the Applicant to the City prior to the lapsing of the above time periods and considered at the sole discretion of the GM.

23. Approval and the receiving of Grants under this Program shall not preclude eligibility, approval and the receiving of financial assistance for the same site under any other available municipal program with the exception of any other tax increment-based or tax cancellation program which shall not be permitted to be combined with assistance under this Program.
24. A Grant provided with respect to an Enhanced Brownfield Development which achieves the housing affordability priority described in Section A shall:
 - a. Be based on the entire development's tax-increment notwithstanding if the development contains residential units with mixed rent levels and/or is a mixed use development containing non-residential uses; and
 - b. In the event that the terms under which financial assistance being provided under a CMHC, Federal, Provincial or City program have not been complied with by the Applicant or in respect of the development for any reason the following shall apply:
 - i. If Grant payments have already commenced or reached the maximum term under this Program, the difference in the Grant amount provided relative to that which would have been provided a Brownfield Development as prescribed in Section A, Table 1 shall become repayable and any remaining Grant payments, if applicable, shall be provided in the amount prescribed for a Brownfield Development; or
 - ii. If Grant payments under this Program have not yet commenced, the Grant will be provided in the amount prescribed for a Brownfield Development as prescribed in Section A, Table 1.
25. The total Grant provided over the maximum applicable term of this Program shall not exceed the actual eligible costs incurred or the maximum Grant approved by City Council, whichever is less.

26. The City reserves the right to audit the invoices/costs submitted for consistency with the Remedial Action Plan, contractor quote or other work plan submitted in support of the application and for compliance under the Program terms contained herein.
27. A Grant under this Program will be provided to an approved Applicant if all terms and conditions of this Program have been satisfied including payment of all municipal property taxes. Notwithstanding any other term contained in this Program description, in the case of condominium developments, confirmation of payment of all taxes shall be limited to the period up to development completion and for any portion of the development retained by the Applicant after development completion.
28. If a building(s) erected on a site participating in this Program is demolished before the applicable Grant period expires, the remaining Grant to be provided under this Program shall be forfeited.
29. A Grant under this Program shall not be permitted to be assigned except where the Applicant has been approved for a loan under the ERASE Commercial Districts Remediation Loan (ECDRL) Program in which case the Applicant shall be required to assign the Grant under this Program to the City of Hamilton as payment towards their loan under the ECDRL. Any Grant amount under this Program in excess of the total loan outstanding under the ECDRL shall be provided to the Applicant in accordance with the criteria of this Program.
30. In the event of a Change of Corporate Control where the Applicant is a corporation, the Applicant covenants and agrees that in the event that:
 - a. the Applicant fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require or;
 - b. without the written consent of the City first had and obtained:
 - i. the Applicant issues or redeems any of its shares or transfers any of its shares;
 - ii. there is a sale or sales of the shares of the Applicant which result in the transfer of the legal or beneficial interest of any of the shares of the Applicant or;
 - iii. the Applicant amalgamates, merges or consolidates with any other corporation; and

The result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Applicant, or the requested information is not provided, then future Grant payments under the Program shall cease at the absolute discretion of the City.

31. Applications under this Program are subject to approval at the absolute discretion of City Council and subject to the availability of funds.
32. Without limiting the discretion as set out in paragraph 31 herein, City Council, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where, in the opinion of City 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 shall include but not be limited to the following: The Applicant identified on the application form and, if a corporation, any person or entity with an interest in the corporation or any officer or director of the corporation as determined by the City in its sole, absolute and unfettered discretion.
33. Without limiting the discretion as set out in paragraph 31 herein, City Council, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application without further consideration where due diligence undertaken by the City identifies municipal property tax arrears owed on the subject site, non-compliance with respect to Zoning By-law regulations or there exist outstanding property standards, Building Code or Fire Code orders in respect of the subject site or any other judicial, regulatory or governmental order in respect of the subject site.
34. Without limiting the discretion as set out in paragraph 31, herein, City Council, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where there is credible information that the Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that they will not conduct themselves with honesty and integrity in undertaking the activity, operation or business for which a Grant under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this paragraph 34, will be considered to be the corporation, the officers and directors of the corporation and the shareholders and this paragraph 34 shall apply jointly and severally to each of them.
35. Buildings uses and developments shall conform to the City's Official Plan(s), applicable Secondary Plan(s), Zoning By-Laws(s), Site Plan approval and any other applicable and approved municipal policies, by-laws or guidelines (e.g. urban design guidelines) and any other laws applicable to the development.
36. A Program application may be denied by City Council if the development is not supported by City Council notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to, the Ontario Land 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.

37. Approval of a Program application by City Council may provide for a reduced Grant amount such 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 Ontario Land 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 the MPAC post-development assessment estimates required by the City.

C. ELIGIBLE/INELIGIBLE COSTS

Eligible costs under this Program for sites located within the Historically Developed Area consist of the following (excluding HST) but shall exclude in all cases any cost which would have been required for the development regardless of the need to remediate contaminated soil/groundwater and/or abate/remove Designated Substance and Hazardous Materials (DSHM), where applicable:

1. Physical environmental remediation of soil and/or groundwater which includes the cost of any action taken to reduce the concentration of contaminants on, in or under the eligible site required to meet the applicable SCS needed to facilitate the planned development/use and to permit the filing of a RSC by a Qualified Person, including costs of preparing and filing the RSC and Certificate of Property Use (CPU);
2. Clean back fill, grading and compaction to replace contaminated soils, where required;
3. Phase II ESAs, Remedial Action Plans and/or Risk Assessments not reimbursed, or planned to be reimbursed, under the ERASE Study Grant (ESG) Program;
4. Peer-reviews with respect to Risk Assessments where an RSC is not required by the MECP;
5. Installation of environmental and/or engineering controls/works, related to environmental remediation, as specified in the Remedial Action Plan, Risk Assessment and/or CPU;
6. Testing of on-site excess soils for potential reuse but shall not include the excavation, management, transportation or disposal of such soil except where the soil originates from the site and is found to be contaminated;
7. DSHM Survey and/or abatement/removal in accordance with the *Occupational Health and Safety Act* and Ontario Regulation 278/05 (where applicable) on the following sites within the Historically Developed Area:
 - a. Sub-Area 1 - Older Industrial Areas;

- b. Those containing a current/closed institutional use;
 - c. Those containing a building designated under Part IV or V of the *Ontario Heritage Act*; or
 - d. Those being developed for use as a not-for-profit housing development; and
8. In addition, the following costs may also be considered eligible when incurred on a site requiring remediation of contaminated soil/groundwater and/or abatement/removal of DSHM and located in the applicable geographic area identified:
- a. Within the Historically Developed Area:
 - i. 50% of incremental construction costs required to achieve an environmental sustainability certification listed in Section B, paragraph seven (7) herein as well as the following associated soft costs supporting such certification:
 - 1. consultation fees;
 - 2. energy modeling; and
 - 3. certification fees; and
 - ii. 50% of incremental construction costs required to incorporate District Energy Readiness components listed in Section B, paragraph eight (8) herein for developments where a current or future connection is deemed feasible as determined by the City; and
 - b. Within Sub-Area 1 – Older Industrial Areas of the Historically Developed Area:
 - i. Existing building demolition for planned non-residential developments where such costs are being incurred on a private property(s) subject to an application under this Program and where such demolition will support the rehabilitation and reuse of the site;
 - ii. 25% of the cost for the removal, replacement and/or upgrade of capacity for existing on-site infrastructure services (water, sanitary and storm) for planned non-residential developments where such costs are being incurred on a private property(s) subject to an application under this Program and where such upgrades will support the rehabilitation and reuse of the site; and
 - iii. Industrial/Office Reuse Feasibility Study not reimbursed, or planned to be reimbursed, under the ESG Program.

Ineligible costs shall be any cost not identified in this Section or any cost identified above which has been incurred prior to the date an application was submitted under this Program and accepted by the City with the exception of studies which were the subject of a previously

approved ESG Program application. An Applicant shall assume the risk, and bear the sole responsibility, for any cost incurred after an application has been submitted but prior to approval under this Program being received should the application not be approved for any reason.

The City reserves the right to reject any application under this Program that proposes a remediation practice/method which is deemed by City Council, or its delegate, in their sole and unfettered discretion, to have the potential to cause a negative overall environmental impact to a site, area or person. In addition, the City reserves the right to approve an application that excludes costs otherwise eligible that are associated with a remediation practice/method which is deemed by City Council, or its delegate, in their sole and unfettered discretion, to have the potential to cause a negative overall environmental impact to a site, area or person. Furthermore, if after application approval, a remediation practice/method utilized is deemed by City Council, or its delegate, in their sole and unfettered discretion, to be causing, or have caused, a negative overall environmental impact to a site, area or person, the City may reduce or cancel all or a portion of previously eligible program costs prior to or during the grant payment term.

D. DEVELOPMENT CHARGE DEFERRAL OPTION

The payment of Development Charges (DCs) as a condition of development can be a significant factor in determining the feasibility of remediating and redeveloping brownfields as DCs are often required to be paid early in the development process at the same time as costs are being incurred to remediate site contamination in preparation for site development.

As a strategy to further support the feasibility and added cash flow pressures required for brownfield redevelopment, approved applicants under the ERG Program may be provided the option to utilize an ERASE specific deferral of DCs at low/no interest in an amount up to the lesser of:

- The maximum estimated Grant approved by City Council; or
- The maximum Grant estimated to be achieved within the parameters of the Program, as determined by the City, based on the estimated eligible costs and estimated post-development assessment and municipal property tax uplift.

Where a City Council approved ERG Applicant has elected and been approved by the General Manager of Finance and Corporate Services to utilize the ERASE DC Deferral Option, Grant payments under this Program will be directed towards fulfilling the ERASE DC deferral until the deferred DCs have been fully paid.

All Applicants utilizing the ERASE DC Deferral Option will be required to enter into an ERASE DC Deferral Agreement with the City. This Agreement shall contain provisions including, but not limited to, the terms and conditions set out herein and such additional conditions as required by City Council, the City Solicitor or General Manager of Finance and Corporate Services in their

sole discretion. Such agreement may also include the provision of securities that include, but may not be limited to, Letters of Credit, mortgages registered on title and/or personal guarantees as deemed required by the City.

ERASE DC Deferral Agreements will be subject to the applicable, in effect DC By-law and any additional requirements, conditions and agreements as deemed appropriate to affect the Agreement at the discretion of City Council or the General Manager of Finance and Corporate Services.

E. PROGRAM APPLICATION CRITERIA

Potential Applicants shall 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.

A complete Program application shall be submitted to the Economic Development Division prior to the commencement of eligible works that are the subject of a Program application. Required documents and information forming a complete application shall be identified within the Program's application form. The application date for the purposes of the Program will be the date on which City staff have deemed the application complete in their sole discretion.

An application fee is payable upon submission of application. The fee will be authorized through a user-fee by-law passed by City Council. The rate of the fee may be changed from time to time as approved by City Council and will be identified on the Program's application form. Application fees are non-refundable including in the event an application is not approved.

Applications shall include all available environmental studies for the site (Phase I and II ESAs, Risk Assessment, DSHM Survey), a Remedial Action Plan completed by a Qualified Person, contractor cost estimates for environmental remediation and any other potentially eligible works and any other details as may be required to satisfy the City as to the cost of the environmental remediation and any other potentially eligible works and the development's conformity with the objectives of the this Program and the ERASE CIP. The City may also require the submission of a Business Plan for the proposed development.

Applications under this Program will not be accepted if there is an outstanding dispute, proceeding or process including but not limited to: a Request for Reconsideration through the MPAC, an outstanding Assessment Review Board appeal, an outstanding divisional court appeal or an outstanding *Municipal Act* appeal, relating to the assessment of the site or in respect of property taxes related to the site. The Program application will only be accepted once any of the above applicable matters have been finally resolved and the revised (if applicable) property taxes have been calculated.

Applicants may be required to obtain a post-development assessment estimate from the MPAC as part of submitting a Program application. Developments which are the subject of this requirement will be identified in the Program's application form.

F. PROGRAM ADMINISTRATION

Economic Development Division staff will review applications for eligibility and completeness in accordance with the ERASE CIPA, ERASE CIP, the Program terms contained herein and in collaboration with other City departments as required. Acceptance of the application by the Economic Development Division in no way implies Grant approval.

The Site and Applicant will be the subject of due diligence undertaken by the City prior to any recommendation on the application being brought to City Council for consideration and prior to each Grant payment being provided. This will include, but may not be limited to, confirmation of the following: all municipal property taxes are paid and current on the subject site, the site is in compliance with Zoning By-law regulations, that there are no outstanding property standards violations or orders, Building Code violations or orders or Fire Code violation or orders, any violations of law or any orders by any other judicial, governmental or regulatory authority, regarding the subject site or the development on the subject site and that the Applicant is not in litigation with the City. Failure to comply with any of the above will result in an application not being approved or, if the application is approved, non-payment of a Grant under this Program.

Where the development requires approval of a Site Plan, a conditional Site Plan approval shall have been obtained from the City prior to City Council consideration of an application under this Program. Where a conditional Site Plan approval contains conditions which, until satisfied, may impact a post-development assessment of the development including but not limited, requirements to obtain Minor Variances through the Committee of Adjustment, the City may require these conditions to be satisfied prior to City Council consideration of the application. Where no Site Plan is required for the development, City Council's consideration of an application will occur after such time as the Economic Development Division is satisfied that all necessary information has been provided to inform an estimate of the resulting post-development assessment and municipal property taxes.

Where a portion of estimated eligible costs are not yet known, Economic Development Division staff reserves the right to consider bringing forward multiple recommendations respecting the application for City Council consideration as part of a multi-step application process as estimated eligible costs become known.

Where an application has been submitted but not yet approved by City Council and the subject site is sold/transferred to a new 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 GM. 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 GM in their sole, absolute and unfettered discretion. The new 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 GM.

Applications under this Program are subject to approval at the absolute discretion of City Council and subject to the availability of funds.

Developments identified as an Enhanced Brownfield Development shall be required to provide documentation to the City in support of this determination prior to a Grant being provided. Supporting documentation may include, but is not limited to, eligible certificates/accreditations issued by a recognized environmental sustainability organization, a signed declaration of a financial commitment issued for the subject development from the CMHC, Federal or Provincial governments or associated agency and/or City of Hamilton. Applicants who do not submit required documentation prior to the initial Grant payment being provided, the timing of which is described in Section B, may continue to be provided a Grant in accordance with the Grant term and Grant calculation equal to that afforded a Brownfield Development, in accordance with Section A, Table 1, and subject to all the same applicable requirements associated with that classification. If required, documentation necessary to confirm the status of a development as an Enhanced Brownfield Development for the purposes of this Program is obtained after the Grant payments have commenced, the corresponding increase to Grant payments shall commence with the next annual Grant payment and shall not be retroactive.

Approved Applicants shall be required to enter into a Grant Payment Agreement with the City containing (but not limited to) the terms and conditions set out in this Program description.

The City reserves the right to require the submission of any additional documentation or enter into any additional agreements as deemed necessary by the City to ensure the goals and purpose of this Program and the ERASE CIP are met.

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 approved Applicant since the date of application submission, may be assigned to a future intended owner of the subject site only in such instance where the registered owner of the site at the time of City 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 owner will assume all requirements and obligations required under this 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 owner. In such an instance, a request to assign the application shall be submitted in writing to the City by the existing owner and the City Council approved Applicant with accompanying rationale and

be subject to approval by City Council in its sole discretion. The future intended 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 in their sole, absolute and unfettered discretion.

With respect to remediation of contaminated soil/groundwater, as a condition of Grant payment, the Applicant shall be required to:

- Successfully file a RSC to the MECP, prepared by a Qualified Person, that conforms to Ontario Regulation 153/04 and applicable SCS required for the development/use and submit to the City an Acknowledgement of receipt of the RSC by the MECP; or
- Where the filing of an RSC is not required under the *Environmental Protection Act* to permit the development/use notwithstanding the confirmed presence of contamination that would not otherwise meet the applicable SCS for the planned development/use, and provided the Applicant undertakes a Risk Assessment and remediates the site to a standard that would have otherwise enabled the Applicant to submit a RSC, the Applicant may instead provide the City with a Risk Assessment prepared by a Qualified Person which shall be subject to a peer-review by a Qualified Person for Risk Assessment, chosen by the City and at the Applicant's expense (permitted as an eligible cost). This peer-review must certify that the site has been remediated to the applicable SCS for the planned development/use in accordance with the Risk Assessment and Ontario Regulation 153/04, to the satisfaction of the City.

The City reserves the right to require that the submission of the RSC, MECP Acknowledgement, Risk Assessment and environmental reports and supporting documentation be submitted to the City's satisfaction.

Paid Invoices for all eligible costs incurred will be supplied to the City and the Grant will be based on the City's review, satisfaction and acceptance of these invoices and all supporting reports and documentation 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 Applicant, at the City's discretion. The Grant may be reduced or cancelled if the eligible works are not completed, not completed as approved and/or where documentation/invoicing of said costs is not provided to the City's satisfaction. In addition, invoices must be billed to the Applicant approved by City Council.

Once the development is complete, has been reassessed by the MPAC, and after one (1) full calendar year of taxes reflecting the reassessment have been paid, the City will undertake updated due diligence, including, but not limited to, ensuring that the site is not in tax arrears and that the site and development are still in conformity with the terms of the Grant 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 contained in Section A and B herein. If the site is severed into multiple parcels or lots or if there is a conveyance of part of the site (all referred to as severed parcels) prior to the first full year of reassessment resulting from the completion of the development. the municipal property taxes used to calculate the Grant shall be the sum of the amount which is the lesser of the post-development 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-development 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 Applicant in the year in which the Grant becomes payable. If a written request has not be 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.

The City is not responsible for any costs incurred by the Applicant in any way relating to the Program, including without limitation, costs incurred in anticipation of an application approval or Grant being provided.

Applications to this Program not yet approved by City Council shall be subject to any changes to the terms of this Program which are approved by City Council prior to the application being approved.

City Council may discontinue this Program at any time. However, Applicants with approved applications will still continue to receive the Grant subject to meeting the Program terms contained herein.