



City of Donna, Texas

Guidelines for Public-Private Partnerships

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ARTICLE I. INTRODUCTION

In order to assist local governmental entities to meet their growing infrastructure needs, the State has enacted the Public and Private Facilities and Infrastructure Act Chapter 2267, Texas Government Code (the “Act”) to allow greater use of public-private partnerships. The Act recognizes that there is a public purpose and need for a procurement tool that:

- Proposals;
1. Enables local governments to develop a predictable process to receive and review
 2. Ensures transparency and accountability to the public;
 3. Increases competition and value delivery;
 4. Provides checks and balances to reduce project delivery problems; and
 5. Spurs innovation and creative project approaches.

A. PURPOSE AND OVERVIEW

1. Purpose

In accordance with Section 2267.052 of the Act, the City Council of the City of Donna, Texas (the “City”), a “responsible governmental entity” as defined in the Act, has adopted these Guidelines for Public-Private Partnerships (the “Guidelines”) for the purpose of encouraging private entity participation, creativity, and competition, and to guide the selection of Private Entities for Qualifying Projects. These Guidelines govern the evaluation of Proposals by the private sector to partner with the City for the development or operation of certain projects and improvements. A successful Proposal will result in an agreement between the private sector and the City for development, completion, financing, operation, or maintenance of a Qualifying Project (Defined terms are defined in Section II A hereof).

It is the City’s intention to comply with all mandatory provisions of the Act, whether or not these Guidelines refer to such provisions specifically. These Guidelines will furnish the private sector with a fair and uniform format:

- a. To respond to Proposals; and
- b. To provide for a fair and transparent evaluation and selection process for Proposals in accordance with State law.

These Guidelines are intended to be reasonable, encourage competition, and guide the selection of projects under the purview of the City. Except as may be provided in these Guidelines, no agreement falling within the scope of these Guidelines shall be binding upon the City without prior approval by the City Council.

2. **Overview**

a. A person may not develop or operate a Qualifying Project unless the person contracts with the City as prescribed by these Guidelines and applicable law.

b. The private sector may participate in the P3 Program in a variety of ways, from designing a facility to undertaking its financing, construction, operation, maintenance, or management, or any combination of these activities.

c. Participation in the P3 Program is initiated by responding to a Solicitation or in the manner prescribed by these Guidelines. Although the City identifies development opportunities from time to time, such opportunities are not exclusive. Although the City cannot review an Unsolicited Proposal, these Guidelines do not prohibit the City from soliciting Proposals for a Qualifying Project similar to a project referenced in an Unsolicited Proposal.

d. The City will exercise full due diligence in the evaluation of Proposals and will examine carefully the qualifications, capabilities, resources, and other attributes of a Private Entity. Private Entities will be held strictly accountable for representations made and information provided to the City regarding their qualifications and experience.

e. As contemplated by the Act, the City's P3 Program is a flexible development tool that allows innovative approaches to project development, use, and financing. The City encourages submission of Proposals offering private financing in support of a Qualifying Project. Such financing, which may include non-traditional mechanisms such as user fees and other forms of service payments, may give rise to commensurate risk for a successful Private Entity, but also provide the Private Entity with benefits beyond those typically available through traditional financing methods.

f. Proposals may include in-kind consideration in an amount not less than the fair market value of the real property interest, including but not limited to construction of new facilities; expansion, alteration, and restoration of existing facilities; and environmental remediation.

g. Absent a legally enforceable written agreement executed by an authorized representative of the City, the City will not be responsible for any costs incurred in the preparation, submission, or presentation of a Proposal.

B. QUALIFYING PROJECTS

The goal of the P3 Program is to: (1) encourage investment by Private Entities and other persons; (2) provide the City with the greatest possible flexibility in contracting with Private Entities or other persons to provide public services through Qualifying Projects; (3) encourage redevelopment of underdeveloped and underutilized properties; (4) share risk and expense between the City and the Private Entity; and (5) develop public-private partnerships in a way that provides mutually beneficial results given related project risks. A public-private partnership is documented through an interim and/or comprehensive development agreement between the City, a public agency (federal, state, or local), and a private sector person or entity. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared to deliver a facility and/or service (e.g., planning, designing, financing, constructing, operating, maintaining, and owning) for the use of the general public and each sector shares in the potential risks of the timely and efficient delivery of the service or facility. To be considered under the P3 Program, a Proposal must meet the definition of a Qualifying Project and be determined to be in the best interest of the City.

The City may, from time to time, identify Qualifying Projects for inclusion in the P3 Program. To encourage consistent and compatible development that enhances the value of City assets, the City will consult and work cooperatively with private entities to encourage intensive, high quality development of underdeveloped and underutilized assets within its charge or control. The City will select property interests, such as a long-term, non-subordinated ground lease, that may be marketed to private entities with the objective of soliciting Proposals that demonstrate potential to generate sustainable non-tax revenue sources and that allows the City to participate in the increase in value of its real estate and other assets over time.

C. DESIGNATED CITY REPRESENTATIVE

1. The City designates the following representative to meet with Private Entities considering submitting a Proposal:

City Manager
City of Donna, Texas
307 South 12th Street
Donna, Texas 78537

2. The City Manager may designate in writing another employee of the City to act in his/her stead regarding any particular Proposal. Such designation may amend or withdraw the designation at any time.

3. The City's designee is available by appointment only, Monday - Friday between 9:00 a.m. - 5:00 p.m., C.T. excluding holidays.

ARTICLE II. GENERAL PROVISIONS

A. DEFINITIONS

Unless otherwise specified, words defined in the Act shall have the same meaning when used in these Guidelines. Additionally, the following terms shall have the meanings set forth below:

“Act” means the Public and Private Facilities and Infrastructure Act, Chapter 2267, Texas Government Code.

“Comprehensive Development Agreement” shall have the same meaning as the term “comprehensive agreement” as defined in §2267.001(2) of the Act. A Comprehensive Development Agreement requires approval by the City Council.

“Contracting Person” means an individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefits corporation, nonprofit entity, or other business entity that enters into an Interim Development Agreement or Comprehensive Development Agreement with the City.

“Cost-Benefit Analysis” means the City's or its designated consultant's financial assessment of the Proposal along with its nonfinancial benefits.

“Interim Development Agreement” shall have the same meaning as the term “interim agreement” as defined in §2267.001(6) of the Act. An Interim Development Agreement requires the approval of City Council. The Interim Development Agreement may authorize the Contracting Person to begin activities

or project phases related to the Qualifying Project including, but not limited to, project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities, or any other phase of the Qualifying Project that constitutes activity on any part of the Qualifying Project.

“Newspaper” means the newspaper selected by the City to publish public notices.

“Oversight Committee” means a city-designated committee that may consist of qualified professionals of the City in accordance with §2267.052(c)(2) of the Act, including but not limited to personnel from the City Manager’s Department, Finance Department, Purchasing Department, and the City Attorney to select a successful Respondent and negotiate terms of an agreement permitted herein.

“P3 Program” means the City’s public-private partnership program implemented in accordance with the Act.

“Proposal” means a proposal submitted by a Private Entity to the City in response to a Solicitation.

“Private Entity” means a non-governmental entity, or a group or team of such entities, including any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

“Proposer” means a Private Entity that submits an Unsolicited Proposal.

“Qualifying Project(s)” has the same meaning as defined in the Act and is intended to include all assets owned or operated by the City pursuant to its authority under Chapter 367, Texas Transportation Code.

“Respondent” means a Private Entity that submits a Proposal.

“Review Stage” means the period of time during which a Proposal is reviewed pursuant to the Guidelines.

“Solicitation” means a written request for services issued by the City soliciting proposals for a Qualifying Project that may include business plans, relevant information, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

“Unsolicited Proposal” means (i) a Proposal submitted by a Private Entity not in response to a Solicitation, or (ii) a Proposal submitted by a Private Entity in response to a Solicitation that is received by the City after the due date reflected in the Solicitation and that is rejected for consideration by the City.

B. GENERAL PROPOSAL SUBMISSION PROCESS

Set forth below is a general description of the type of information that is expected to be included in a Proposal (subject to the specific terms defined in a Solicitation). The specific content, and the organization of that content, is set forth in Article IV below or will be prescribed in the Solicitation, such that if all of the information identified in Article IV or in the Solicitation is provided in a Proposal, the information generally described in this Article II will be deemed to have been provided.

A Private Entity shall specifically identify any facility, building, infrastructure, or improvement included in the Proposal.

The process for receipt and review of a proposal is initiated by a solicitation by the City. Except as noted herein, the Proposal should provide general information on the Private Entity's qualifications, experience and financial resources, the project characteristics, project financing, project benefit, value, compatibility as further set forth in these Guidelines, and anticipated public support or opposition.

The P3 Program is intended to be a flexible development tool that allows the use of innovative financing techniques. Private Entities are encouraged to include innovative financing methods, including the imposition of user fees or other forms of service payments as provided in the Act, in their proposal. The Contracting Person can be involved in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and management.

Proposals should be prepared simply and economically, but should include a concise description of the Private Entity's capabilities to complete the Qualifying Project. Proposals must include a scope of work and a financial plan for the Qualifying Project, containing enough detail to allow, at a minimum, a cursory cost-benefit analysis by the City of the Proposals' financial feasibility. As provided in the Act, the City reserves the right, on a case-by-case basis, to conduct the analysis of the Proposal with internal resources or to contract with outside advisors or consultants to provide this service. In either case, the City may request follow-up financial or other relevant information to complete the cost-benefit analysis required of every Proposal. The City may, at any time, request in writing that the Respondent clarify or supplement its submission.

The P3 Program is intended to encourage proposals from the private sector that offer the provision of private financing in support of a Qualifying Project, which may include commensurate risk to the Private Entity, but may also benefit the Private Entity through innovative approaches to project financing, development, and use. Solicitations may include in-kind consideration, in an amount that is not less than the fair market value of the real property interest, including but not limited to construction of new facilities, alteration and restoration of existing facilities, and environmental remediation. The City shall continue to exercise full and proper due diligence in the evaluation and selection of Qualifying Projects. In this regard, the qualifications, capabilities, resources, and other attributes of a Private Entity shall be carefully examined for every Qualifying Project. In addition, Private Entities shall be held strictly accountable for representations and information provided regarding their qualifications, experience, or other contents of their Proposals, including all specific aspects of proposed plans to be performed by the Private Entity.

THE CITY SHALL NOT BE LIABLE FOR ANY COST INCURRED BY THE PRIVATE ENTITIES IN PREPARING, SUBMITTING, OR PRESENTING THE PROPOSAL AND IN SATISFYING ANY DEMONSTRATION OR OTHER REQUIREMENTS FOR AN UNSUCCESSFUL PROPOSAL.

C. PROPOSAL REVIEW FEES

If the City decides to proceed with evaluation of a Proposal, the City may at its discretion engage professional advisors, attorneys, or consultants having appropriate experience in analyzing public-private partnership proposals and negotiating comprehensive agreements, as set out in Article III, of these Guidelines. The Private Entity shall pay the reasonable fees of any advisors, attorneys, or consultants engaged by the City to complete the evaluation of the Proposal. Payment shall be made in the manner and amounts set out in an Interim Agreement between the City, the Private Entity, and such advisors, attorneys, or consultants.

D. TEXAS PUBLIC INFORMATION ACT

The Act creates certain exceptions to the disclosure of documents related to a Proposal under the Texas Public Information Act, Chapter 552, Texas Government Code (the "PIA"). Additionally, information in the custody of the City consisting of memoranda, staff evaluations, or other records prepared by City staff and its outside advisors or consultants related to the evaluation and negotiation of Proposals may be exempt from public disclosure if disclosure before or after the execution of an Interim Development Agreement or Comprehensive Development Agreement would adversely affect the financial interest or bargaining position of the City. Any records provided to the City in relation to a Proposal that contain trade secrets, financial records not generally available to the public through regulatory disclosure filings, or information that if made public before the execution of an Interim Development Agreement or Comprehensive Development Agreement would adversely affect the financial interest or bargaining position of the Private Entity shall be exempt from public disclosure. These provisions, however, do not prevent disclosure of all other information in an Interim Development Agreement or Comprehensive Development Agreement, service contract, lease, partnership, or agreement of any kind entered into by the City in response to a proposal. In the event of a request for information related to a proposal, the Office of the Attorney General will determine whether the requested information may be protected from public disclosure, not the City. If the City receives such a request for information, the City will notify the Private Entity of the request and give the Private Entity an opportunity to assert, in writing to the Office of the Attorney General, a claimed exception under the PIA or other applicable law within the time period allowed under the PIA. No information that is subject to a claimed exception under the PIA or other law will be released by the City until all proceedings related to determining the validity of the claimed exception have concluded.

ARTICLE III. PROPOSALS

A. GENERAL INFORMATION

Any submissions received that are not in response to a Solicitation shall be deemed an Unsolicited Proposal under these Guidelines. The City may accept and consider, at its discretion, Proposals received after the due date reflected in the Solicitation if the City finds such would be in the best interests of the City, to the extent not prohibited by law. Any submissions received after the due date reflected in the Solicitation and not otherwise accepted for consideration by the City shall be deemed an Unsolicited Solicitation. The City shall not be liable for any cost incurred by the Private Entities in preparing, submitting, or presenting a Proposal.

The procedures and requirements applicable to any particular Proposal shall be definitively specified in the Solicitation which may or may not contain all of the provisions provided in these Guidelines. It is the City's duty to clearly state the requirements of a Proposal. It is the Respondent's

obligation to determine from the City's Solicitation document the extent of applicability of these Guidelines.

Generally, proposals solicited by the City in either an RFP or RFQ format will follow City procurement policy and procedures or applicable Texas law governing the City's procurement requirements. These Solicitations, in addition to RFP or RFP requirements, may request some or all of the following:

1. **Identification of the Private Entity**

a. Identify the legal structure of the Private Entity and its members or principals making the Proposal; and

b. Identify the firms that will provide design, construction, and completion guarantees and warranties.

2. **Qualifications and Financial Capacity**

The Private Entity must be able to provide demonstrable experience in the development and operation of projects of similar complexity, scope, and scale to the proposed Qualifying Project. The submission must describe relevant experience with respect to the development and operation of other commercial or public-private partnership projects, clearly distinguishing the experience of the Private Entity from that of consultants.

3. **Project Overview**

The Solicitation may require an overview of the Qualifying Project, including the conceptual design of any facility or a conceptual plan for the provision of services. The conceptual design for facilities, at a minimum, shall include concept renderings, a concept site plan, and elevations that collectively illustrate the location, size, and context of the Qualifying Project.

4. **Project Analyses**

The Solicitation may require a project analysis that includes, but is not be limited to, the following: (1) location and site analysis, (2) marketing and competitive analysis, (3) community impact, and (4) financial impact, and (5) construction schedule.

5. **Project Financing**

Financing is an integral part of any Solicitation. The City may require, but is not limited to requiring, any or all of the following in a Proposal: financial analysis, project budget, pro forma financial statements, formal banking commitments, and bond requirements.

6. **Information Required By Act**

Any other information required by the Act but not requested specifically in the Solicitation shall be provided by the Respondent.

B. PROPOSAL EVALUATION AND SELECTION CRITERIA

The evaluation and selection criteria for Proposals shall be particularly described within the Solicitation. All Proposals shall be analyzed by qualified professionals of the City or by qualified

professionals retained by the City at the City's discretion to provide an independent analysis in accordance with Section 2267.052 of the Act.

Should the City select to pursue a Proposal for negotiation of an Interim Development Agreement or a Comprehensive Development Agreement, Section 2267.055 of the Act requires that a copy of the Proposal be provided to any affected jurisdictions. The City will send written notification to the Respondent that it has selected their Proposal within 120 days of the Solicitation due date and will request that the Respondent submit its Proposal within 10 days to Hidalgo County, Texas and any other affected jurisdiction(s) identified by the City, if any, for comment.

C. FORMAT FOR SUBMISSIONS OF PROPOSAL

A Proposal shall be submitted in the following format; however, the City retains the right to alter the format on a case by case basis for each Solicitation.

1. All Proposals must be organized in the manner outlined and submitted with the Review Fee. No page limitation is imposed, but brevity is appreciated. All Proposals shall be submitted as one original and two copies and one electronic copy (searchable PDF format on CD or USB drive). The original copy containing original signatures shall be marked ORIGINAL on the cover letter.

2. Private Entities shall also submit trade secrets, financial records, proprietary, or other confidential records exempt from disclosure under the relevant provisions of the Act and in a separate, sealed envelope, designated on the cover as CONFIDENTIAL MATERIALS. Failure to mark confidential or proprietary information may lead to its disclosure as publicly available records. The duty lies with the Private Entity to identify protected information delivered to the City.

3. Proposals shall be packaged and submitted in the following format:

a. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below;

b. The submittal shall be divided into tabbed sections as follows:

TAB 1: Executive Summary

TAB 2: Private Entity

TAB 3: Qualifications and Financial Capacity

TAB 4: Proposal

TAB 5: Project Analyses

TAB 6: Project Financing

TAB 7: Community Impact

TAB 8: Miscellaneous

TAB 9: Addenda

- c. The contents shall be printed on 3-hole punched 8/2" x 11" paper (except A/E drawings and Renderings);
- d. Drawings shall be printed no larger than 36" x 54"; and
- e. Supplemental materials in alternate formats may be allowed to describe the Proposal in more detail.

4. All submissions shall be addressed to City of Donna, City Manager, 307 South 12th Street, Donna, Texas 78537, in a sealed envelope marked:

P3 PROGRAM PROPOSAL
DO NOT OPEN IN MAILROOM

Respondent's Name
Mailing Address
Proposal Date

The City shall not be liable for any cost incurred by the Private Entities in preparing, submitting, or presenting the Proposal and/or in satisfying any demonstration or other requirements for a successful or unsuccessful Proposal.

D. SUBSTANCE OF PROPOSAL

Proposals shall be sufficient to convey the experience and capacity of the Private Entity, the nature and benefits to the City of the Qualifying Project, as well as the financial and implementation strategies to ensure successful completion of the Qualifying Project. The submittal should be organized in the following order and tabbed in accordance with this Section. All submittals, at a minimum shall provide the following, unless the Respondent receives a written waiver of the requirement or requirements by the City in advance of submitting the Proposal.

1. Tab 1: Cover Letter and Executive Summary

Provide a cover letter, signed by an authorized representative of the Private Entity, including the information detailed below:

- a. Identification
 - i. Identify the Private Entity who will be directly involved in the Qualifying Project;
 - ii. Identify the principal(s) include their title, mailing address, phone number, and email address;
 - iii. Identify the person(s) in charge of negotiations, key personnel who will be involved in decision making, and the representative authorized to sign on behalf of the Private Entity; and

iv. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Qualifying Project.

b. Private Entity Contact Information

i. Physical address (if a consortium, include the address of each partner or member);

ii. Mailing address (if a consortium, include the address of each partner or member); and

iii. Primary phone and facsimile number.

Include a no more than five page executive summary that highlights the key components of the Qualifying Project; including but not limited to describing the Private Entity, its qualifications and experience with similar projects, highlights of the proposal and Qualifying Project analyses, and the community impact and benefits of the Qualifying Project.

Qualifying information evidencing the Respondent's thorough understanding of the complexities of the Qualifying Project as well as management and operational expertise sufficient to complete the Qualifying Project in a timely and professional manner should also be included.

2. **Tab 2: Private Entity**

a. Identify the legal structure of the Private Entity and its members or principals making the Proposal; and

b. To the extent the Private Entity is created, and for each member thereof, provide proof of authority to do business in Texas and, as applicable, a certificate of good standing from the Texas Comptroller of Public Accounts and Texas Secretary of State.

c. To the extent a team is created, provide a list including the company name, primary contact, title, address, telephone, and email of each team member and any selected or prospective professional or consultant which may include, but are not limited to analysts, architects, engineers, contractors, legal counsel, marketing firms, real estate brokerage, and property management firms;

d. Identify the firms that will provide design, construction, and completion guarantees and warranties

e. Provide an organizational chart that clearly illustrates the team and identifies the role of each team member, including design professional, consultant or major contractor (over \$1 million), participating in the development or operation of the Qualifying Project; and

f. Describe the management structure and the role each team member, partner and any prospective professional, consultant or major subcontractor (over \$1 million) that will develop or operate the Qualifying Project.

3. **Tab 3: Qualifications and Financial Capacity**

The Private Entity must provide demonstrable experience in the development and operation of Qualifying Projects of similar complexity, scope and scale to the proposed Qualifying Project. The submission must describe relevant experience with respect to the development and operation of other commercial or public-private partnership projects, clearly distinguishing the experience of the Private Entity (including joint venture partners) and that of consultants and other team members. To substantiate experience and ability to perform the following information shall be provided:

a. Describe the length of time in business, business experience, public sector experience, and other engagements of the members of the Private Entity;

b. Resumes and work experience of each member;

c. For the Private Entity and each major subcontractor or subcontractor on the team, provide a statement listing five to ten prior projects and clients within the past five years and contact information for each. Such prior projects list should focus on any projects similar in scope and size to the Qualifying Project and the most recent projects. For each project identified, provide at least the following information:

i. Client's name, project name and project location, including primary contact name, address, telephone number, and e-mail address. Identify the affected jurisdiction, including references and contact information, involved in each project;

ii. Private Entity's role in the project, the project description including year completed, type, size, unit mix and tenants; and any available photographs and plans;

iii. A description of the experience of the members of the Private Entity, key principals and project managers bringing similar projects to completion on budget and in compliance with design, land use, service, and other standards. Also provide the performance schedule from contract to completion including stabilization;

iv. Identify the banking/lending commitments and description of the development cost including a brief explanation of the approach and type of financial structure and terms used to finance the project, including identification of sources and amounts of debt and equity, and public subsidies and incentives, if any;

v. All performance evaluation reports for the Private Entity and the major contractor(s) or subcontractor(s) or other documents that are in its possession evaluating the performance for the listed projects in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful Qualifying Project development, operation, and completion;

vi. A description of public involvement process and challenges or obstacles, if any, arising from the process, and how the Private Entity overcame such challenges or obstacles;

d. Provide at least three development and financial references (name, title, entity, telephone number, email address, and contractual relationship) that can be contacted with respect to current and past project experience;

e. Establish and demonstrate access to financial resources such as the ability to raise equity and secure debt capital to deliver the Qualifying Project in a professional and timely manner;

f. Provide a listing and description of all pending projects under enforceable funded contracts, including the status, development schedule, financing, method, sources, and amounts, and financial commitments required of the private entity;

g. For the Private Entity and each major contractor or subcontractor that will perform construction or design activities, provide a sworn certification by an authorized representative of each attesting to the fact that it is not currently debarred or suspended by any federal, state, or local government entity; and

h. Financial Capacity: Demonstrate access to financial resources such as the ability to raise equity and secure debt capital to deliver the Qualifying Project in a professional and timely manner. To demonstrate financial resources, each Proposal must provide the information listed below:

i. Portfolio: Composition of current real estate portfolio, including the size, value, years of ownership, and asset performance compared to initial pro forma statements and any other relevant information; and

ii. Pending Projects: A listing and description of all pending projects under enforceable funded contracts, including the status, development schedule, financing method, sources, and amounts, and financial commitments required of the Private Entity.

iii. Three years of Audited Financial Statements for any participants having not less than 5% interest in operations of Private Entity.

4. **Tab 4: Proposal**

Provide an overview of the Qualifying Project including the conceptual design of any facility or a conceptual plan for the provision of services. The conceptual design for facilities, at a minimum, shall include concept renderings, a concept site plan, and elevations that collectively illustrate the location, size, and context of the Qualifying Project. The required renderings and drawings include:

a. Concept Plan

i. Concept Renderings: Provide a concept design (plan, computer aided model, aerial sketch, photomontage, etc.) that characterizes the context of the urban design of the Qualifying Project. The concept drawings shall clearly illustrate the relationship of the Qualifying Project to the principal street and surrounding developments.

ii. Concept Site Plan: The site plan shall encompass the subject property and portions of contiguous parcels. The site plan shall also indicate all major pedestrian entrances, all proposed outdoor areas, and the circulation plan

showing how the Qualifying Project relates to public rights-of-way to and within the site, for public transportation, and for motor vehicles.

b. **Qualifying Project Overview.** The Qualifying Project overview, at a minimum, must include:

i. Describe the proposed business arrangements (i.e. ground lease, build-to-suite, parking management agreements, etc.);

ii. Describe the plan for the development, financing, and operation of the Qualifying Project showing the anticipated schedule of which funds will be required;

iii. Describe the implementation strategy for the Qualifying Project;

iv. Provide a preliminary schedule including permits and approvals from any federal, state, or local agencies, to the extent such are required, and timing of any contemplated requests for federal, state or local resources, and the initiation of operations or construction phasing, completion and opening (if not already opened) of the Qualifying Project including major milestones and the proposed major responsibilities and timeline for activities to be performed by the City and the Private Entity;

v. To the greatest extent possible the overview must describe the following items:

A. Operational and management plan, if applicable;

B. Existing conditions and anticipated site preparation;

C. Other opportunities that will benefit the viability of the Qualifying Project;

D. Adjacent uses and emerging projects that impact the value or influence the use of the Qualifying Project;

E. Connections to public transportation; and

F. Availability and existing capacity of public infrastructure and required extensions or improvements.

c. **Terms, Special Conditions and Other Considerations.** This Section is reserved for a description of any special conditions, contingencies, or conditions related to the Qualifying Project that the Respondent may offer to, or request from the City.

5. **Tab 5: Qualifying Project Analyses**

The analyses of a Qualifying Project should support the business case of the Qualifying Project. The analyses of a Qualifying Project shall be categorized into four sub-tabbed sections as follows: (1) location and site analysis, (2) marketing and competitive analysis, (3) financial analysis, and (4) legal analysis.

a. Location and Site Analysis

i. Provide an explanation of how the proposed design of the improvements and the attributes of the site will generate maximum financial, economic and social benefits;

ii. List any public utility facilities that will be affected by the Qualifying Project and a statement of the plans to accommodate the affected facilities; and

iii. A list of any public utilities likely to be affected by the Qualifying Project and a summary of plans to accommodate same.

b. Construction/Project Schedule

i. Provide a conceptual time line identifying all the stages of project development from design to completion.

ii. Provide a construction time line setting out the work schedule for the project from the design stage to project acceptance by the City.

c. Legal Analysis

i. Provide a list of all permits and approvals from federal, state, and local agencies required for the development and completion of the Qualifying Project, together with a description of any reasonably anticipated support for or opposition to the Qualifying Project (including potential legal responses) from public or private persons or entities.

ii. Identify any federal, state or local resources that the private entity contemplates requesting for the Qualifying Project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.

6. **Tab 6: Qualifying Project Financing**

a. Financial Analysis including the following:

i. The Private Entity's financing plan for the Qualifying Project, including identification of sources of capital, financing mechanisms, and amounts of debt and equity to capitalize the Qualifying Project.

ii. A description of the sources and anticipated amounts of working capital to pay operating costs.

iii. Letters, not more than ninety days old, from authorized representatives of regulated financial institutions evidencing the existence of liquid assets or suitable unencumbered lines of credit and financing arrangements sufficient to finance all reasonably anticipated pre-development activities.

iv. Documentary evidence of the Respondent's liquid assets or acceptable forms of equity of a nature and in amounts sufficient to meet requirements likely to be imposed by a regulated construction lender.

v. To the extent the private entity has identified federal, state, or local funding sources; describe such sources.

b. **Qualifying Project Budget.** Using standard estimating techniques, provide a development budget detailing any anticipated land acquisition(s) and the anticipated pre-development costs. The budget should include cost estimates to pay for the relocation of any utility facilities which will be displaced as a result of Qualifying Project development.

c. **Pro Forma Financial Statements**

i. Provide a discounted cash flow analysis, for the duration of the Qualifying Project, including but not limited to: estimates of costs, operating expenses, capital reserves including replacement and re-tenancing reserves, net operating income, debt service, partnership percentages, disposition benchmarks, calculations of net present value, and internal rate of return.

ii. Provide projected balance sheet and income statement for the four years of operation.

7. Tab 7: Information Regarding Community Impact

To the extent not already supplied, provide the following:

a. A description of the Qualifying Project's anticipated financial benefit to the City, including tax revenues and overall economic impact;

b. Estimates of the number of jobs for area residents to be generated by the Qualifying Project and of the compensation (including the value of benefits) for such jobs;

c. A description of the Qualifying Project's anticipated non-financial benefits to the City; and

d. Any additional information the Respondent considers important with regard to the Qualifying Project's impact on the area surrounding the Qualifying Project and the City as a whole.

8. Tab 8: Miscellaneous

Use this Section to present additional information such as letters of recommendation, letters of interest from prospective lenders, additional information concerning the development team, and other information that supports the Proposal.

9. Tab 9: Addenda

Use this Section to present any item cited or referenced in the Proposal.

Any other information required by the Act but not requested specifically in the Solicitation shall be provided by the Respondent.

ARTICLE IV. EVALUATION PHASE AND SELECTION CRITERIA

A. REVIEW STAGE

Following submission of a Proposal, the City Manager shall notify the Respondent through a Letter of Interest if any additional information is needed to evaluate the Proposal.

Once the Respondent has submitted the Proposal, the City Manager will submit a copy of the Proposal to the Oversight Committee. Within 120 days from the due date of the Solicitation of the Proposal, the Oversight Committee shall evaluate the Proposal and determine whether a recommendation to proceed to an Interim Development Agreement or Comprehensive Development Agreement shall be made to the City Council. The Respondent shall be sent notification in writing within such 120-day time period of the City's decision either to make such recommendation or to not pursue the Qualifying Project as presented in the Proposal. Upon declination, the City shall return all submitted documents to the Respondent.

At any time during the Review Stage, the City may request additional information or a meeting with the Respondent to seek clarification regarding the submitted Proposal.

The City reserves the right to accelerate the selection, review, and documentation timelines for Proposals involving a Qualifying Project considered a priority by the entity. The City will notify Respondents of any accelerated evaluation in the Solicitation or by other reasonable means.

B. SELECTION CRITERIA

The City shall make a best value determination in evaluating the Proposals received and consider the total Qualifying Project cost as one factor in evaluating the Proposals. The City is not required to select the Proposal that offers the lowest total project cost and may consider the following factors:

1. the proposed cost of the Qualifying Project;
2. the general reputation, industry experience, and financial capacity of the person submitting a Proposal;
3. the proposed design and overall quality of the Qualifying Project;
4. the eligibility of the Qualifying Project for accelerated selection, review, and documentation timelines under the Guidelines;
5. comments from local citizens and affected jurisdictions;
6. benefits to the public;
7. the person's good faith effort to comply with the goals of a historically underutilized business plan;
8. the person's plans to employ local contractors and residents;
9. for a Qualifying that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing;

10. the relationship and conformity of the Qualifying to a state or local community plan impacted by the Qualifying Project or to the uses of property surrounding the Qualifying Project;
11. the historic significance of the property on which the Qualifying Project is proposed to be located;
12. the environmental impact of the Qualifying Project; and
13. other criteria that the City considers appropriate and to be in the best interest of the City, as described in the solicitation.

C. EVALUATION FACTORS

Factors to be considered in evaluating a Proposal shall include but not be limited to the following:

1. **Qualifications and Experience.**
 - a. Experience working with the public sector on public-private projects;
 - b. Experience, training and preparation with projects of similar size, scope, and complexity;
 - c. The extent of personnel, logistical resources, bonding capacity, and the ability to complete the Qualifying Project in a timely and professional manner;
 - d. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control, and project safety;
 - e. Demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
 - f. Leadership structure;
 - g. Project manager's experience;
 - h. Management and operational plans;
 - i. Financial condition and capacity; and
 - j. Project ownership.
2. **Project Characteristics.** Factors to be considered in evaluating the Qualifying Project characteristics may include, but are not limited to:
 - a. Project scope and scale, land use, and product mix;
 - b. Operation of the Qualifying Project;
 - c. Technology; technical feasibility;
 - d. Federal, state, and local permits;

- e. Ongoing operations and maintenance of the Qualifying Project;
- f. Provides flexibility to accommodate reasonably foreseeable changes in technologies necessary for efficient operation of the Qualifying Project;
- g. Provides flexibility to accommodate long-term variances in the number of City residents likely to be served by the Qualifying Project; and
- h. Is consistent with the City's long-term goals for sustainability and protection of the environment.

3. **Project Cost and Financing**

Factors to be considered in evaluating whether the proposed financing allows adequate access to the necessary capital to finance the Qualifying Project may include, but are not limited to:

- a. Cost and cost benefit to the City;
- b. Financing and the impact on the debt or debt burden of the City;
- c. Financial plan, including overall feasibility and reliability of plan;
- d. Past performance with similar plans and similar projects;
- e. The degree to which the private entity has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;
- f. Estimated project cost and life-cycle cost analysis; and
- g. The identity, credit history, past performance of any third party that will provide financing for the Qualifying Project and the nature, amount, and timing of their commitment, as applicable.

4. **Community Impact**

Factors to be considered in evaluating the Qualifying Project's community impact may include, but are not limited to:

- a. Community benefits, including the economic impact the Qualifying Project will have on the City and affected jurisdictions in terms of tax revenue, the number of jobs generated and level of pay and fringe benefits of such jobs;
- b. Community support or opposition, or both;
- c. Compatibility with existing and planned facilities; and
- d. Compatibility with local, regional, and state economic development efforts.

5. **Other Factors**

Other factors that may be considered by the City in the evaluation and selection of Proposals may include, but are not limited to:

- a. The extent the offered consideration generates value and returns to the City and benefits to the public, including in-kind consideration greater than the fair market value of the asset;
- b. The general reputation, industry experience, and financial capacity of the private entity;
- c. The proposed design of the Qualifying Project;
- d. Opportunity cost of taking an alternative action;
- e. The Private Entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- f. The Private Entity's plans to employ local contractors and residents; and
- g. Other criteria that the City deems appropriate.

ARTICLE V. POSTING AND HEARING REQUIREMENTS

A. NOTICE AND ACCESS TO ACCEPTED PROPOSALS

In accordance with Section 2267.066 of the Act, within 10 business days of the City accepting a Proposal, the City will make the Proposal available to the public on its official website. It will also make available a hardcopy of the Proposal for inspection at its City Secretary's Office.

Trade secrets, financial records, or other designated records of the Contracting Person excluded from disclosure pursuant to relevant provisions of the Act and under PIA may not be posted or made available for public inspection except as otherwise agreed to by the City and the Private Entity.

In addition to making the Proposal available for review through the City's website and at the City Secretary's Office, the City shall also provide notice on its website that the City: (i) has received and accepted a Proposal under the P3 Program; (ii) intends to evaluate the Proposal; and (iii) may negotiate an Interim Development Agreement or Comprehensive Development Agreement with the Private Entity based on the Proposal. The notice also shall summarize the Qualifying Projects and identify the proposed locations.

B. PUBLIC HEARING ON ACCEPTED PROPOSALS

In accordance with Section 2267.066(d) of the Act, during the review process of a Proposal and not later than the 30th day before the City enters into an Interim Development Agreement or Comprehensive Development Agreement, the City shall hold a minimum of one public hearing on the Proposal in the area in which the proposed Qualifying Project is to be performed. Additional hearings may be held at the City's discretion.

C. WORK PRODUCT PROPOSALS

Each Respondent agrees that the City shall be entitled to use all non-confidential work product that is not returned to the Respondent (including concepts, ideas, technology, techniques, methods,

processes, drawings, reports, plans, and specifications) contained in its Proposal or generated by or on behalf of the Respondent for the purpose of developing its Proposal. The City shall not, under any circumstances, use confidential work product of the unsuccessful Respondent.

ARTICLE VI. INTERIM DEVELOPMENT AGREEMENTS AND COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sections 2267.058 and 2267.059 of the Act provide for the City and a private entity to enter into a Comprehensive Development Agreement and, if needed, an Interim Development Agreement. Any Comprehensive Development Agreement or Interim Development Agreement shall define the rights and obligations of the City and the contracting party with regard to the Qualifying Project.

A. MINIMUM INTERIM DEVELOPMENT AGREEMENT TERMS

The scope of an Interim Development Agreement may include but is not limited to:

1. Project planning and development;
 2. Design and engineering;
 3. Environmental analysis and mitigation;
 4. Surveying;
 5. Ascertaining the availability of financing for the proposed Qualifying Project through financial and revenue analysis;
 6. The timing of the negotiation of the Comprehensive Development Agreement;
- and
7. Any other provisions related to any aspect of the development or operation of the Qualifying Project that the parties deem appropriate prior to the execution of a Comprehensive Development Agreement.

Any Interim Development Agreement entered into pursuant to these Guidelines between the City and the contracting entity is subject to approval by City Council.

B. MINIMUM COMPREHENSIVE DEVELOPMENT AGREEMENT TERMS

Any Comprehensive Development Agreement entered into pursuant to the P3 Program is subject to approval by City Council. The City shall accept no liability for development or operation of the Qualifying Project prior to entering into a Comprehensive Development Agreement. Each Comprehensive Development Agreement shall define the rights and obligations of the City and the Contracting Person with regard to the Qualifying Project. The terms of the agreement shall be tailored to address the specifics of the Qualifying Project and shall include but not be limited to:

1. The delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the Qualifying Project;
2. The review of plans and specifications for the Qualifying Project by the City;

3. The rights of the City to inspect the Qualifying Project to ensure compliance with the Comprehensive Development Agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the Qualifying Project and the tort liability to the public and employees and to enable the continued operation of the Qualifying Project;
5. The monitoring of the practices of the contracting person by the City to ensure proper maintenance;
6. The terms under which the Contracting Person will reimburse the City for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the City and the Contracting Person in the event that the Comprehensive Development Agreement is terminated or there is a material default by the Contracting Person including the conditions governing assumption of the duties and responsibilities of the Contracting Person by the City and the transfer or purchase of property or other interests of the Contracting Person by the City;
8. The terms under which the Contracting Person will file financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the Qualifying Project;
10. A copy of any service contract;
11. A schedule of the current user fees or lease payments;
12. Classifications according to reasonable categories for assessment of user fees;
13. The terms and conditions under which the City may contribute financial resources, if any, for the Qualifying Project;
14. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
15. The terms and conditions under which the City will be required to pay money to the private entity and the amount of any such payments for the Qualifying Project;
16. Liquidated damages for breach of contract;
17. Appropriate protections against potential bankruptcy;
18. A periodic reporting procedure that incorporates a description of the impact of the Qualifying Project on the City and affected jurisdictions; and

19. Other requirements of the P3 Program, of applicable law, or that the City Council deems appropriate.

C. POSTING OF PROPOSED INTERIM DEVELOPMENT AGREEMENT OR COMPREHENSIVE DEVELOPMENT AGREEMENT; FINAL HEARING AND VOTE ON PROPOSED COMPREHENSIVE DEVELOPMENT AGREEMENT

Should the City determine after a full evaluation of a Proposal, that a Comprehensive Development Agreement is to be negotiated, it will designate its negotiating team and engage the Private Entity. Upon concluding negotiations, the proposed development agreement shall be posted on the City's website, and made available at the City Secretary's Office for inspection by the public for a period of two weeks prior to entering into such agreement in accordance with Section 2267.066(e) of the Act.

After making the proposed Comprehensive Development Agreement available in accordance with Section 2267.066(e) of the Act, the City shall hold a minimum of one public hearing on the final version of the proposed Comprehensive Development Agreement and vote on the proposed Comprehensive Development Agreement after the hearing. The hearing must be held not later than the 10th day before the date the City enters into a Comprehensive Development Agreement with a Private Entity.

ARTICLE VII. CITY COUNCIL AUTHORIZATION AND APPROVAL

Upon completion of the requirements of these Guidelines and the prescribed notice and hearing requirements, the City may present a Qualifying Project in the form of an Interim Development Agreement or Comprehensive Development Agreement to its City Council for consideration. No agreements shall be valid prior to the approval of the City Council.

ARTICLE VIII. GOVERNING PROVISIONS

In the event of any conflict between these Guidelines and any federal or state statutory or administrative authority, the terms of the respective statutory or administrative authority shall control.

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