

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 its own property, the City may, on occasion under certain circumstances, appropriate capital dollars to a not-for-profit organization for a particular capital project serving a defined City purpose in spite of the fact that the property is neither owner nor leased by the City (a "Project"). In such cases, as required by the New York State Constitution, the Project must be operated such that it will continue to serve a City purpose for its entire useful life (which corresponds to the period that the bonds issued by the City to finance the Project remain outstanding). Projects may involve real property or Moveable Property, as further defined below. Appropriations and distributions of funding for Projects are made only after an applicant organization demonstrates the capacity to comply fully with all legal requirements in connection with such funding including, but not limited to: the restriction on the use of the Project to a City purpose for its entire useful life, and the requirements of the City Charter, the New York State Local Finance Law, the directives of the City Comptroller, and other applicable laws and regulations and reporting requirements. In addition, before an appropriation is made, recipient organizations must demonstrate the financial and administrative ability to complete the Project and support and operate the completed Project for its useful life.

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

All requests for City funding must include submission of a completed Capital Funding Request Form for Not-for-Profit Organizations ("Request Form") to the relevant elected official(s). 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 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 funding for such Projects. Please be further advised that these guidelines are subject to change at any time without notice to any party. 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 comply with these guidelines and all applicable standards, procedures, and legal

requirements. The existence of a City appropriation alone is not sufficient to entitle an organization to receive City capital funds. The organization will only be entitled to receive City funds once an agreement (a "Funding Agreement") is executed between the organization and the City, and such funds will only be available on a reimbursement basis upon the City's determination that the recipient has complied with all standards, procedures and legal requirements governing such funding.

Please note that these guidelines do not apply to housing programs except as described below under "Exceptions." These guidelines also do not apply to addition of funds to previously-approved projects under the limited circumstances described below. In addition, certain of these guidelines do not apply to projects administered by the City's Department of Cultural Affairs ("Cultural Projects"), as further described below.

BASELINE STANDARDS FOR CAPITAL FUNDING

Not-for Profit Status. All recipient organizations must be not-for-profit organizations organized under New York State law or registered to do business in New York State.

City Operating Contract. Recipients of City capital funding for acquisition, construction or reconstruction of real property 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 amount of at least \$50,000 in each such year. Recipients of City capital funding for Moveable 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. Hospitals and clinics may receive capital funds for Moveable Property 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. Examples of items that do not constitute capital assets include the following:

- Lease payments (including payments under capital leases) are ineligible.
- Maintenance, demolition, fundraising, and title insurance are ineligible.
- Interest costs are ineligible. Repayment of principal of a loan is only eligible to the extent the loan relates to an eligible 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 are eligible only 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 after completion or

installation in order to be eligible for City capital funds. In general, most Projects involving real property will have longer useful lives, but not longer than 30 years.

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 organization will be required to enter into legal contracts with the City including a declaration of restrictive covenant that is recorded as a senior lien against, and runs with, the land (the "City Purpose Covenant") requiring, among other things, that the Project 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 Project be used by a not-for-profit organization for front-line services that are made directly available to residents of the City during normal business hours without discrimination. The City Purpose Covenant does not secure the repayment of the City funds, as would a traditional lien. Rather, it will require that the Project be used for the required purpose, even if another party were to take control of the Project.

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 Moveable 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 Project 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 Project. Compliance with the City Purpose Covenant will be subject to annual review by OMB, as described below.

Minimum City Contribution. The City contribution to a Project involving real property (i.e., land or a building) must be at least \$500,000. The 2.5% administrative fee may be included in meeting the \$500,000 minimum threshold. The minimum City contribution for Moveable Property is \$35,000; provided, however, that where Moveable Property is affixed in any way to real property, the minimum contribution will be \$500,000 (e.g., window treatments or light fixtures). 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 \$35,000 minimum cost threshold. However, in the case of Initial Outfitting (i.e., the outfitting of a defined area that has been newly acquired, leased or constructed or is the subject of a comprehensive reconstruction), items that are not physically connected may be combined to meet the \$35,000 minimum as long as each item has a minimum cost of \$110 and as long as they are ordered within six months of the first use of such area. The 2.5% administrative fee may not be included in meeting the \$35,000 minimum threshold.

Maximum City Contribution. The City may fund 100% of Projects that are entirely for Moveable Property. However, the City contribution to a Project involving real property (i.e., acquisition, construction or reconstruction) may not exceed 90% of the costs of the Project up to \$2 million and 50% of the portion of the Project that is in excess of \$2 million. For example, a Project with a total cost of \$3 million may receive \$2.3 million in City capital funds (which equals 90% of the first \$2 million plus 50% of the additional \$1 million in Project costs). Contributions from recipients for Project costs must be fully funded with available cash, commitment letters from lenders willing to accept a lien position subordinate to the City Purpose Covenant 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 this threshold.

Property Must Be Owned and Used By Funding Recipient. All funds must be for Projects that are both owned and used directly and solely by the recipient organization at the location stated in the Request Form in conformance with the City Purpose Covenant. The City will not pay for an organization to acquire, construct or improve property that leased or is to be rented out to others. However, the following exceptions will apply:

- The City may fund Projects on real property that is rented from or to an affiliate of the recipient organization provided that: (i) both organizations are under common corporate control; (ii) no rent is charged/paid between the two organizations with respect to the space acquired or improved with City funds; (iii) both organizations are not-for-profits; and additionally, in cases where the recipient is the tenant, (iv) the recipient provides documentation from its landlord and any lienholders that they will agree to the recordation of the City Purpose Covenant on the property in a senior position; (v) the lease is at least as long as the useful life of the improvements; and (vi) the recipient organization has the demonstrable ability to fulfill its obligations under the lease until its expiration.
- The City may waive the ownership requirement for 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 (which will be at least 15 years but not more than 25 years, depending on the improvements being made); and (iv) the senior center has the clear ability to fulfill its obligations under the lease until its expiration.
- The City may improve real 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.

Front Line Services. 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.

Operating Budget and Audited Financials. Applicants must demonstrate financial resources sufficient to support the Project on an ongoing basis throughout its useful life. 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. Funding will not be provided to startup organizations or organizations that cannot demonstrate a history of operating those services proposed to be provided to the satisfaction of the City.

Moveable Property. Any Moveable Property to be paid for with City capital funds that is attached in any way to real property will be treated as real property and will be subject to the real property requirements set forth in these Guidelines unless the landlord or other owner of the real property in which such items are to be installed (and any party holding a mortgage or other lien on such real property) acknowledges in writing by amending its lease that such items are not considered part of such real property and are not subject to such ownership, mortgage or lien. Where Moveable Property is so attached, Projects will be subject to a minimum cost of \$250,000. Furthermore, the City will not provide funding for Moveable Property that is not easily transportable and reusable in another location if the City is forced to take possession of such Moveable Property. Similarly, the City will not provide funding for Moveable Property if its value would not justify the cost of relocating it and reusing it if necessary.

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.

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 City's 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 neutral, broad-based programs (rather than individual schools) that provide direct aid to students, provided that such funding complies with all applicable laws.

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 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. For example, a project with a \$1 million City appropriation will only receive \$975,000 after deducting the administrative fee.

All Real Property Projects Must Have a 15% Contingency Built In. The City will also require that the Project contain a 15% contingency for all unexpended costs. This contingency may be funded through City or non-City sources. The recipient organization will be responsible for all cost overruns that exceed the 15% contingency.

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 organization to advance funds from its own sources and provide proof of payment prior to reimbursement from the City for eligible costs. The City has no obligation to reimburse an organization until a Funding Agreement is executed between the City and the organization and registered with the City Comptroller. **Organizations should not expend any funds until the Funding Agreement has been executed and registered. Any such prior expenditure may not ultimately be reimbursed and is at the organization's sole risk.**

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.

Failure to Comply with Prior City Agreements. The City will not fund recipients that have not complied with prior agreements with the City. However, such non-compliance may be cured to the satisfaction of the City.

EXCEPTIONS

Housing Programs. Projects in New York City Housing Authority property and housing Projects identified with a loan program of the City's Department of Housing Preservation and Development are not subject to these guidelines. Some of such loans may be "forgivable" and as such are not repayable. Funds requested for housing development (new construction) or rehabilitation can be used for construction hard or soft costs. Funds can be used for acquisition only if the project has all funding in place and is assured to move to completion.

Cultural Projects. Some of the requirements described above do not apply to Cultural Projects. Cultural Projects may receive capital funds although the funding recipient has no operating contract with the City. The provisions that limit the maximum City contribution, that require that space funded with City capital dollars be used only for front line services, that require a \$250,000 minimum City contribution for Moveable Property that is minimally attached to real property, and that require that recipients have a history of operations do not apply to Cultural Projects. In addition, the City may improve property leased by cultural organizations, provided that (i) 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 and (ii) the lease is at least as long as the useful life of the property.

Additional City Funds for Previously-Approved Projects. Additional City capital funds may be added to Projects for which a capital appropriation was made in a prior year even if such Project does not meet all of the requirements listed herein, provided that: (i) a Certificate to Proceed ("CP") has already been issued by OMB (as defined below), (ii) the addition of funds is to cover cost overruns (i.e., increased costs for scope items that were previously approved); and (iii) the Project remains viable as determined by the managing City agency and OMB.

FUNDING AGREEMENT REQUIREMENTS.

The Funding Agreement will reflect terms including, but not limited to, those listed below.

Restrictive Covenant for Real Property. 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 as a senior lien against the recipient's property and will run with the land for the useful life as determined by the City.

Security Agreement for Moveable Property. In the case of acquisition of Moveable 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 Property. New York State Department of Motor Vehicles Notices of Lien will be filed reflecting this security agreement for vehicles.

Prevailing Wages. 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 New York State Labor Law.

Green Buildings. 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.

Vendex. 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 note that different elected officials may have different submission deadlines. 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, it is the applicant's obligation to provide the City with *all* information requested about the Project. Failure to expeditiously provide such information will result in rejection of the Project.

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 may not occur for several months after 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 as determined by the City's Department of Cultural Affairs. 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 Moveable Property (except, in limited circumstances, the City's Department of Cultural Affairs for certain Cultural Projects). The following will be assigned to manage Projects:

- The New York City Economic Development Corporation ("EDC") will manage all Projects for construction or acquisition of real property that are funded less than 50% with City funds (with certain exceptions for Cultural Projects);
- The City's Department of Design and Construction ("DDC") will manage all construction Projects and real property acquisition Projects, where 50% or more of funding is derived from City funds (with certain exceptions for Cultural Projects);
- The City's Department of Health ("DOH") will manage all Moveable Property Projects related to hospitals and clinics;
- The City's Department for the Aging ("DFTA") will manage all Moveable Property Projects for senior centers;
- DDC will also manage all Moveable Property Projects not managed by DOH and DFTA.

Contract Development and Requirements. EDC, DDC, DOH 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 CP before a Funding Agreement 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 Moveable Property 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 the Funding Agreement if such Funding Agreement is not ultimately registered or if such purchases do not comply with the terms of the Funding Agreement.

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 Moveable Property projects at least one year from the expected date of appropriation.

POST-FUNDING COMPLIANCE

Annual Reporting and Certification. Following the receipt of City capital funds, the recipient organization will be required to submit to the City every year throughout the useful life of the Project the following information: (i) an officer's certificate attesting to compliance with the City Purpose Covenant; (ii) audited financial statements for the most recently ended fiscal year; and (iii) a current year operating budget. Failure to comply may result in denial of future funding, forfeiture of the asset or other legal remedies deemed appropriate by the City.