

X. Capital Lease Financings (Non-certificated Lease Purchase Agreements)

A. Purpose

This policy has been developed for City agencies that are non-Enterprise Funds, as defined by TABOR, to ensure that Capital Lease Financings for City agencies are accomplished in a manner that meets the agencies' needs and comply with all legal requirements. Available revenue resources are critical evaluation factors in acquiring capital equipment. Paying cash for City acquisitions eliminates the need to incur interest and other financing costs so it is the preferred method of purchasing capital items. Financing equipment, including computer software, over a period of time offers the City the flexibility to acquire critically needed equipment when the City does not have sufficient financial resources in the year of acquisition. There are legal restrictions against the City incurring multi-year fiscal obligations and the Department of Finance has adopted a Debt Policy to address bond and certificates of participation financings. Properly structured Capital Lease Financings are not legally defined as debt and are permissible under Colorado statutes and the DRMC. This policy statement has been prepared to document the policy for City of Denver Capital Lease Financing transactions.

B. Authority

1. Article XX of the Colorado Constitution.
2. City of Denver Charter Sections 2.5.1, 7.2.2, 7.51, and 7.53.
3. Denver Revised Municipal Code Sections 20-1 and 20-97.

C. Definitions

1. For purposes of this Policy, capital equipment, including computer software, is defined as tangible items that have a useful life of no less than three years, and a cost of no less than \$7,500.
2. Leases that meet one or more of the following criteria are *Capital Leases*:
 - A. The lease transfers ownership of the property to the City
 - B. The lease contains a bargain purchase option
 - C. The lease term is equal to 75% or more of the estimated economic life of the leased asset
 - D. The present value of the minimum lease payments (including executory costs) equals or exceeds 90% of the fair value of the leased asset.

Any leases that do not meet any of the four criteria above are *operating leases* and are not subject to this Policy.

D. Policy

1. To be eligible to be financed through a Capital Lease Purchase transaction:
 - A. Capital Lease Purchase transactions must be structured to comply with all applicable laws, regulations and covenants and shall not be entered into if it jeopardizes the credit worthiness of the City. Only financing entities that meet the City's legal requirements may provide lease purchase financing.
 - B. As a general rule the minimum cost of equipment financed through a capital lease should be \$500,000 with a useful life of 5 years or more, but the Manager of Finance may waive this requirement if deemed in the City's best interest.
 - C. The term of the Capital Lease Purchase shall not exceed the depreciable life of the asset acquire
2. Periodically, the Cash Risk and Capital Funding Division will assist the Purchasing Division with a selection process to identify a pool of financing entities with which the City may contract to enter into Capital Lease Purchase transactions.
3. Representatives of Purchasing, Cash Risk and Capital Funding, Budget, and the City Attorney's Office will meet periodically to review proposed and/or approved capital acquisitions for which Capital Lease financings may be undertaken. The Purchasing Division will be responsible for the scheduling of these meetings as needed.
4. When an acquisition through a Capital Lease Financing has been approved by the Office of Budget and Management, the Agency responsible for the use or administration of the equipment will designate an Agency Contact and Agency Representative (if different than the contact) who will provide to Cash Risk and Capital Funding information in the form of Exhibit I to this Policy Statement. Copies of completed Exhibit I are to be provided to the Office of Budget and Management and Purchasing.

E. Responsibility and Applicability

1. The execution of a Capital Lease Purchase requires the coordination of a number of City departments with various responsibilities under this Policy Statement:
 - A. City Agency requesting capital equipment
 - B. City Attorney's Office
 - C. Office of Budget and Management
 - D. Purchasing Division of the Department of General Services
 - E. Cash Risk & Capital Funding (CR&CF) Division of the Finance Department

2. City Agency Requesting Capital Equipment

- A. When each agency prepares its capital budget, the agency is responsible for identifying and prioritizing its capital needs for the subsequent year. If an agency is proposing financing the acquisition of equipment with a Capital Lease, agencies are to prepare an analysis of potential sources to make annual lease payments for new equipment such as from grants, donations, potential new revenue streams, or cost reductions from the acquisition.
- B. A staff member who is most familiar with the equipment will be identified as the Agency Contact through the Capital Lease Purchase process. The Agency Contact will coordinate the provision of information to the other city agencies with responsibilities for Capital Lease transactions. All inquiries from other departments working on the transaction will be returned promptly. Individuals designated as an Agency Representative have legal responsibilities under the terms of executed leases and may or may not be the Agency Contact.
- C. The Agency Contact will be responsible for the completion and provision of City documents required by other agencies, including:
 - 1. Purchase Requisition (if applicable) to Purchasing
 - 2. Form 42 for the Vendor Contract (CR&CF will complete the Form 42 for the lease financing) to City Attorney
 - 3. Exhibit I to CR&CF, with copies to Budget and Purchasing
- D. Payment of and accounting for rental payments will be the responsibility of the Agency, with copies of all requests for payment provided to CR&CF at least 10 days prior to the payment date.

3. Office of Budget and Management

- A. As the agency that initially receives capital equipment requests from City agencies, the Office of Budget and Management will be responsible for recommending the approval of equipment in the capital budget.
- B. A cost/benefit analysis shall be prepared in cooperation with the submitting Agency.

- C. Based upon the cost/benefit analysis, the Office of Budget and Management is responsible for identifying equipment which will need to be financed through a Capital Lease Purchase transaction and will forward notice of the approved equipment to the designated individuals in the CR&CF and Purchasing Divisions.
4. Purchasing Division of the Department of General Services
- A. Once the subsequent year's Capital Equipment Budget has been adopted, the Purchasing Division will be responsible for working with each agency to prioritize and coordinate the acquisition of approved equipment.
 - B. When an item has been identified to be acquired through a Capital Lease Purchase transaction, Purchasing will notify CR&CF of the item, Agency Contact, and the information contained in Exhibit I, which includes:
 - 1. schedule for acquisition
 - 2. Agency Contact information
 - 3. expected cost
 - 4. planned repayment structure
 - 5. expected date of installation,
 - 6. date of acceptance – the item is expected to be certified for use
 - 7. projected annual amounts available for lease payments
 - 8. schedule for vendor selection
 - C. Purchasing will facilitate the Form 42 process for the Vendor Contract and assist the agency contact with the negotiation of terms and conditions.
 - D. Purchasing will conduct a bid process of the pool of identified financing entities for review with CR&CF.
5. Cash Risk and Capital Funding Division of the Department of Finance
Upon notification of a proposed purchase requiring a Capital Lease Purchase, CR&CF staff will:
- A. Review the financing bids received by Purchasing and recommend which entity shall provide the financing
 - B. Contact the City Attorney's Office and obtain a designated attorney for the transaction
 - C. Prepare the Form 42 for the lease purchase transaction
 - D. Assist in the drafting of the Lease Agreement

- E. Assist in the selection of an Escrow Agent, if necessary, and assist in the preparation of an Escrow Agreement
- F. Prepare the accounting entry to record the capital lease transaction and the recognition of the equipment in the City's Fixed Assets Account Group
- G. Assist the Agency, as needed, with the processing of rental payments and maintain the repayment schedule in the CR&CF debt management software system (the DBC System)
- H. Maintain all financing documents, including IRS forms 8038/8038G, notices of assignment, etc.
- I. Confirm payments are made timely and recorded accurately in the City's General Ledger, properly recognizing the Principal and Interest components and the inclusion in the City's Long Term Debt Account Group
- J. Work with the Agency upon completion of the lease terms to obtain title to the redeemed equipment.

6. City Attorney's Office

Upon being contacted to prepare an agreement for equipment being acquired through a Capital Lease Purchase, City Attorney staff will:

- A. Designate the attorney(s) who will be responsible to work with the agency, Purchasing and CR&CF staff in preparing the Vendor Contract and Lease Agreements
- B. Assist in the negotiation of the vendor and lease documents to ensure the structure of the transaction complies with state and local laws
- C. Assist CR&CF with recording and filing any information with the Secretary of State Office or other title recording/release needed
- D. Prepare ordinance for Council consideration for approving the lease documents and, if necessary, approving the vendor documents.

Acquisition of Equipment Through a Capital Lease

1. AGENCY INFORMATION

Agency: _____

Agency Contact: Name: _____

Phone: _____ Fax: _____

Email Address: _____

Person designated as Agency Representative – if different: _____

2. DESCRIPTION OF ITEM(S) BEING ACQUIRED:

Estimated Life of Equipment: _____

Is this replacement Equipment _____ or new equipment _____?

Is this equipment essential for the operation of the agency? _____ Yes _____ No

3. PURCHASING INFORMATION:

Name of Buyer Assigned: _____

Phone Number: _____ Fax: _____

Date Approved for Capital Lease Financing: _____

Date Needed by Agency: _____

Vendor: _____

Vendor Tax I.D. _____

General Ledger Account Code to be charged for current year lease payments:

Exhibit I – Page 2 Acquisition of Equipment through a Capital Lease

4. OTHER INFORMATION:

A. Estimated Cost _____

B. Revenue Source for Repayment: _____

C. Annual amounts available for repayment: _____

D. Agency's preferred Repayment Schedule (attach suggested schedule if not equal annual payments):

E. Provide reference for the acquisition to the approved budget:

F. Does the Vendor Offer financing for inclusion in the bid process for the lease:

_____ No _____ Yes – if yes provide

Name of firm: _____

Address: _____

Representative name and phone number: _____

Email Address: _____

Cc: Budget and Management
Purchasing Division

On a separate sheet of paper, please provide a description of the plans for implementation from receipt of the item(s) to when it(they) will be placed into service, including any special needs to carry out the plan.