



THE CITY OF NEW YORK

GUIDELINES FOR CAPITAL FUNDING REQUESTS FOR NOT-FOR-PROFIT ORGANIZATIONS

INTRODUCTION

Although the City of New York (the “City”) has compelling needs for capital projects that improve upon property owned or leased by the City, under certain circumstances and to further specific City purposes, the City on occasion may wish to appropriate City capital dollars to not-for-profit organizations for particular capital projects for a City purpose on property neither owner nor leased by the City. As with all City capital projects, these non-City capital projects must serve City purposes, as required by the State Constitution, including serving a defined City purpose for the life of the bonds that the City must issue to finance them. Appropriations for non-City capital projects are made only after the recipient organization fully demonstrates the capacity to comply with all legal requirements, including the requirement that the project be used for a City purpose, the requirements of the City Charter and the State Local Finance Law, the requirements of the directives of the City Comptroller, and the requirement that the City have a sufficient interest in the project that it finances to ensure that the project will be used for a City purpose for the life of the bonds issued to finance it. In addition, before an appropriation is made, not-for-profit organizations must demonstrate the financial and administrative ability to complete the project and support and operate it for the life of such bonds.

These guidelines describe the process used by the City when considering the appropriation of capital funds to not-for-profit organizations. Further, these guidelines describe the process on how to implement and administer a project with City capital funds. They are intended to ensure that all non-City capital projects serve legitimate City purposes and greatly increase the likelihood that non-City capital projects for which City funds are appropriated may be carried out.

All requests for City funding must include submission of a Capital Funding Request Form for Not-for-Profit Organizations (“Request Form”). Please carefully review these guidelines prior to submitting a Request Form.

These guidelines are intended solely to assist prospective funding applicants by providing a general summary of current standards with respect to non-City capital projects. However, these guidelines do not establish rules and are not intended to be a comprehensive description of all standards, procedures and legal requirements governing such funding. Please be further advised that these guidelines are not binding upon the City and are subject to change at any time. Funding awards will be made at the sole discretion of the City. The City may reject any and all requests for funding, including those involving projects that are capitably eligible. Furthermore, an appropriation of funding by the City

does not guarantee that a recipient will be entitled to receive such funding. Organizations may only receive funding on a reimbursement basis; such reimbursement will occur only upon the City's determination that the recipient has complied with all standards, procedures and legal requirements governing such funding. These guidelines do not apply to New York State or Federal housing programs.

BASELINE STANDARDS FOR CAPITAL FUNDING

Not-for Profit Status. All recipient organizations must be not-for-profit organizations.

City Operating Contract. Recipients of City capital funding for acquisition, construction or reconstruction of real property (including fixtures) must have a separate, pre-existing contract with the City for operating funds in the current fiscal year (i.e., the fiscal year in which the Request Form is submitted) and the preceding two fiscal years in an annual amount of at least \$50,000 in each such year. Recipients of City capital funding for acquisition of personal property must have a contract with the City for operating funds in the current fiscal year (i.e. the fiscal year in which the Request Form is submitted) of at least \$25,000. Cultural projects agreed to in consultation with the City's Department of Cultural Affairs may receive capital funds although they have no operating contract with the City. Hospitals and clinics may receive capital funds for equipment purchases although they have no operating contract with the City.

Capital Asset. City capital funds may only be used for capital assets pursuant to Generally Accepted Accounting Principles and the directives of the City Comptroller. The significant elements of such principles and directives are the following:

- A capital project for personal property must cost at least \$35,000. Any items that do not serve the same logical purpose and are not physically connected are considered separate projects, each of which must meet the minimum cost threshold. Surface treatments such as carpet and paint may not be included in meeting the \$35,000 minimum threshold. The 15% contingency and the 2.5% administrative fee, each described below, may not be included in meeting the \$35,000 minimum threshold.
- However, the initial outfitting of a defined area that has been newly acquired, leased or constructed or is the subject of a comprehensive upgrade or betterment can be capially eligible. In the case of an initial outfitting, each item must have a minimum cost of \$110 and must be ordered within six months of the first use of such area.
- Lease costs will not be deemed capital under any circumstances.
- Maintenance, demolition, fundraising, and title insurance may not be paid for with City capital funds.
- Interest may not be paid for with City capital funds. Repayment of principal is only eligible to the extent the loan relates to an eligible capital project and was taken out after the date of the City appropriation in anticipation of repayment with City funds. Soft costs such as design costs will be capially eligible to the extent they are necessary and incidental to a project.

Useful Life. The City, in its sole discretion, will assign a period of probable useful life to the project based on engineering estimates and the requirements of the New York State Local Finance Law. That period will also correspond to the period of time during which the City will be required to repay the funds that it must borrow in order to finance the project. The project must have a useful life of at least five years in order to be eligible for City capital funds. Most construction projects will have longer useful lives.

City Purpose. Projects must be for a defined City purpose, which should be thoroughly explained in the Request Form. Prior to the distribution of City capital funds, a recipient will be required to enter into legal documents including a covenant (the “City Purpose Covenant”) requiring, among other things, that each asset financed with City capital funds be used for such defined City purpose for its entire useful life. The required use of the project pursuant to the City Purpose Covenant will be based on the particular City purpose that is being served by the project. At a minimum, the City Purpose Covenant will require that the asset be used by a not-for-profit organization for front-line services that are made directly available to residents of the City without discrimination. City capital funds may not be used for back office or administrative programs, unless the funds are for an integrated building where administrative space is less than fifty percent of the total space and the City funds are applied pro-rata to the entire building and the fit-out thereof (provided, however, that provision does not apply to cultural projects agreed to in consultation with the City’s Department of Cultural Affairs). The City Purpose Covenant will be in the form of a restrictive covenant that runs with the land (in the case of real property, including fixtures) or a use agreement/security agreement (in the case of personal property). In all cases, there may be no mortgages or other liens on the property unless they are subordinated to the City Purpose Covenant prior to the distribution of City funds. There also must be no current intention to transfer the asset to another party, by sale, lease or otherwise. Any unanticipated transfers will subject transferees to the restrictions of the City Purpose Covenant. Recipients may not repay City funds in order to remove restrictions from the property.

Minimum Project Contribution. The City contribution to the acquisition, construction or reconstruction of real property must be at least \$500,000. The 15% contingency and the 2.5% administrative fee, each described below, may be included in meeting the \$500,000 minimum threshold.

Maximum City Contribution. The City may fund 100% of equipment projects. However, the City contribution to a project involving the acquisition, construction or reconstruction of real property may not exceed 50% of the total cost of a project of \$2 million or more or 90% of a project costing less than \$2 million; provided, however, that this provision does not apply to cultural projects agreed to in consultation with the City’s Department of Cultural Affairs. Contributions from recipients for project costs must be fully funded with available cash, commitment letters from lenders willing to accept a subordinate lien position and/or reasonable fundraising plans (with cash in-hand before any City funds are distributed). The non-City portion of the funding may come from any source, including the organization’s funds or other governmental sources. Items that are not eligible for City capital funding but that are essential elements of the project must be reflected as paid for with non-City funds in the project budget. The 15% contingency and the 2.5% administrative fee, each described below, may be included in meeting these threshold.

All Projects Will Be Subject to a 2.5% Administrative Fee by the City Agency Administering the Project. The 2.5% administrative fee will be based on total amount of the City appropriation and will be deducted by OMB from the total appropriation available for the project i.e., it will not be available for use by the recipient organization. The 2.5% administrative fee will not be available to pay cost overruns.

All Projects Must Have a 15% Contingency Built In. The 15% contingency will be based on the total amount of the City appropriation. The recipient organization will be responsible for all cost overruns that exceed the 15% contingency. The City will also require that the overall project contain a 15% contingency (i.e. that a 15% contingency also be built in for costs funded by non-City sources).

Funds Will Be Made Available Only on a Reimbursement Basis. Please note that funds will be paid only as reimbursements upon requisition by the recipient. Requisitions must include invoices along with proof of payment of those invoices in order to be reimbursed. It will be the responsibility of the recipient to advance funds from its own sources and provide proof of payment prior to reimbursement from the City for eligible costs.

The City Will Reimburse Only for Eligible Costs Incurred After the Date of the City Appropriation. Expressions of intent to fund a project are not conclusive until an appropriation has been made through the City's legislative process.

Direct Use By Funding Recipient. All funds must be for property that will be used directly and solely by the not-for-profit organization applying for the funds at the location stated in the Request Form. Requests for funding will be rejected if they are made by one not-for-profit organization on behalf of another not-for-profit organization or for property that will be used at the location of another not-for-profit organization.

Operating Budget and Audited Financials. Applicants must demonstrate an operating budget sufficient to support the project on an ongoing basis. Audited financials must be provided showing a history of operations and the wherewithal to support the ongoing operation of the project for a City purpose.

Leased Property. The City will not fund improvements to property that is not owned by the organization designated to receive the City funds, with the following exceptions. The City may fund leasehold improvements to senior centers provided that (i) the recipient provides documentation from its landlord that the landlord will agree to the recordation of the City Purpose Covenant on its property, (ii) there are no liens or mortgages on the property, (iii) the senior center's lease is at least as long as the useful life of the improvements and (iv) the senior center has the clear ability to fulfill its obligations under the lease until its expiration. The City may also improve property that is owned by New York State or the Federal Government, or affiliates thereof, provided that they have a demonstrated interest in keeping the project operating for a City purpose for its useful life. The City may also improve property leased by cultural organizations, provided the recipient provides documentation from its landlord and any lienholders that they will agree to the recordation of the City Purpose Covenant on its property in a senior position.

Legal Requirements, Licensing/Zoning/Building Codes. Recipient must demonstrate that the project will comply with all applicable Federal, State and local laws. No funds shall be provided to projects that support political activity, that conflict with the

requirements of the First Amendment, that fail to meet access requirements, or that otherwise violate the laws of the United States, the New York State Constitution and other State laws, or local laws, rules or regulations, including all those concerning zoning, building or licensing. It is the responsibility of the applicant, not the City, to identify all such zoning, building or licensing requirements and to ensure compliance with them and with all other applicable laws.

Failure to Comply with Past City Agreements. The City will not fund recipients that have not complied with prior agreements with the City. Such compliance may be cured to the satisfaction of the City.

Private Schools. No funding will be provided to private elementary or secondary schools, except schools where one-hundred percent of the student body consists of special education students with disabilities whose tuition costs are covered by the New York City Department of Education, provided that any such school is not located in the building of another school. Only schools that are approved by the New York State Education Department for the provision of services to students with disabilities will qualify for funding, and the funding of such schools must comply with all other requirements. This shall not prohibit the appropriation of capital funding to broad-based programs that direct aid to students, provided that such funding complies with all applicable laws.

CONTRACT REQUIREMENTS.

The contract to be entered into with the recipient organization will reflect the following significant terms, among others:

- In the case of acquisition, construction or reconstruction of real property (including fixtures thereto) a declaration of restrictive covenant constituting the City Purpose Covenant (as further described above) will be recorded against the recipient's property and will run with the land for the useful life as determined by the City.
- In the case of acquisition of personal property, a security agreement will be entered into requiring that the property be used in compliance with the City Purpose Covenant. UCC-1 forms will be filed reflecting this security agreement with respect to non-vehicular moveable equipment. DMV Notices of Lien will be filed reflecting this security agreement for vehicles.
- For construction projects managed by the City's Department of Design and Construction ("DDC"), the recipient organization must bid and award sub-contracts for the proposed construction project in accordance with New York State General Municipal Law Section 101 (also know as the Wicks Law), i.e. they must be bid with separate specifications for HVAC, electrical and plumbing trades, and award separate contracts for HVAC, electrical and plumbing trades.
- The New York State prevailing wage laws apply to all construction contracts and the recipient organizations must ensure that its subcontractors and consultants pay their staff and laborers in accordance with prevailing wage requirements, titles, and pay rates, consistent with Section 220 of the Labor Law.
- New York City Green Buildings Standards may apply. Please refer to New York City Charter Section 224.1 and Title 43, Chapter 10 of the Rules of the

City of New York for additional information. As a general matter, such standards are applicable to projects with at least 50% City funding or with City funding of at least \$10 million.

- Recipients must comply with all applicable procurement requirements including, among other things: maintenance of insurance; Vendor Information Exchange System (“VENDEX”) questionnaires; multiple bidding requirements, subcontracting limitations.

FUNDING PROCESS

Submission of Request Forms. Applicants must submit to the relevant elected official a complete Request Form. Incomplete Request Forms will not be reviewed. Please be advised that if funds are ultimately appropriated, recipients may not change projects to a different location or type of work without submission of a new Request Form and a re-appropriation of funds for the new purpose. After applicants submit the Request Form, and at all times thereafter, it is the applicant’s obligation to provide the elected official or the managing agency *all* information requested by such official or such agency in order to complete the funding process. Failure to expeditiously provide such information may result in rejection of the Request Form or rescindment of an appropriation.

Appropriation of Capital Funds. Appropriations are made for the fiscal year commencing July 1. The City will not reimburse for costs incurred prior to the date of appropriation.

Identification of Projects and Assignment of Managing Agency. The process of assigning a managing agency commencing a project will not occur until the end of September following the date of appropriation. Recipients of capital grants should not expect to commence work with a City agency prior to such time. Although the recipient may commence spending its own funds at the time of appropriation, only the costs deemed to be eligible by the City, and which meet all the requirements of the contract, will be reimbursed at a later date. No City agency will act as the general contractor or construction manager for a construction project, with limited exceptions for cultural projects. It is the responsibility of the recipient organization to hire and supervise the construction projects. No City agency will act as a buyer for any equipment or vehicles (except, in limited circumstances, the City’s Department of Cultural Affairs for certain cultural projects). The following will be assigned to manage projects:

- DDC will be the managing agency for all equipment projects, except those for organizations that have a relationship with the City’s Department of Health and Mental Hygiene (“DOHMH”) or Department for the Aging (“DFTA”). DDC will also handle all construction projects and real property acquisitions the majority of funding for which is derived from City funds (with certain exceptions for cultural projects).
- The New York City Economic Development Corporation (“EDC”) will manage all construction projects and real property acquisitions that are funded with a majority of non-City funds (with certain exceptions for cultural projects).

Contract Development and Requirements. EDC, DDC, DOHMH or DFTA, as the case may be, will enter into a contract with the recipient organization. Legal counsel for the managing agency will initiate discussion of the contract with legal counsel for the recipient organization. The City contract documents (restrictive covenant, funding and security agreements) will be standard forms and the City will not agree to changes in its standard provisions. Copies of the City's standard form contracting documents are attached hereto.

Office of Management and Budget ("OMB") approval. OMB must approve and issue a Certificate to Proceed before a contract may be entered into.

Registration. After all necessary approvals have been issued, a contract may be executed and sent to the City Comptroller for registration. Organizations should refrain from making purchases of equipment or real property until after a contract has been registered. Any purchases made prior to such registration are made at the organization's risk. The City is under no obligation to reimburse an organization for purchases made prior to the registration of a contract if such contract is not ultimately registered or if such purchases do not comply with the terms of the contract that is registered.

Disbursement of Funds. Following registration of the contract, and resolution of any title and legal closing matters, disbursement of funds will be made on a reimbursement basis according to the terms of the contract documents. The time from the date the managing agency initiates contact with the recipient to the time disbursement can commence typically takes approximately 10 to 12 months, although that time may vary greatly depending on the complexity of the project, delivery of information by the recipient, and other factors. Recipient must plan project finances to accommodate this timetable and it is recommended that the recipient plan for the construction, acquisition or purchase of equipment at least one year from the expected date of appropriation.