

City of Ogdensburg, New York Ogdensburg Growth Fund Policy Guidelines and Operating Plan

Section 1. GENERAL

- 1.1 Policy Guidelines and Operating Plan. The Policy Guidelines and Operating Plan (the "Plan") is adopted by the Board of Directors of the Ogdensburg Growth Fund Development Corporation and is intended to serve as the primary administrative document for the Ogdensburg Growth Fund loan program. Any changes to the Plan must also be adopted by the Board of Directors of the Ogdensburg Growth Fund Development Corporation.
- 1.2 Objectives. The primary objectives of the Ogdensburg Growth Fund (OGF) are to facilitate the expansion of business activity throughout the greater Ogdensburg area, enhance employment opportunities, expand the commercial tax base, improve the quality of life for all area residents, lessen the burdens of government, and act in the public interest.
- 1.3 Functions.
- a) Administer Ogdensburg Growth Fund Loan Program
 - b) Promote, provide, and/or facilitate for additional and maximum employment through the creation of residential, commercial, and industrial development throughout the community.
 - c) Instruct and train individuals to improve or develop their capabilities for jobs.
 - d) Conduct research for the purpose of attracting or retaining businesses in the Ogdensburg area.
 - e) Attract funding from private and public sources for the purposes of supporting economic growth within the greater Ogdensburg area.

Section 2. ELIGIBILITY REQUIREMENTS

- 2.1 Eligible Activities.
- a) The principal business activity which will be primarily impacted by the OGF financing must be located within the City of Ogdensburg. Exceptions to this requirement will be granted only where the OGF Board determines that the expanded business activity will have a direct and significant positive impact on the OGF's stated objectives.
 - b) OGF assistance may be provided for any commercial or industrial business activity which effects the OGF program objectives.
 - c) The business activity to be undertaken with assistance from the OGF must directly result in the creation or retention of employment positions consistent with the Federal regulations governing the Community Development Block Grant (CDBG) program.
- 2.2 Ineligible Activities. Activities which consist solely of housing or which include housing as the predominant component, except those housing activities permitted under Section 8.1, will be ineligible for OGF financing.

2.3 Eligible Borrowers. Eligible borrowers include sole proprietorships, partnerships, and corporations. Loans may also be provided to individuals acting as principals of an eligible entity and who will rent or lease assets to an otherwise eligible borrower.

2.4 Eligible Uses of OGF Funds. OGF funds may be used for any justifiable business purpose including, but not limited to fixed assets, current assets including inventory and receivables, and permanent working capital. The use of OGF funds must also be eligible pursuant to the Federal regulations governing the CDBG program.

Section 3. PROGRAM STANDARDS

3.1 Employment/Cost Ratio. The maximum amount of OGF financing may not exceed the ratio of \$15,000 for each employment opportunity to be created or retained. For the purposes of calculating employment opportunities, the following will apply:

- a) Only permanent jobs will be counted; temporary and construction jobs will not be counted.
- b) Jobs of 35 or more hours per week will be considered as one full-time job. Part-time permanent jobs of less than 35 hours per week will be converted to full-time equivalent jobs by dividing the number of part-time hours by 40.
- c) Seasonal jobs will be considered to be permanent jobs if the duration of the working period is long enough to classify the job as the employee's principal occupation.
- d) Projected employment must be reasonably expected to occur as a direct result of the expanded business activity, and such projection may in no instance extend beyond 36 months from the completion of the expansion.
- e) The limit of \$15,000 of OGF financing per employment position may be exceeded in instances where the OGF Board determines that the expanded business activity will effect an extraordinary degree of other public benefit.

3.2 OGF Financing Amount. Consistent with the Federal regulations governing the CDBG program, OGF assistance must be no greater than the minimum amount necessary to effect the business activity. Applicants must therefore demonstrate that all other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable. It is generally expected that the amount of OGF assistance will not exceed 40% of the total amount of the required financing, including fixed asset and working capital requirements.

3.3 Minimum Amount of OGF Assistance. OGF assistance will not be considered where the amount of such required assistance is less than \$5,000.

3.4 Maximum Amount of OGF Assistance. OGF assistance may not exceed the amount of \$100,000 for each project assisted.

Section 4. LENDING POLICIES

- 4.1 **Term of Loans.** For fixed asset loans the OGF loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies and in no instance exceeding 15 years. For term working capital loans, the loan term may not exceed 10 years. For all loans, the term will be determined by the OGF Board based upon such factors as the structure of other related loans, the nature of the collateralized assets, and the borrower's projected ability to repay the loan.
- 4.2 **Interest Rate.** The interest rate charged for the use of OGF funds will be a minimum of ½ the prevailing commercial lending rates. There is no stated policy regarding fixed or variable interest rates.
- 4.3 **Repayment Terms.** The OGF Board will determine the schedule of loan repayments on a case-by-case basis based on the applicant's projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk assumed by the OGF. Repayment terms may involve standard forms of loan amortization, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the Board to be appropriate.
- 4.4 **Security.** The OGF Board will determine the required security for each loan on a case-by-case basis based on such factors as the risk of default, the nature and value of the security, and the position of the OGF in relation to other lenders. In determining the appropriate security, the following will apply:
- (a) The OGF Board will generally require a security interest in all assets financed with OGF funds. Collateralization of additional assets of the borrower may be required at the Board's option.
 - (b) For loans to corporations, the OGF Board may require the personal guarantee of any owner of stock of the company.
 - (c) For loans to closely-held corporations, the OGF Board may require collateralization of selected personal assets of one or more of the owners.
 - (d) For loans to individuals, partnerships, or corporations which have affiliated interests and/or identities of ownership with other business entities, the OGF Board may require additional guarantees.
 - (e) For loans to businesses which have a dependence upon specific individuals for their continuing viability, the OGF Board may require an assignment of insurance on the lives those persons.
- 4.5 **Subordination.**
- (a) The OGF Board will generally allow a subordination of OGF debt and collateral to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.
 - (b) The standing of the OGF's financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
 - (c) The OGF Board will generally require a subordination to OGF financing of notes payable to any officer, owner, or similarly affiliated party to the borrower where appropriate and feasible. Such subordination may include subordinate security interests and/or repayment restrictions.

(d) The OGF Board will generally require the execution of intercreditor agreements in instances where multiple lenders exist. The use and form of such agreements shall be the responsibility of the OGF Attorney.

4.6 Exceptions. The OGF Board, by a two-thirds (2/3) majority vote of the entire voting membership of the Board, may approve exceptions to the policies and criteria stated in this Section 4 where the OGF assistance will result in an extraordinary degree of public benefit. The nature of such public benefit shall be expressed in the Board motion and minutes.

Section 5. APPLICATION PROCESSING

5.1 Loan Applications. Applications for OGF financing must include all of the information required by the OGF Application Form (attached hereto as Appendix A), and any additional information as may be reasonable requested by the OGF Board and/or the City of Ogdensburg Office of Planning & Development.

5.2 Application Fee. A non-refundable application fee shall apply to the submission of applications for OGF financing. This fee shall be established by the Board and reviewed as necessary.

5.3 Application Processing. The processing of loan applications will be responsibility of the OGF designee and will generally consist of the following:

- (a) Review of applications for completeness and procurement of appropriate additional information.
- (b) Review for OGF program eligibility criteria and eligibility pursuant to Federal CDBG regulations.
- (c) Determine economic feasibility, perform credit analysis, and assess risk.
- (d) Determine amount and terms of OGF financing, including appropriate security.
- (e) Perform appropriateness review conformance with HUD guidelines.

5.4 Loan Approval. The OGF Board shall have sole authority to approve OGF loans. Such authority shall the commitment to lend OGF funds, the interest rate(s) to be charged, the repayment terms, and the requisite security for the loan. The application of other appropriate conditions of lending and covenants of the borrower shall be the responsibility of the OGF Attorney with input from the City Comptroller, Office of Planning and Development, and the OGF Board.

5.5 Loan Disapproval.

- (a) Loan applications may be disapproved by the Chief Financial Officer based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to Sections 5.3(a) and 5.3(b) of this Plan respectively. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (b) Loan applications may be disapproved at the direction of the OGF Board if the Board determines that OGF financing is clearly inappropriate based on the reviews conducted in accordance with Sections 5.3(c) and 5.3(e) of this Plan. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.

- (c) Loan applications may be disapproved by the OGF Board for any reason or reasons which represent a reasonable determination that the approval of the OGF application would not meet the objectives of the OGF program and/or would not represent an appropriate or prudent use of OGF funds. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.

Section 6. POST-APPROVAL PROCESS

6.1 Commitment Letter. Within ten calendar days from the date of the OGF Board's approval of an OGF loan, a commitment letter shall be sent to the applicant which includes, at a minimum, the following information (see sample at Appendix B):

- (a) The amount of the loan approved, the applicable interest rate, the term of the loan, the terms of repayment, and the expiration date of the commitment.
- (b) The required use of the loan funds.
- (c) The OGF's requirements for collateral and additional security - including guarantees, pledges of assets, assignment of life insurance, etc.
- (d) Summary information regarding employment requirements.
- (e) Any other conditions of lending.
- (f) A listing and explanation of any fees to be charged and other closing costs which will be the responsibility of the borrower.
- (g) A listing of those conditions and requirements of the borrower which must be fulfilled precedent to a loan closing.
- (h) Any other information which could reasonably be expected to influence the borrower's decision to accept the terms of the loan commitment.

6.2 Loan Closings. The OGF Attorney shall have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The borrower shall be required to pay all closing costs incurred by the OGF, including costs incurred by the City of Ogdensburg acting on behalf of the OGF. The OGF Attorney shall determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval and standard commercial lending policies. Such documents shall generally include the following:

- (a) A loan agreement which includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending, affirmative and negative covenants - including compliance with applicable federal laws and regulations, requirements regarding employment creation and reporting, default provisions, and any other provisions which may be appropriate (see sample at Appendix C).
- (b) A note or notes to evidence the indebtedness and the terms of repayment.
- (c) The appropriate documents to evidence and record mortgages, liens, guarantees, and such other security as may be required by the terms of the loan.
- (d) Other appropriate documents as determined by the OGF Attorney.

- 6.3 Security. The OGF Attorney will be responsible for perfecting all of the OGF's security interests including, where appropriate, the execution of security agreements, the filing of financing statements, the execution and filing of mortgage documents, the execution of guarantees, and any other appropriate actions to adequately protect the OGF's security interests. Intercreditor agreements should be executed where appropriate to further protect the OGF's interests and to facilitate the processing of defaults and foreclosures.
- 6.4 Loan Disbursements. The disbursement of loan proceeds shall be the responsibility of the Chief Financial Officer. For such disbursement, the following guidelines shall generally apply:
- (a) Subject to the borrower's compliance with the terms and conditions of the loan agreement, all documents evidencing and securing the loan, and other guidelines for disbursement as described in this Section 6.4, the Chief Financial Officer may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the Administrative Director or OGF Designee which represent paid or accrued expenses of the borrower and which are eligible costs as determined by him or her.
 - (b) Where other debt or equity financing is to be used in conjunction with the OGF financing, such debt or equity must, in the opinion of the Administrative Director, be firmly committed for such use. Evidence of the commitment(s) shall be submitted by the borrower. In these cases, OGF funds shall remain in escrow until the project draw schedule has been approved.
 - (c) Where other debt or equity financing is to be used in conjunction with the OGF financing, the Chief Financial Officer or Administrative Director, at his/her discretion, determine an appropriate draw schedule for OGF funding based on such factors as the magnitude of risk assumed by the OGF, the nature of the activities being financed, the draw schedule for the other financing, and applicable federal regulations for the use of CDBG funds. The manner and terms of the disbursement of the OGF financing should normally be included in the approval of the financing by the OGF Board. However, in instances where the OGF Board has not prescribed a draw schedule, the Chief Financial Officer or Administrative Director may approve a draw schedule.

Section 7. LOAN MANAGEMENT

- 7.1 Delinquencies. The Chief Financial Officer will contact the borrower within 14 days of any delinquency of payment to inform the borrower of the delinquency and to determine if there is a need to procure additional information or to provide technical assistance. Delinquencies which continue for 90 days will be referred to the OGF Attorney and OGF Board for further action.
- 7.2 Adjustment of Terms and Conditions. Requests by the borrower for adjustment of any of the terms and conditions of the loan will be reviewed by the Administrative Director to determine whether the adjustment is in the best interests of the OGF program. Requests will be processed in accordance with the following:
- (a) Requests to adjust the interest rate, term of the loan, or security for the loan will be reviewed by the Administrative Director and presented to the OGF Board for action. Any such adjustments will require approval of the OGF Board.
 - (b) Requests to accrue interest or to pay interest only will be reviewed by the Administrative Director and presented to the OGF Board for action.

- (c) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the OGF Board as to content and the OGF Attorney as to form.
- (d) Requests for any other changes to the covenants or conditions of the loan including, but not limited to such areas as reporting requirements, cost documentation, and maintenance of records may be approved by the Administrative Director or referred to the OGF Board at the Administrative Director's discretion.
- (e) The Chief Financial Officer shall be promptly notified of any actions of the OGF Board which affect the amount or schedule of OGF loan repayment.

7.3 Compliance Monitoring. The Administrative Director shall be responsible for monitoring the borrower's compliance with all of the conditions and covenants of the Loan Agreement with the exception of the repayment requirements. Such responsibility shall include taking appropriate actions in the event of non-compliance, informing the OGF Board and OGF Attorney of any incidence of default under the terms and conditions of the loan agreement, and providing file documentation as appropriate.

Section 8. HOUSING ACTIVITIES

8.1 Eligibility. Notwithstanding any of the guidelines, policies, or review criteria stated in this Plan, OGF funds may be used to facilitate housing activities in the following manner:

- (a) OGF funds may be used to assist in the construction of new rental or for-sale housing which is to be principally occupied by low and moderate income households.
- (b) OGF funds may be used to assist in the rehabilitation of property where the purpose of such rehabilitation is to provide housing principally for low and moderate income households and where such property will be owned or leased by a nonprofit corporation or similar entity.
- (c) The provision of OGF funds to facilitate housing activities pursuant to this Section 8.1 must represent an eligible use of funds pursuant to the applicable federal regulations for the CDBG program.