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RULES AND REGULATIONS

NON PROFIT PERFORMING ARTS LOAN PROGRAM  
(NPALP)

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TABLE OF CONTENTS

1	.....	General
2	.....	Definitions
3	.....	Loan Procedure
4	.....	Loan Terms and Amounts
5	.....	Eligible Uses of Loans
6	.....	Insurance
7	.....	Contractor Participation
8	.....	Loan Committee
9	.....	Default
10	.....	Terms of Forgiveness

## 1. GENERAL

### 1.1 RULES AND REGULATIONS

- A. Purpose: The purpose of these rules and regulations is to establish uniform procedures for implementation of the Non-profit Performing Arts Loan Program (NPALP), and to describe the rights and duties of organizations involved in or affected by the administration of NPALP.
- B. Development: The Director of the San Francisco Grants for the Arts (GFTA) program shall develop and amend from time to time the Rules and Regulations in consultation with pertinent City and County agencies and any other appropriate organizations with which the Director in his or her discretion may choose to consult.
- C. Approval: The Director shall submit for approval by resolution to the Board of Supervisors the Rules and Regulations and any future amendments.
- D. Availability: The Rules and Regulations shall be made available for review by the public during regular business hours in the office of the Director, Office of the Clerk of the Board of Supervisors, and any other office which is assigned responsibilities for carrying out this program.

### 1.2 DELEGATION OF AUTHORITY

Under Section 50.10 of the Administrative Code the Director of the San Francisco Grants for the Arts program shall be responsible for administration of all aspects of the Non-profit Performing Arts Loan Program (NPALP). The Director and each City and County Agency assigned responsibilities under this chapter shall have all such authority as may be reasonably necessary to carry out these responsibilities, including the authority to enter into or amend any agreements that the Director deems necessary to help administer the NPALP, including but not limited to, agreements with loan servicing agencies. The Director may utilize the services of the Department of Public Works and the Fire Department, in connection with the code enforcement aspects of the program, and the services of the Mayor's Office, Department of Administrative Services and Department of Building Inspection in connection with the loan financing aspect of the program. The Director may also request the assistance of any other City and County Agency in meeting his or her responsibilities under this program. With Respect to funds previously sent through interdepartment work order from Grants for the Arts to the Nonprofit Performing Arts Loan Program to supplement the original \$500,000 in the Fund, the Director shall have the discretion to convert such funds for use in making capital grants.

(In making capital grants, the Director shall give special consideration to grant applicants who were prior NPALP borrowers who have timely paid their loan obligations.)

### 1.3 FUND AND BUDGET

Section 10.100-119 of the Administrative Code created a Performing Arts Loan Fund for the receipt and disbursement of funds for facilities management, capital improvement, and acquisition loans to Non-Profit Arts groups.

1.4 REPORTING

Within 90 days following the completion of each fiscal year, the Director shall submit an annual report to the Board of Supervisors, setting forth:

- A. An accounting of all the funds appropriated to the fund for the period;
- B. The report shall account for all fees, interest and other charges levied;
- C. For each loan made since the last annual report, the primary purpose of the loan, the principal amount, the interest rate, and any fees, charged on the loan in excess of regular interest;
- D. For each loan-outstanding as of the last annual report, the outstanding principal balance, the current status of principal and interest, repayments made, any current or potential default, any potential administrative action to be taken, and any conversion of the outstanding balance of loans or portions of loans into grants;
- E. Possible suggestions for amendments.

2. DEFINITIONS

- A. "Acquisition" - shall include either a lease or purchase of a fee interest in a property to be used by a performing Arts groups for performances.
- B. "Capital Plan" - Shall mean a plan submitted by applicant which sets forth the scope of any facilities maintenance, or capital improvements for which the applicant is applying for funds from the program. The proposed plan shall include provisions designed to correct all code violations and incipient code violations, and any other provisions which the Director in his or her discretion may require.
- C. "Code Violation" - Shall mean a violation of any section of the San Francisco Municipal Code relating to the physical condition of structures.
- D. "Director" Shall mean the Director of the Grants for the Arts (GFTA) Program, or his or her designee.
- E. "Fees" Shall mean the 1% loan fee which is required pursuant to S.F. Administrative Code Section 50.23.

- F. "Fund" - Shall mean the Non-Profit Performing Arts Loan Fund, established pursuant to S.F. Administrative Code Section 10.100-119.
- G. Incipient Code Violations - Shall mean a physical condition which may reasonably be expected to deteriorate into a code violation within two years.
- H. "Non Profit Arts Organization" or "Arts Organization", Shall mean a nonprofit performing arts organization created pursuant to the laws of the State of California for the purpose of furthering the presentation of performing arts activities to the people of the City and County of San Francisco, and which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- I. "Program" - Means the Non Profit Performing Arts Loan Program (NPALP).

3. LOAN PROCEDURE

3.1 Eligibility

- A. As a prerequisite to having its application considered by the Director, the applicant must:
- 1) Be a performing arts organization organized under the non-profit laws of the State of California with an annual budget of less than \$2,500,000.00; and
  - 2) Intend to:
    - (i) acquire and rehabilitate a performing arts facility in San Francisco that contains 50 to 600 seats, or
    - (ii) rehabilitate such a facility already owned by the applicant, or
    - (iii) acquire a space not currently designed for the performing arts and convert it to such a facility.
- B. In addition to the requirements set forth in Section 3.1A above, applicants must also meet one of the following criteria:
- 1) Be a performing arts organization working in San Francisco which has been, or is subject to being cited with code, violations or incipient code violations; or
  - 2) Demonstrate to the satisfaction of the Director the ability to repay such a loan.

3.2 Application

- A. General - Applications shall be accepted by the Director on a semi-annual basis, or more or less frequently, as the Director in his/her

discretion may decide. The Director shall distribute application forms to interested Arts Organizations. Within the time specified in the application, interested Arts Organizations, shall submit completed application packages to the Director in the form specified in Section 3.2B below.

- B. Application Package - when applying for a loan under the program, each applicant shall submit the following to the Director:
  - 1) A completed application form to be provided by Director with the specified attachments.

- 2) Financial statements of income and expense and assets and liabilities for the previous three years, each of which shall meet one or more of the following tests:
  - a. Audited by an independent certified public accountant; or
  - b. Prepared and attested by a certified public accountant; or
  - c. Accompanied by copies of Federal or State tax returns and annual charitable trust reports for the relevant year, which copies must be certified in writing by the chief executive officer of the applicant to be complete and accurate.
- 3) If the proposed use of funds is for the acquisition (purchase or lease) of property, the application shall indicate the location, purchase price or lease terms, seating capacity, size and current use of the property to be acquired. In addition, applicant shall state what other sources of funding applicant intends to rely on in order to acquire the facility.
- 4) If the proposed use of funds is for equipment, architectural, engineering, construction project management or other professional services related to the correction of code violations or incipient code violations, the applicant shall submit a capital plan which includes:
  - a. A listing of the code violations;
  - b. A listing of the incipient code violations;
  - c. A detailed estimate by trade of the work to be completed.
- 5) If the proposed use of funds is for construction project management or other professional services related to renovation of an existing facility, the applicant shall submit a capital plan which includes:
  - a. A description of the scope of work proposed to be performed with loan funds, accompanied by documentation of the necessity of the work for ensuring the adequacy of the performing space;
  - b. A detailed estimate by trade of the work to be completed.

- 6) A completed owner's Consent to Leasehold Improvements Form approving the proposed improvements.
- 7) Letters from patrons, neighborhood groups, community leaders, etc., which demonstrate community support for the applicant.
- 8) A marketing plan for the facility which includes the following:
  - a. Proposed rental charges for the use of the facility by other nonprofit organizations when not needed for rehearsal or performance by the applicant; and
  - b. Proposed marketing plan to publicize the availability of the facility to other nonprofit organizations.
- 9) Any other information which the Director may require in order to adequately assess the applicant.

### 3.3 Selection Criteria

- A. The following criteria will be given priority in evaluating each application:
  - 1) The extent to which the funds will be used to correct life-safety code violations in the facility which is presently being used or will be used by applicant.
  - 2) Applicant's ability to repay the loan and their track record of repayment of loans from the City or other lending institutions within the past 5 years.
- B. The following additional criteria will be used in evaluating each application:
  - 1) The extent to which the loan will meet emergency needs of the applicant and facilitate the applicant's ability to sustain operations.
  - 2) The nature and amount of security being offered for the loan.
  - 3) The Art Organization's financial and funding history and potential.
  - 4) Ability of the applicant, to use the funds as expeditiously as possible so as to enable the commencement or continuation of operations.
  - 5) Ability of applicant to obtain funds from other sources, as needed, to complete the improvements.
  - 6) The extent to which the funds will be used to benefit the diverse communities of San Francisco.

- 7) The Applicant's location in a community or neighborhood that has been relatively underserved by similar organizations, has a significant percentage of low-income households, or would otherwise especially benefit from the activities and programs operated by the Applicant.

4. LOAN TERMS AND AMOUNTS

4.1 Amount

The maximum amount of a loan to any single arts group under the program is \$200,000. The actual loan amount will be based on a proposed contract and the organization's ability to pay the loan.

4.2 Terms

Each loan will bear simple interest at the rate of 3% per year. In addition, a 1% loan fee will be levied on the principal amount of each loan. In individual cases of documented hardship, the Director may either waive payment of the loan fee or defer it until the termination of the loan. In order to demonstrate hardship, the applicant must:

- A. Provide evidence that the organization does not have the available cash; or
- B. Have requested and have been denied the funds for payment of the loan fee from individuals or organizations; and
- C. Any other evidence the Director may deem necessary.

4.3 Security

Every loan made under this chapter shall be fully secured. The Director shall determine that the liquidation value of any security equals or exceeds the full value of the loan and the expected costs of proceeding on such security and obtaining the proceeds of any collateral. The types of acceptable security are as follows:

- A. Deed of Trust on the subject property, naming the City and County as beneficiary;
- B. The guarantee of the loan by the owner of the property;
- C. The independent, joint and several, collateral guarantee of individuals,, and
- D. A chattel mortgage or similar security under the California Commercial Code on equipment or personal property owned by the arts organization.
- E. Other security deemed to be acceptable by the Director.

#### 4.4 Transfer and Assignment of Loans

- A. All loans are due and payable upon the sale or transfer of Title or leasehold interest in the property.
- B. Loans are not assumable without the authorization of the Director.
- C. Consideration of loan transfer or assumption shall be made only when a qualified Performing Arts organization submits a request. The Director may only consider the request when there are no qualified organizations that had previously been denied funding due to lack of funds.
- D. An eligible transfer request must meet all the current requirements.

#### 4.5 Criteria

In determining the amount and terms of the loan, as well as the type of security required, the Director shall use the following criteria:

- A. Whether the arts organization owns the subject property or holds a long-term lease, the life of which exceeds the anticipated repayment period;
- B. The size, age, value and condition of the subject property;
- C. The nature and extent of all code and incipient code violations;
- D. The type and mixture and security to be given for the loan;
- E. The verifiable financial soundness of the arts organization and its ability to complete the project for which Loan Application is made; and
- F. The ability of the arts organization to carry the proposed debt service for the life of the loan.
- G. The extent to which the loan will enhance opportunities for other nonprofit arts organizations to obtain rental space at reasonable rents.

#### 4.6 Loan Closing

- A. A loan which is made on the condition of matching funds for acquisition and code corrections will not close until such time that the Director has received evidence of the availability of said matching funds. If a commitment of City funds is made and the arts groups has not shown substantial progress towards securing commitments for the necessary matching funds within six months, the Director may cancel the City's funding commitment, if in his/her judgment the immediate needs of other qualified applicants justify such cancellation.
- B. At loan closing, borrower shall execute the following documents in form and substance acceptable to the City:

- 1) Loan Agreement.
  - 2) Promissory Note in favor of the City.
  - 3) Deed of Trust in favor of the City, if the Note is secured by the property.
  - 4) Security Agreements, guaranties, or other documents as necessary to secure the Note, if the proposed security is other than real property.
  - 5) Deed of Trust on the borrower's leasehold interest in the property to the City, if the property is leased.
- C. As a condition of loan closing, borrower shall submit to the City the following documents in form and substance acceptable to the City:
- 1) Title insurance policy in the amount of the loan, if the loan is secured by the property.
  - 2) Owner's consent to the leasehold improvements, if the property is leased.
  - 3) Owner's consent to the assignment of leasehold interest to the City, if the property is leased.
  - 4) Such other documents specified at the time of loan approval as conditions of the loan.

#### 4.7 Loan Funding - Progress Payments

- A. A fund disbursement account with a qualified fund disbursement agent will be established for each individual loan. Loan funds shall be deposited only in the disbursement account, unless one of the following conditions applies:
- 1) The work has been completed subsequent to loan approval, but prior to loan funding, with the approval of the Director, and with inspection and approval of rehabilitation staff. In this case, loan funds may be disbursed directly to borrower to reimburse expenses incurred in rehabilitation, upon submission of documentation of expenses in form and content satisfactory to the Director.
  - 2) The loan is for the purpose of acquiring the property. In this case, funds shall be deposited with an escrow holder acceptable to the borrower and City, under escrow instructions acceptable to both parties.
- B. Prior to funding the loan, the City shall satisfy itself that borrower has obtained any required building permits, zoning and use approvals, and any other necessary approvals for the performance of the work to be funded by the loan. If the permit has been approved but not issued, no payments shall be made from loan funds prior to permit issuance other than for fees for permit issuance.
- C. As construction progresses the Director or his or her designee shall request payment checks on an approved invoice form payable to the borrower and the contractor. Payments must be within the payment schedule with 10% holdback. Fund disbursement agent will issue payment according to instructions.

- D. The construction period will be limited to twelve months. If the organization cannot complete the work within that period of the Director may re-examine the loan terms and conditions.
- E. Upon completion, borrower shall submit to the City a conformed copy of a recorded notice of completion and a letter of completed work verification form the Bureau of Building Inspection. Fund disbursement agent will disburse final payment no earlier than 31 days following recordation of the notice of completion.
- F. Fund disbursement agent shall prepare closeout statement itemizing all disbursements from loan accounts.

5. ELIGIBLE USES OF LOAN

- A. The cost of correcting code violations and incipient code violation with a maximum of 10% contingency;
- B. Costs of renovation of the facility which, in the opinion of the Director, are reasonably necessary for the operation of the facility as a performing arts space.
- C. Reasonable architectural and engineering fees, project management costs and creation of facility management and operating manuals; Acquisition Costs;
  - Purchase - downpayments, payments towards principal, closing costs excluding Broker fees.
  - Lease - payments limited to the director's discretion excluding Broker fees; and

- E. Loan closing costs for the NPALP Loan such as: Title insurance, appraisal, document preparation, escrow and servicing costs.

6. INSURANCE

- A. Contractor will maintain in force, during the terms of the contract, insurance as follows:
  - 1. Worker's Compensation with Employers' Liability limits not less than \$1,000,000 each accident.
  - 2. Comprehensive General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations Coverages.
  - 3. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and property Damage, including owned, non-owned and hired auto coverages as applicable.
- B. Borrower will maintain in force, for the life of the loan, all risk property insurance, for 100% of the replacement value of improvements financed by the City, with loss payable to the City as its interest may appear.
- C. Comprehensive General Liability and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:
  - 1. Name as ADDITIONAL INSURED, the City and County of San Francisco, its Officers, Agents, Employees, and Members of Commission.
  - 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Contract, and that insurance applies separately, to each insured against whom claim is made or suit is brought.
- D. ALL POLICIES SHALL BE ENDORSED TO PROVIDE:  
Thirty (30) days advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following address:

Grants for the Arts  
City and County of San Francisco  
City Hall, Room 347  
San Francisco, California 94102  
ATTENTION: The Non-Profit Performing Arts Loan Program

- E. Certificates of insurance, satisfactory to the controller, evidencing all coverage above, shall be furnished to the City prior to certification of contract and before commencing any operations under this contract, with complete copies of policies upon City request.
- F. Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.

7. CONTRACTOR PARTICIPATION

All contractors must be licensed by the Contractor's State License Board of California and will be required to:

- A. Receive one lump sum payment for all work performed. Contractor shall not be paid until thirty-five (35) calendar days have elapsed after the Notice of Completion has been recorded.

8. APPLICATION REVIEW; REGULATIONS

8.1 Application Review. Applications shall be submitted to the Director who shall review the applications in consultation with his or her designated Grants for the Arts staff members as well as with the Grants for the Arts Advisory Committee. In addition, Director will consult with the San Francisco Art Commission and other pertinent City and county agencies and any other appropriate organizations which the Director in his or her discretion may choose to consult regarding the review of loan applications.

8.2. Applicant Presentation. Applicants that meet minimum eligibility requirements and submit detailed loan applications shall be invited to make a formal presentation to the Director and the Grants for the Arts Advisory Committee.

8.3 Applicant Selection. The Director shall notify applicants regarding the outcome of their application within six months of their application.

9. DEFAULT

- A. Loan agreements executed by borrower organizations shall include, but not be limited to, the following as events of default under the loan:
  - 1) Failure by the borrower to submit, upon request by the City, annual recertification that equipment or personal property in which the City has a security interest (a) remains in the possession of the borrower, (b) is in good condition, and (c) is described in an inventory attached to the certification.
  - 2) Failure by the borrower to continue to function as a bona fide nonprofit performing arts organization substantially as at the time of the original loan approval.

- 3) Failure by the borrower to maintain the insurance coverage required under the terms of the agreement or to provide evidence of said coverage upon request of the Director.
  - 4) Failure by the borrower to complete the work for which the loan was approved.
  - 5) Use of the property acquired or improved with loan funds for purposes other than nonprofit performing arts purposes, without the prior written consent of the Director.
- B. Borrowers whose loan payments are more than 60 days in arrears shall be notified that their loans are delinquent. Borrowers shall be informed that they must establish a schedule approved by the Director to bring their loan current. A borrower shall be considered in default if (1) it fails to establish and carry out a satisfactory schedule to become current, or (2) its loan becomes more than 120 days in arrears.
- C. In the event of default, the Director shall, in consultation with the City Attorney, take all reasonable steps to protect the City's interest.

#### 10) TERMS OF FORGIVENESS

In accordance with Section 50.11, these rules and regulations "shall include general payment schedule adjustments, individualized payment schedule adjustments and criteria for loan forgiveness where the Director, in consultation with the Controller's Office, deems such provisions are necessary in order to recoup outstanding loans or to ensure the ongoing effectiveness of the program by assisting the economic viability of the borrowers and helping to alleviate debt-related or other financial hardships."

##### A. LOAN FORGIVENESS.

(1) For loans made on or before June 1, 2006 the following loan forgiveness criteria shall apply.

All borrowers, whether in arrears or not, are eligible for loan adjustment or forgiveness as follows:

Option 1:

Borrowers may:

- A. Make a payment of 20% of the total outstanding amount (exact amount to be confirmed by Amerinational Community Services (ACS) loan servicing agent) by December 31, 2006; and
- B. Document to the satisfaction of the Director the free or discounted services provided by the organization to the arts community and the public amounting to at least 80% of the total outstanding amount.

Upon satisfaction of both these requirements, the entire remaining balance will be forgiven.

Option 2:

Borrowers may:

Sign a new loan agreement by December 31, 2006, with adjusted payment amounts agreed upon in writing by Grants for the Arts and the borrower. At the end of each year of full payments toward the debt, an identical amount will be forgiven until the entire debt is discharged.

C. TERMS OF FORGIVENESS

For loans made after June 1, 2006:

Pursuant to Section 50.11 of the San Francisco Administrative Code, the Director shall promulgate such rules and regulations as he or she may deem appropriate to carry out administration of the Fund, including rules and regulations for general payment schedule adjustments, individualized payment schedule adjustments and criteria for loan forgiveness where the Director, in consultation with the Controller's Office, deems such provisions are necessary in order to recoup outstanding loans or to ensure the ongoing effectiveness of the program by assisting the economic viability of the borrowers and helping to alleviate debt-related or other financial hardships.

To be eligible for some level of forgiveness, a Borrower should demonstrate to the Director's satisfaction that:

1. A financial hardship exists and why, whether caused by the loan obligation and/or other circumstances;
2. They have made every effort to meet the NPALP loan obligation;
3. Forgiveness of the loan will alleviate the financial hardship;
4. Forgiveness of the loan will assist the economic viability of the borrower, because the loan obligation has caused a financial barrier to the organization's financial health and that forgiveness would eliminate the financial barrier; and
5. They have made substantial progress towards meeting all other obligations of their loan agreements, which would include the performance outcomes that they proposed in their application, such as the proposed number of people served, number of performances given, number of discounted tickets or free performances, etc.

C. LIMITATIONS ON LOAN FORGIVENESS.

- (1) Predevelopment Expense Forgiveness.

Loans for professional services that do not result in completion of the proposed project shall be eligible for forgiveness for up to an amount of \$25,000.

- (2) Conversion of Loans to Grants for implementation of Asset Management tools

Portions of loans up to \$10,000 for Asset Management tools shall be eligible for forgiveness if they are spent by Organizations that have purchased their facilities. Asset Management tools include operations manuals that have been implemented for at least a year and an annually reviewed replacement reserve analyses designed to plan for long-term facility capital needs.