

**Broadway Park Redevelopment Brownfield Plan**  
City of Ann Arbor Brownfield Review Committee

**Broadway Park Redevelopment Brownfield Plan Staff Report**

**MEETING DATE:** May 29, 2019

**PROJECT:** Broadway Park Redevelopment

**ADDRESS:** 841 Broadway Street

**BROWNFIELD PLAN DATE:** May 20, 2019

**PROPOSED PROJECT:** The applicant is proposing to redevelop a 13.8 acre site located on Broadway Street, with frontage on the Huron River. Approximately 8.7 acres of the site will be reserved for outdoor recreation space. The site was historically a manufactured gas plant by MichCon, now DTE. Roxbury has a purchase agreement with DTE and is proposing a multi-use redevelopment with residential, commercial, hospitality, and food and beverage. The 104-unit residential use will consist of four, six-story buildings that will provide both for-sale townhomes and condominiums. A two-story parking deck is also proposed, 50% of which will be available to the public. The final details of proposed land uses will be included as part of the Planned Unit Development application. The northeast corner of the property will be sold as a “pad” for a nine-story hotel, and restaurant. Additional pads will be sold for supplemental commercial uses.

There will be publicly accessible, multifunctional green space with 8.7 acres of the currently unused, environmentally impacted, vacant land north and west of the proposed buildings that will be transformed into outdoor recreation space. A 7,800 s.f. pavilion, river trail, and pedestrian bridge to the Border to Border Trail are included. River access will be provided via areas for canoes, kayaks, etc. These amenities will be managed by a Conservancy, in perpetuity, to be established.

Private investment by the applicant is estimated at \$70,500,000, while additional investment by others of the hotel, restaurant, and commercial space will increase total investment to an estimated \$100,000,000.

The proposed Brownfield Plan will use Tax Increment Financing to reimburse the developer for both Environmental and Non-Environmental Eligible Activities, estimated at \$9,336,999 and (capped at) \$8,000,000, respectively. The total capture period is estimated at 12 years, and includes 7% of annual TIF capture to be deposited in the County’s Local Brownfield Revolving Fund, projected to be \$1,352,047. Some of this annual 7% capture may instead be utilized for County Administrative expenses, as needed and at the discretion of the County Brownfield Authority.

As required by Act 381, 50% of the captured State Education Tax will be captured and remitted to the State of Michigan State Revolving Fund.

# Broadway Park Redevelopment Brownfield Plan

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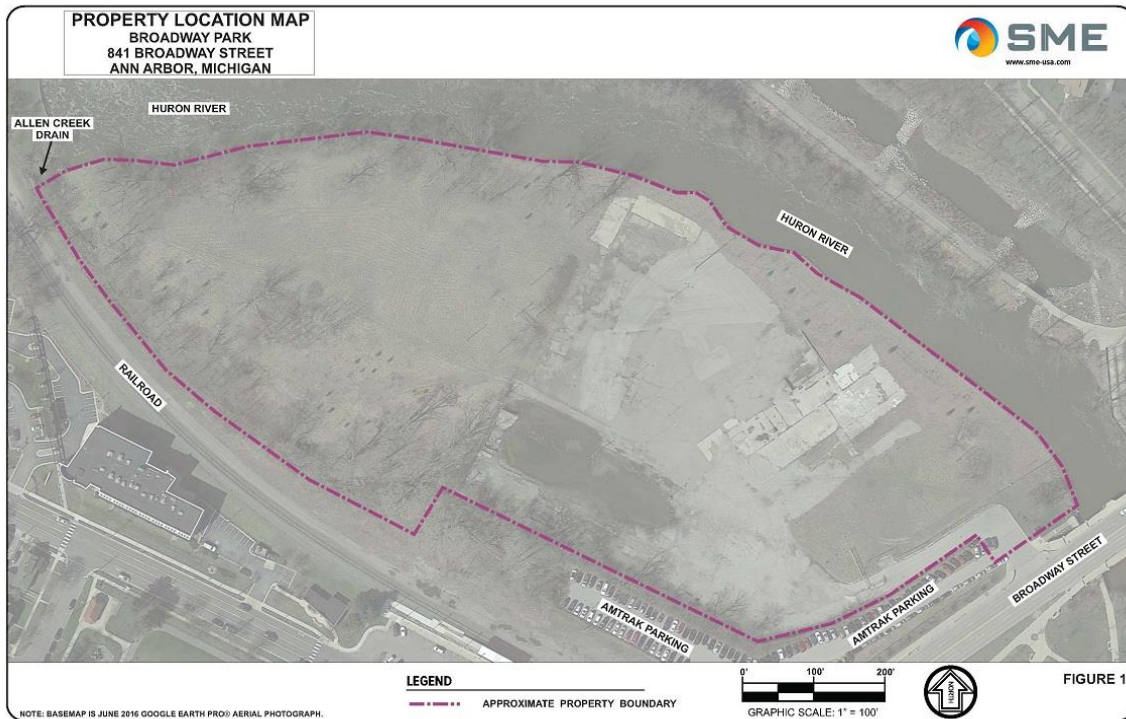


Figure 1 – Site Location

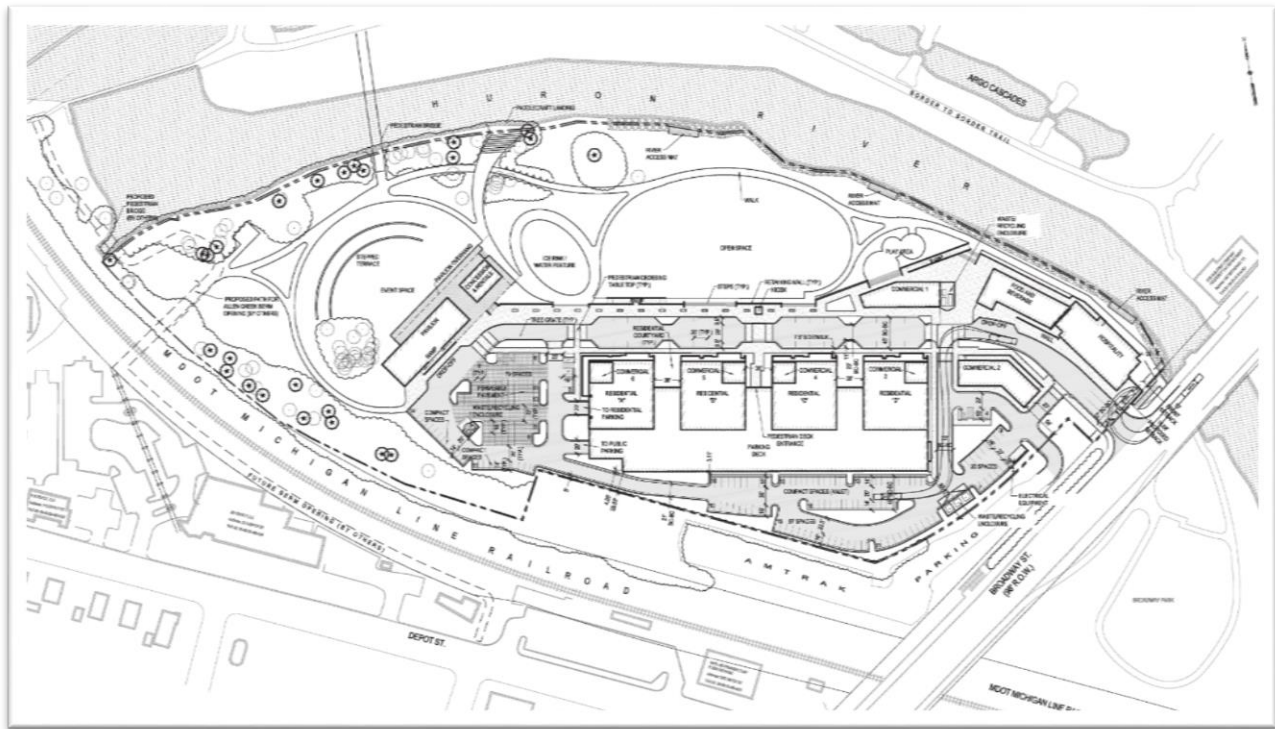


Figure 2 – Conceptual PUD Plan

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**ELIGIBILITY:** The property is eligible for Brownfield Tax Increment Financing (TIF) as it meets the definition of a Facility, pursuant to Part 201 of Michigan’s Natural Resource and Environmental Protection Act (PA 451 1994, as amended). Soil and groundwater on the Property is contaminated with multiple hazardous substances at levels above established criteria.

**BROWNFIELD PROCESS:** The City of Ann Arbor participates with the Washtenaw County Brownfield Redevelopment Authority, and has successfully partnered on numerous previous Brownfield projects. The Brownfield Plan approval process is generally as follows:

1. *City Brownfield Review Committee makes recommendation on Brownfield Plan*
2. *City Council Public Hearing and approves Brownfield Plan*
3. *County Brownfield Authority makes recommendation on Brownfield Plan*
4. *Washtenaw County Board of Commissioners notifies taxing jurisdictions, publishes notice of Public Hearing, holds Public Hearing and Adopts the Plan.*

The Brownfield Plan approval at the local level only secures the capture of local taxing millages in reimbursement of Eligible Activities. In order to secure capture of state school millages, the developer will prepare an Act 381 Work Plan, on behalf of the County Brownfield Authority. The Work Plan will be submitted to the Michigan Department of Environment, Great Lakes, and Energy (EGLE, formerly MDEQ) and the Michigan Economic Development Corporation (MEDC), approvals by both of which will allow the capture of State School taxes towards financing of Eligible Activities.

#### **BROWNFIELD CONDITIONS:**

From 1899 until the 1940s the Property was a manufactured gas plant, owned by the Michigan Consolidated Gas Company (Michcon, and later DTE), which was the source of significant environmental contamination on the site. Volatile organic compounds, semi-volatile organic compounds, metals, and other organic and inorganic compounds have been documented in the soil and groundwater at concentrations greater than established residential and nonresidential use criteria promulgated by the Michigan Department of Environment, Great Lakes, and Energy (EGLE). In addition, (non-aqueous phase liquid in the form of) coal tar is present at the Property.

A “Response Activity Plan” (RAP) dated February 19, 2018 was submitted to the MDEQ by SME, the Environmental Consultant for the developer, and a link will be provided to the BRC to the document. The RAP was conditionally approved by the MDEQ in an October 2, 2018 letter (link provided). As stated in section 1.4 A of the RAP:

*The purpose of the RAP is to present: 1) the cumulative results of environmental assessments of soil and groundwater on the Property, 2) evaluations of the exposure pathways and risks to human health and the environment posed by identified environmental conditions, and 3) the response activities proposed to mitigate those risks.*

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It's important to distinguish proposed actions of the developer to address brownfield conditions in order to redevelop the property, from those responsibilities of the Liable Party, DTE Energy. The developer cannot include response actions in the RAP, or funded through TIF, that are the responsibility of the Liable Party. The City, County and EGLE will coordinate all response activities on the site to ensure Liable Party activities are separated from TIF-supported activities.

### **LIABLE PARTY STATUS OF DTE ENERGY:**

The site owner, DTE Energy, is a recognized Viable Liable Party for the brownfield conditions of the property, as the entity that caused the brownfield contamination on the site. Section III, M. of the Brownfield Plan provides information on DTE's previous environmental clean-up activities, estimated at \$6 million, as well as additional required remediation activities, at a cost of approximately \$250,000 - \$350,000. The additional activities include removal of more contaminated soils, and continued monitoring of previous clean-up activities. These Liable Party responsibilities are not included in the Brownfield Plan and will not be reimbursed under the Plan. A more detailed description of historic remediation activities can be found in Section 2.1 of the Response Activity Plan dated February 19, 2018, conditionally approved by the MDEQ on October 2, 2018. As a Liable Party, DTE is only responsible to remediate the site to "industrial" standards. The proposed buyer and developer is proposing residential and recreational uses, which require a higher clean-up standard according to State environmental standards.

It's the City's understanding that there are several additional open Liable Party questions that will need to be addressed between the owner and EGLE. These include verification or identification of a method to prevent free product in the subsurface from leaving the site, and possible contaminated soil river sediment downriver that originated from the site.

### **CITY TECHNICAL REVIEW OF REDEVELOPMENT STRATEGY:**

The City requested a technical review of the proposed Plan and redevelopment approach by TetraTech, and environmental consulting firm that performs other environmentally related analysis for the City. Please refer to the attached review letter dated April 2, 2019 to Derek Delacourt, City Community Services Administrator, from Patti McCall, of TetraTech. This review was done of an earlier version of the Brownfield Plan but is still valid. The current Plan, dated May 20, 2019, includes minor revisions and the cap on Non-Environmental Eligible Activities, and an updated base Taxable Value from \$569,000 to \$570,000. The TetraTech letter also included review of a Response Activity Plan, dated February 19, 2018, submitted by the developer to the MDEQ.

TetraTech summarized the redevelopment approach proposed by the developer, and included eight (8) recommendations, most of which will be addressed with the submittal of the Act 381 Work Plan. Staff requested the developer provide responses to the recommendations, which were received and included in a memo to the City from SME, the environmental consultant for the developer, dated May 10, 2019.

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**PROPOSED ELIGIBLE ACTIVITIES:**

Act 381 allows projects within the City of Ann Arbor to use TIF to finance both Environmental and Non-Environmental Activities. Below is a summary of Eligible Activities the developer is seeking to be reimbursed for using Tax Increment Financing.

<b>Environmental Activities (Approved by EGLE)</b>	<b>Amount</b>
Baseline Environmental Assessment Activities	\$ 14,500
Due Care Activities – Planning, Coordination, Investigation and Documentation	\$ 595,000
Due Care Activities – Design and Construction, including soil remediation and vapor mitigation	\$7,449,564
Brownfield Plan and Work Plan Preparation	\$ 90,000
15% Contingency	\$1,187,935
<i>Environmental Sub-Total</i>	<b><i>\$9,336,999</i></b>
<b>Non-Environmental Activities (Approved by MEDC)</b>	
Demolition	\$ 200,000
Public Infrastructure Improvements (streetscapes, water/sewer, public recreation, surface and deck parking, ped bridge, dam repairs)	\$ 8,591,857
Site Preparation	\$ 553,950
Brownfield Plan and Work Plan Preparation	\$ 45,000
15% Contingency	\$ 1,401,871
<i>Non-Environmental Sub-Total</i>	<b><i>\$10,792,678</i></b>
City-Recommended Cap on Non-Environmental Activities	<b>\$ 8,000,000</b>
<b>Grand Total Developer-Reimbursable Activities</b>	<b>\$17,336,999</b>

In addition to the above developer-reimbursable costs to be financed with TIF, 7% of annual TIF capture, or a total of \$1,352,047 is proposed for deposit Washtenaw County’s Local Brownfield Revolving Fund (LBRF), a portion of which may be captured by the Authority to fund Administrative costs of the brownfield program. The LBRF fund is utilized to support Brownfield redevelopment projects in the region. Finally, \$1,075,348 will be captured for the State Revolving Brownfield Fund, which is the capture of 3 mills of the State Education Tax required by Act 381. These funds are distributed to the MDEQ and MEDC to support administrative operations of those agencies for TIF projects.

The Brownfield Plan projects 12 years of TIF capture to fully reimburse all costs contemplated in the Plan. In reference to the footnotes to the TIF Tables, a 3-4 year build-out period is assumed, during which the full Taxable Value will be realized. A 2% increase in annual Taxable Value is assumed after project build-out.

Figure 3, on the next page, provides Table 1 from the proposed Brownfield Plan, which shows proposed Environmental and Non-Environmental activities to be financed through TIF:

ELIGIBLE ACTIVITIES	TOTAL ELIGIBLE COST
<b>ELIGIBLE DEPARTMENT SPECIFIC (EGLE) ACTIVITIES<sup>(1)</sup></b>	
<b>BEA Activities<sup>(2)</sup></b> Phase I ESA BEA Report	\$14,500
<b>Due Care Activities</b> Due Care Planning and Coordination Due Care Investigations Due Care Plans and Documentation <sup>(2)</sup> No Further Action Report <sup>(2)</sup> Security Fence Remediation of Direct Contact Issues in Public Space Management and Disposal of Contaminated Soil Management and Disposal of Contaminated Dewatering Effluent Soil Stabilization Vapor Mitigation Controls Human Direct Contact Mitigation - Developed Areas Dust, Runoff, and Track-out Control Prevent Exacerbation of Contaminated Groundwater - Utilities Prevent Exacerbation and Human Exposure - Utilities Due Care Design, Engineering, Management and Coordination Construction General Conditions Field Monitoring and Management - Environmental	\$8,044,564
<b>Act 381 Work Plan and Implementation<sup>(2)</sup></b>	\$45,000
Subtotal Department Specific Activities	\$8,104,064
Contingency (15%)	\$1,187,935
<b>Total Department Specific Activities</b>	<b>\$9,291,999</b>
<b>ELIGIBLE NON-ENVIRONMENTAL (MSF) ACTIVITIES<sup>(1)</sup></b>	
<b>Demolition Activities</b> Remaining Pavements, Asphalts, Slabs, Utilities, and subsurface structures	\$200,000
<b>Public Infrastructure Improvements - Public Right of Ways</b> Paving and Streetscapes Traffic Control Utility/Power Pole Relocation Municipal Water Main Upgrades Sanitary Sewer Improvements Geotechnical Engineering Architectural and Engineering Design, and Surveying/Staking Services Site Construction Management Construction General Conditions	\$1,230,150
<b>Public Infrastructure Improvements - Public Area</b> River Trail Paddle Craft Launch Pedestrian Bridge over Huron River Event Flex Parking Public Improvements to Broadway Park East Geotechnical Engineering Architectural and Engineering Design, and Surveying/Staking Services Site Construction Management Construction General Conditions	\$2,329,454
<b>Public Infrastructure Improvements - Other</b> Infrastructure Repairs - Argo and Geddes Dams Parking Structures (50% Public) River Street Construction Geotechnical Engineering Architectural and Engineering Design, and Surveying/Staking Services Site Construction Management Construction General Conditions	\$5,032,253
<b>Site Preparation Activities - Public Area</b> Geotechnical Engineering Design, Engineering, and Surveying Services Site Construction Management Construction General Conditions	\$233,020
<b>Site Preparation Activities - Developed Area</b> Clearing and Grubbing Site Grading and Land Balancing Permanent Retaining Wall Geotechnical Engineering Design, Engineering, and Surveying Services Site Construction Management Construction General Conditions	\$320,930
<b>Contingency (15%)</b>	\$1,401,871
<b>Act 381 Work Plan and Implementation<sup>2</sup></b>	\$45,000
<b>Total Non-Environmental Activities</b>	<b>\$10,792,678</b>
<b>BROWNFIELD PLAN</b>	
<b>Brownfield Plan</b>	<b>\$ 45,000</b>
<b>TOTAL ELIGIBLE ACTIVITIES<sup>(3)</sup></b>	<b>\$ 17,336,999</b>

Figure 3 – Table 1, Eligible Activities

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**FINANCIAL ANALYSIS:** City of Ann Arbor Financial & Administrative Services staff completed a Tax Increment Finance Analysis on February 5, 2019, and revised the analysis on May 20, 2019 (attached). The purpose of this review is to ensure the requested TIF financing of Eligible Activities will address a financial gap in the ability for the development to realize a reasonable return. The developer submits detailed Pro-Forma and financial information for analysis by the Financial and Administrative Services Unit.

The Analysis was conducted of an earlier version of the Brownfield Plan that included \$21 million in proposed Eligible Activities. The result of the financial analysis was to recommend a cap on the Non-Environmental Activities, from \$11.5 million to \$8 million, which will ensure a return of approximately 9% to the developer. As a result, the Brownfield Plan was updated to reflect the \$8 million cap on Non-Environmental Activities.

The Financial Analysis also indicates consideration should be given to limiting the TIF capture to 10 years, or reducing the TIF and extending the capture period. Additionally, the Analysis recommends no funding for County Administrative fees or developer Interest, and limiting LBRF capture to 1 or 2 years.

Finally, the Financial Analysis recommended that the Brownfield Plan state that, should the MEDC or EGLE not approve any costs, the burden shall not shift to local taxes. Please note that the last paragraph of Section B. of the Brownfield Plan includes this language.

**STAFF SUMMARY:** The subject property is significant for the community in various ways. While once providing critical gas supply to the City, the site has been vacant for many years, blighted, and threatening to public health and the environment. An opportunity is now presented to better utilize the site, which is well-situated on the river, and near important points of interest such as U of M hospital and the downtown. As it currently sits, the site detracts from the neighborhood and does not contribute to the area's well-being. Significant community benefit would be derived from the redevelopment of the site, where the proposed benefits have been identified in numerous City Plans. The public use portions of the development will be constructed by the developer, most, but not all, of whose costs will be reimbursed over time with Tax Increment Revenues captured on the site.

The primary purpose of Brownfield financing is to "level the playing field" between a comparable greenfield site and the subject brownfield site. The brownfield incentives are available to facilitate the redevelopment of sites that otherwise may not be developable. Based on the financial review, brownfield incentives appear justified to ensure the project moves forward. However, this assumes a recommended reduction (cap) of reimbursed Non-Environmental costs to maximum \$8 million, to ensure the developer does not realize excessive returns.

The project details and level of brownfield support has been negotiated between City staff and the developer for over a year, and Staff is looking for Committee feedback and input at this time. Below are the factors that staff recommends the BRC members consider and discuss in order to make a recommendation to the full Council:

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- A. The proposed TIF request at this time is \$17.4 million, which is 25% of the proposed private investment by the applicant. This is considered high, in comparison to previous projects. However, it may be justified given the many unique factors and challenges in redeveloping this site, including significant contamination and extensive public facilities being proposed, while all still ensuring a reasonable return by the developer.
- B. A financial analysis concluded that the \$17.4 million in Eligible Activities, if Non-Environmental Eligible Activities are capped at \$8 million, would result in a reasonable return on investment to the developer.
- C. A viable Liable Party exists, DTE Energy, who is responsible for all of the contamination on the site. Significant remediation has been undertaken by DTE, and additional clean-up and monitoring will be required of DTE by EGLE. However, are these actions sufficient to adequately fulfill DTE's responsibilities to address its part in contaminating the site for decades? How will EGLE and the Liable Party address the additional open questions of whether downriver impacted river sediment originated from this site, and ensuring free subsurface product from the development site does not impact the river in the future?
- D. The Liable Party is only responsible for managing the site in accordance with applicable Due Care requirements, and remediating the site to industrial (lower) standards. In theory, DTE could take minimal actions and fence off the site and leave it vacant in perpetuity. The Brownfield activities will help fund activities that will increase the level of clean-up to higher, residential/recreational standards, which is technically not the legal responsibility of DTE. Given the City's desire for redevelopment of the site that is not industrial, and that will contribute more to the area, the Committee might discuss whether the proposed level of brownfield incentive is necessary to ensure the site will be ultimately used in a way that meets the community's goals.
- E. There are significant public benefits to the proposed development that should not be overlooked. These include an 8 acre public outdoor recreation area including a large public pavilion, surface parking, river sports access, paved riverside trail, a pedestrian bridge over the river connecting to the Border-to-Border trail, and funding for repairs to nearby dams. Although these costs will largely be reimbursed through brownfield TIF, the positive benefits of having the public uses developed as part of the overall development should be considered.

Finally, should the BRC be inclined to move the project to City Council with a recommendation, the following additional findings should be made:

- 1. The BRC make a determination that the proposed Eligible Activities are reasonable and appropriate.
- 2. The BRC concurs that the incentive is necessary to close a financial gap in the



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feasibility of the project.

3. The BRC finds that the previous remediation work, and proposed remaining Liable Party activities, seem reasonable, considering the history of environmental impacts on the site and with the additional Liable Party actions EGLE is requiring.
4. The BRC should consider making a condition of any approval that the site owner/Liable party work diligently with EGLE to address the open issues related to downriver sediment originating from this site, and ensuring free subsurface product does not impact the river.
5. Several recent Brownfield Plans have been limited in the maximum number of years for reimbursement. The BRC should consider whether a limit on this Plan is appropriate, as recommended by the Financial & Administrative Services Tax Increment Finance Analysis.
6. Staff recommends that County LBRF/Admin capture be included in all city Brownfield Plans. County Brownfield Authority policy is that all Brownfield projects in the region include capture for LBRF and Administrative costs, which ensures the long-term viability of the brownfield program, and provides additional brownfield redevelopment resources. The City, and other municipalities, have previously included these costs in all Brownfield Plans. Capturing these additional costs leverages City millages in capturing additional millages otherwise unavailable, which will more quickly enhance local redevelopment efforts.

Staff looks forward to discussing this project further with the Committee.

Derek Delacourt  
Community Services Administrator

#### **List of attachments:**

- [5-20-19 Brownfield Plan](#)
- [5-20-19 Tax Increment Finance Analysis](#)
- [2-19-18 Response Activity Plan](#)
- [4-2-19 TetraTech Technical Review of Brownfield Plan](#)
- [5-10-19 SME Response Letter to TetraTech Technical Review](#)