

NYC Department of Homeless Services
Division of Capacity Planning & Development

[DRAFT] Term Sheet for Long Term, Nonprofit Ownership of Shelters

A. Program Description

The New York City Department of Homeless Services (DHS) is focused on developing nonprofit owned shelters that are optimally designed to serve clients, make efficient use of City resources, and provide capacity to meet the needs of current and future clients of DHS. Nonprofit owned shelters will be designed with thoughtful consideration for the clients served within, as well as for the immediate surrounding neighborhood. Nonprofit owned shelters may be stand-alone or combined with other uses in a building.

This term sheet indicates the terms for nonprofit owned shelters, in order for DHS to commence negotiations of a Building Rent Payment (“BRP”) Contract, where a long-term DHS contract with rent payments to help secure financing necessary to cover the cost to acquire, develop, and/or rehabilitate a shelter developed and owned by a nonprofit entity. See Section C for further information.

This term sheet is not intended to be and does not constitute a legally binding obligation on the part of any party, nor is it intended to include all terms and conditions of the subsequent transaction.

B. Eligible Projects

Eligible projects may be new construction, acquisition with rehabilitation, acquisition of an existing shelter by a nonprofit, or rehabilitation & refinancing of an existing shelter that is already nonprofit owned. Eligible projects may co-locate shelter and affordable housing (or other uses acceptable to the City) in the same building or on the same site but developed in different phases for each specific use. Projects may range in size by shelter capacity in accordance with the following:

Shelter Type	Project Size Range
Safe Haven	50-80 Beds
Single Adult	80-200 Beds
Adult Families	80-200 Rooms
Families with Children	80-200 Units

Projects that propose a mix of uses between a shelter and other uses must allocate acquisition, development budget, and operational costs between the shelter and the other use proportionally, subject to DHS and Office of Management & Budget (OMB) approval.

Projects that meet the following criteria, amongst others in the Open-Ended RFP (see Section D), will be considered for a BRP Contract:

1. Site Location meets DHS capacity needs
2. Project services and operational plan meets DHS’ most current requirements
3. Shelter operations, maintenance, and staffing budget are within DHS’ model budget guidelines
4. Project development budget costs for hard cost and soft cost (excluding developer fee) are within Term Sheet Per Diem Allowance guidelines (see Section G)
5. Project acquisition cost is at or below the appraised value (see Section H)
6. Project is designed to effectively serve shelter clients through all aspects of intake, stay, and departure, and is thoughtful and considerate of the neighborhood context

C. Nonprofit Ownership Requirement by an HDFC

The BRP Contract must be between DHS and a nonprofit shelter provider which will operate the shelter under a long-term lease with a nonprofit owner. The nonprofit owner must be a Housing Development Fund Corporation (“HDFC”) formed under Article 11 of the Private Housing Finance Law, and the HDFC must be controlled by the nonprofit provider. The HDFC may develop the shelter alone or in a joint venture consisting of the nonprofit and one or more entities, including for profit entities, provided that the HDFC is the sole owner by permanent conversion prior to start of any Building Rent Payments.

The BRP Contract will provide that, subject to the terms of the contract and future appropriation of funds, DHS will make Building Rent Payments for the amortization term on the permanent financing (the “Loan”) necessary to cover the total cost of the shelter development. The term of the contract must be longer than the Loan term, and the Loan must be fully amortizing over a 30-year term. DHS’ Building Rent Payments must be made to the Provider but can be pledged directly to the permanent lender. Note the Contract is with the provider, but the borrower of the Loan is the HDFC. The contract

NYC Department of Homeless Services

	<p>will further provide that the City’s obligation to pay Building Rent Payments remains even if DHS were to terminate the shelter contract before the end of the contract term or the amortization term.</p>
<p>D. Shelter Contract Award through the Open-Ended RFP</p>	<p>New proposed shelters seeking BRP Contracts must submit new contract proposals through DHS’ Open Ended RFP. Nonprofit shelter providers with site proposals are strongly encouraged to reach out to DHS for a preliminary consultation (see Section P below) in advance of a submission: only projects with evidence of site control, verified zoning analysis, a projected development budget, and a projected operations budget may initiate the process to secure a BRP Contract by applying to the DHS Open-Ended RFP. The application must include an annualized budget for shelter operations and a development budget calculating the annualized Building Rent Payments based on the permanent financing (the “Loan”) necessary to cover the development budget costs. DHS will issue a conditional “Notice of Intent to Award” upon favorable review of the application. Final contract approval will require DHS design review, DHS approval of the development budget and operations budget, OMB budget approval, Law Department approval of the contract as required by the City Charter, Mayor’s Office of Contract Services (MOCS) approval, and NYC Comptroller’s Office registration of the contract.</p> <p>Within 60 days of contract registration, the project must secure construction and permanent financing necessary to cover the project’s development cost from a financing institution acceptable to DHS and start construction. Shelter operations, maintenance, and staffing costs will be covered separately from the Building Rent Payments within the same contract. No payments under the contract, including Building Rent Payments and operation costs, will start without a registered contract. All new shelter projects require final approval by NYS Office of Temporary and Disability Assistance (“NYS OTDA”) to open and operate the shelter, in addition to design requirements listed in Section K below.</p> <p>In order to be considered for a BRP Contract, the nonprofit shelter provider should have a demonstrable track record in running one or more DHS shelters, and/or developing, financing, owning, and operating supportive housing projects or other social service contracts. Any for profit entity in a joint venture must have a demonstrable track record in successfully financing and developing shelter facilities, affordable housing, supportive housing, or mixed-use real estate projects in New York City. All entities must show evidence of being in good standing with the City of New York.</p>
<p>E. Use Restriction</p>	<p>The BRP contract will require that the HDFC owner must record a restrictive declaration against the premises that restricts use of for shelter, affordable housing, supportive housing, and any other use that benefits the public as approved by the City. The use restriction must be in effect prior to the start of Building Rent Payments and have a term of 60 years from the shelter operations commencement date.</p> <p>In certain circumstances, DHS may require an additional shelter use restriction for 40 years within the 60 year use restriction.</p>
<p>F. Requirements prior to Contract Registration</p>	<p>Requirements prior to contract registration will include, but not be limited to, the following:</p> <ul style="list-style-type: none"> • Evidence of site control • DHS approval of the service, operations, maintenance, and security budget • DHS approval of the development budget and calculation of Building Rent Payment amount to be included in the DHS contract (including acquisition cost, hard cost, soft cost, financing fee, and developer fee approved by DHS) • Architectural plans reviewed by DHS and Architect’s Pre-Construction Certificate (applicable for new construction projects & projects requiring substantial rehabilitation) • Integrated Physical Needs Assessment (IPNA) reviewed by DHS (minor rehabilitation projects) • Completion of DHS environmental review, including City Environmental Quality Review • Financing commitment letters from construction and permanent lenders • DHS approved temporary Client Relocation Plan, if needed • DHS public notification of shelter development • Evidence of project’s ability to secure Enterprise Green Communities NYC Overlay Pre-Build approval • Evidence of project’s ability to close on construction financing within 60 days of contract registration • Proposed schedule for construction completion and shelter opening

NYC Department of Homeless Services

G. Per Diem Allowance for Development Costs

The Per Diem Allowance is the per unit daily cost of Building Rent Payment as calculated from the development budget for non-acquisition and non-developer fee costs. For new construction projects and projects with substantial rehabilitation, the DHS maximum Per Diem Allowance for development budget costs is based on the type of population served and the number of units provided per the table below. Development budget costs considered in the Per Diem Allowance below include hard cost, soft costs, financing fees, carrying costs, and capitalized reserves. It does not include acquisition cost and affiliated financing costs, or developer fee. Allowance for acquisition cost and developer fee are covered below in Sections H and I.

Per Diem Allowance for Development Costs* (Hard Cost, Soft Costs, Financing Fees, Carrying Cost)	Per Diem Allowance	Annual Allowance (Building Rent Payments)
Safe Haven (per Bed)	\$15.50	\$5,675.50
Single Adults (per Bed)	\$15.50	\$5,675.50
Adult Families (per Room)	\$26.10	\$9,526.50
Families with Children (per Unit)	\$68.40	\$24,966.00

**Applicable only for new construction projects or projects with substantial rehabilitation work.*

Projects proposing work in existing buildings that include the replacement of major mechanical systems (HVAC, elevator, electrical, and fire/safety), relocation of interior walls, substantial structural work, and substantial work on the building envelope (roof, doors, windows, and insulation) will be considered as substantial rehabilitation projects, subject to DHS review and approval of the scope. For projects with minor rehabilitation, projects must complete an IPNA with a scope of work and cost estimation for DHS review and approval.

The Per Diem Allowance for a project's development budget must be based on a general contractor's hard cost contract amount, verified soft costs, verified financing fees, and projected carrying costs using the most current available information regarding interest rates and projected construction timeframe. Projects that utilize lower per diem amounts will be prioritized. Development budgets and Per Diem Allowance amounts must be approved by DHS and OMB prior to contract registration. Projects that propose Per Diem Allowance amounts that are higher than the Per Diem Allowance listed above must reduce the developer fee in an equivalent amount per diem to be within the Per Diem Allowance, secure other sources of financing to cover the gap, and/or agree to long-term use restrictions beyond the terms stated in this document.

H. Acquisition Costs

DHS will recognize an acquisition price that is the lesser of the actual costs incurred or the fair market value. Projects must provide an appraisal of the property compiled by an independent appraiser. The appraisal methodology must consider highest and best use that is not a shelter. Projects that utilize acquisition financing may utilize the appraisal ordered by the acquisition lender or utilize an appraisal by the construction lender. The allowable per diem for acquisition shall include the acquisition price, necessary transaction costs, and related carrying costs.

I. Developer Fees

The table below provides the allowable developer fee the City will recognize in the development budget by population type:

Developer Fee Per Unit	Up to 80 Units	81-140 Units	141-200 Units
Safe Haven	\$18,000 per Bed		
Single Adults	\$18,000 per Bed	\$15,650 per Bed	\$13,600 per Bed
Adult Families	\$23,000 per Room	\$20,000 per Room	\$17,500 per Room
Families with Children	\$46,000 per Unit	\$40,000 per Unit	\$35,000 per Unit

Developer fees listed in the above tables only apply to projects that involve new construction or substantial rehabilitation projects. For Families with Children shelters, the developer fee per unit applies to projects that comply with the unit type distribution recommendations in Section K. Projects that do not meet the unit type distribution requirements may have the developer fee adjusted.

Projects proposing acquisition with minor rehabilitation of a new shelter, acquisition of an existing shelter from for profit to nonprofit ownership (where the contract is converting from a short-term contract with rent payments to a long-term contract with Building Rent Payments) or refinancing of an

NYC Department of Homeless Services

existing shelter with minor rehabilitation may be allowed a developer fee subject to DHS approval based on the acquisition price and scope of work, if any. Such developer fee may not exceed the fee per unit listed above, and capped at **8%** of development budget costs excluding any acquisition cost, and **5%** of any applicable acquisition cost.

Up to 20% of the developer fee may be paid at construction financing closing from construction loan proceeds and an additional 30% upon construction completion. 50% of the developer fee must be deferred until permanent conversion and paid from permanent loan proceeds. Consultant fees must be paid from the developer fee for all projects except where the project is a refinancing of an existing shelter with limited developer fee proceeds. The allowable per diem for developer fee shall include the fees stated above, and related carrying costs.

J. Unspent Development Funds

The shelter contract will have a development budget attached with a not to exceed amount for the total development cost. The construction lender must verify the final cost accounting for the project prior to permanent conversion. Project costs may be modified within major categories (acquisition, hard cost, soft costs, developer fee), but costs cannot be re-allocated between major categories without DHS approval, except where developer fee is used to cover cost overruns. Any unspent development funds, including any unspent contingency, hard cost, soft cost, financing fees, etc., must be used to reduce DHS Building Rent Payments, fund start-up costs, or other agreed upon use as approved by DHS.

K. Shelter Design and Construction Requirements

An 80-unit minimum is preferred for all projects except for Safe Haven shelters, which can be as small as 50 beds, and no shelter will have capacity of more than 200 beds/rooms/units. Projects must follow DHS' Requirements for Accessibility and projects are encouraged to incorporate best-practices in shelter design. All projects must meet the program and physical requirements of NYS OTDA.

It is the nonprofit provider and the HDFC's responsibility to ensure that the project comply with all laws, rules, regulations, and codes mandated by city, state, and federal authorities having jurisdiction. In circumstances where the DHS guidelines conflict, the laws, rules, regulations, and codes governing the activity take precedence. Such laws, rules, regulations, and codes, include, but are not limited to:

- New York City Zoning Resolution
- New York City Building Code
- New York City Construction Code
- New York State Multiple Dwelling Law
- Subtitle A of Title II of the Americans with Disabilities Act of 1990 and regulations promulgated pursuant, see 28 CFR Part 35 (e) (the 2010 ADA Standards for Accessible Design, subsection on "social services center establishment)
- Fair Housing Act
- Section 504 of the Rehabilitation Act of 1973 and Accessibility Requirements
- Part 900 of 18 NYCRR Chapter II Regulations of the Department of Social Services
- Part 491 of 18 NYCRR Chapter II Regulations of the Department of Social Services
- The 1981 Callahan Consent Decree
- The 2017 Butler Settlement

For all new construction projects and substantial rehabilitation projects, the minimum number of accessible units will be consistent with ADA minimum percentage set-aside standard for mobility and communication units. Projects in locations near accessible mass transit or other infrastructure that would be beneficial to those with accessibility needs are encouraged to exceed the minimum percentage. On a case-by-case basis, DHS reserves the right to require shelter projects include additional ADA units and/or features applicable to the population served.

All new construction projects and projects with substantial rehabilitation shall implement design features that utilize latest best practices in accessible design and universal design, particularly shelters that may serve a client population that may have higher accessibility needs. Designs for shared bathroom, dining, and other common areas shall incorporate adequate capacity of accessible accommodations to will meet the accessibility needs of the target client population. Shelters must provide for air conditioning in all units.

NYC Department of Homeless Services

DHS will approve the unit distribution in Families with Children shelters. Projects are encouraged to have 30% studio units, 40% one-bedroom units, 25% two-bedroom units, and 5% three-bedroom units to realize the developer fee schedule outlined on Section I for Families with Children projects. In addition, units should meet the following minimum and maximum size guidelines:

Unit Type	Min. – Max. Net Square Footage	Unit Type Distribution
Studio	350 – 400 sq. ft.	30%
1 BR	500 – 550 sq. ft.	40%
2 BR	650 – 725 sq. ft.	50%
3 BR	850 – 950 sq. ft.	25%

L. Energy Efficiency, Sustainability, & Resiliency

All new construction and substantial renovation projects must meet the requirements of the Enterprise Green Communities program with the NYC Overlay. Pre-Build Approval from Enterprise is required prior to construction loan closing, and application for Post-Build Approval must have been submitted prior to permanent loan conversion.

Projects that seek to pursue on-site energy generation (through solar PV, co-generation, or other methods) must demonstrate a payback schedule that justifies investment over a 20 year period, or secure funds to help defray costs. Projects must comply with all current legislation regarding energy efficiency and sustainability (including Local Law 94 & 97 of 2019), and are strongly encouraged to pursue resiliency measures to ensure that projects are able to withstand future impacts from climate change and extreme weather.

All shelters must comply with applicable benchmarking requirements based on facility size.

M. Shelter Operations, Services, & Request for Budget Increase

Project operation and service budgets must follow the DHS Model Budget guidelines and will be reviewed and approved through the DHS Open Ended RFP. Service costs should be clearly delineated from building operation and maintenance costs in the contract budget. Mixed use projects with shared facilities must identify allocation of costs between the shelter and the other uses.

During the contract term, where the provider's industry has experienced an increase in costs that exceeds the contract budget, and OMB or another agency has determined that additional funds will be made to a City agency for the class of contracts pursuant to which the provider provides substantially similar services, then DHS shall reimburse the provider for such increases in costs to the extent that such increases have been authorized for contracts within such class of contracts and to the extent that funds are appropriated for such purposes. Any such cost increase to the budget will not be effective unless and until an amendment to contract is registered pursuant to Charter Section 328.

N. Capitalized Reserves & Allowance for Repairs

DHS will allow a capitalized reserve to be incorporated into the development budget for use by the shelter provider to address capital repair needs following shelter opening. The capitalized reserves must be held by the permanent lender and used for such purpose.

Population Type	Capitalized Reserves
Safe Haven	\$500 per Bed
Single Adults	\$500 per Bed
Adult Families	\$800 per Room
Families with Children	\$1,600 per Unit

No other reserves are permitted for the shelter without DHS approval. DHS contracts include an annual allowance for repairs that is equal to 10% of the annual total contract amount. The allowance shall be retained by DHS until necessary repairs are approved pursuant to a new needs request by the shelter provider.

O. Tax Exemption

Projects must secure 420-a real estate tax exemption with the NYC Department of Finance (DOF). The DHS shelter contract will not provide any provisions to pay real estate taxes.

NYC Department of Homeless Services

P. Required Information for Site Proposal

Nonprofit shelter providers with site proposal are strongly encouraged to contact DHS prior to submission to the RFP, as well as other entities interested in learning more about the content in this term sheet. Please have ready the following information, if available:

1. Team information with contacts, development experience, and capacity (include shelter provider, architect, consultant, legal counsel, general contractor, and owner's representative)
2. Site Details (BBL, Lot Area, Zoning, etc.) and Zoning Analysis
3. Status of site control and ownership history
4. Market study and estimated market value, or appraisal, if available
5. Schematic design showing elevations, floor plans, site plan, surrounding context, and compliance with applicable guidelines governing shelter design, if available
6. Brief narrative with a scope of work and neighborhood description
7. Brief narrative with proposed shelter programming and proposed services; proposed number of shelter units/beds/rooms and if applicable, proposed units of affordable housing
8. Brief narrative of experience providing social services to target population and/or the community where the site is to be located
9. Preliminary underwriting based on proposed capacity and acquisition price

Any information provided by DHS in connection with the above shall not be construed as advice on how to propose and what information should be included in a proposal in response to the Open Ended RFP.

CONTACT INFORMATION

NYC Department of Homeless Services, Division of Capacity Planning & Development

Email: CPDInquiries@dhs.nyc.gov

DHS, in its sole discretion, may amend or waive compliance with any of the terms contained herein on a case-by-case basis, negotiate different terms and/or financing arrangements, or reject any or all proposals, and may, at any time and without prior notice, terminate the program if doing so is in the best interest of the City.