



# Administrative Policy for Managing Unsolicited Public-Private Partnership (P3) Proposals

Effective Date: August 29, 2024

## PURPOSE:

The purpose of this administrative policy is to establish the guidelines for the submission, evaluation and management of unsolicited public-private partnership ("P3") proposals within the City of Boca Raton. This document sets forth the steps the City may take should it choose to proceed with an unsolicited proposal, including the options to engage in a public bidding process, or to directly assess the proposal through a public interest determination facilitated by two duly noticed public meetings.

## I. INTRODUCTION

The City encourages redevelopment of underdeveloped and underutilized properties, as well as other capital improvement projects, through public-private partnership where appropriate. The City recognizes properly structured P3s share risk and expense amongst public and private partners; encourage efficiencies and innovation in design, construction, operations, and maintenance; and maximize funding and cash flow initiatives. The City encourages creativity and flexibility in the structuring of a project.

A public-private partnership is a contractual agreement between a public agency such as the City and a private sector person or entity for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement and financing. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared and leveraged to deliver a service or facility to be used by the general public. Each sector shares in the potential risks of the timely and efficient delivery and operations of the service or facility.

The City reserves the right to reject any or all proposals at any time, for any reason. If the City decides not to proceed with a proposal or proposals, it may choose to accept new proposals for the project at a later date. Furthermore, discussions between the City and proposers about a particular project shall not in any way limit the ability of the City to later utilize standard procurement procedures for such project, as set forth in the City's Code of Ordinances and Procurement Code, regardless of whether the project will involve a public-private partnership.

## II. DEFINITIONS:

Unless otherwise specified, whenever the following terms are used in this policy, they have the meanings set forth below:

**"Application Fee"** means a fee established by the City pursuant to this policy that a Private Entity must pay when submitting a Proposal for a Qualifying Project.

**"City"** means the City of Boca Raton, Florida, which may act through its City Council or City Manager, as the context and applicable law permits.

**"Comprehensive Agreement"** means an agreement between a Private Entity and the City that is required before the development or operation of a Qualifying Project.

**"Council"** shall mean the City Council of the City of Boca Raton.

**"Detailed Stage"** means the phase of evaluation following the Initial Stage, during which the City conducts a thorough assessment of a Proposal. This stage focuses on extracting and evaluating intricate details necessary for understanding the full scope and impact of the proposed Project. It includes a review of financial feasibility, Project sustainability, compliance with design standards, and operational effectiveness. The outcome of this stage determines whether a Proposal moves forward to negotiation and potentially to a Comprehensive Agreement.

**"Facility Use Fee"** means a charge imposed by a Private Entity on users for access to or use of a Qualifying Project as set forth in a Comprehensive Agreement.

**"Initial Stage"** means the initial phase in the evaluation process where the City reviews and assesses the Proposal. This stage determines whether the Proposal meets basic criteria and public interests, deciding if the Project warrants further detailed examination. The outcome of this stage determines whether the Private Entity is invited to submit further information regarding the Proposal.

**"Interim Agreement"** means a preliminary, optional agreement between a Private Entity and the City that may be established before the negotiation of a Comprehensive Agreement. This agreement sets the groundwork for negotiating the Comprehensive Agreement but does not commit the City to proceed with it.

**"Lease Payment"** means any payment made under a leasing arrangement, as provided in a Comprehensive Agreement, for the use of land or facilities related to a Qualifying Project.

**"Lifecycle Cost Analysis"** means a comprehensive analysis calculating the total costs associated with an asset over its entire lifespan, including the costs of planning, constructing, operating, maintaining, and replacing the asset, as well as estimates of sufficient capital improvement reserves, and potential salvage value. The analysis must compare the proposed lifecycle cost of the Project with the costs the City would incur using a standard, non-P3 delivery method.

**"Notice of Receipt"** means a written notification provided by the City Manager to the Council, indicated that the City has received a Proposal.

**"Private Entity"** means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity that submits a Proposal for a Qualifying Project.

**"Proposal"** means a submission by a Private Entity to the City outlining plans for a Qualifying Project under the public-private partnership framework. A "Proposal" may be:

an *"Unsolicited Proposal,"* which means a Proposal that is independently submitted by a Private Entity without prior solicitation by the City. The City may, at its discretion, proceed with an Unsolicited Proposal without engaging in a public bidding process following a thorough review and public interest determination through duly noticed public meetings.

a "*Competitive Proposal*," which means a Proposal that is submitted when the City, after receiving an Unsolicited Proposal, elects to publish notice stating that it has received a Proposal and is open to receiving other Proposals for the same Qualifying Project.

**"Qualifying Project" or "Project" means:**

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, rail facility or project, fuel supply facility, medical or nursing care facility, recreational facility, sporting or cultural facility, educational facility, civic facility or other building or facility that is used or will be used by a public educational institution;
2. Any public facility or infrastructure that is used or will be used by the public at large;
3. Any public facility or project that is used or will be used in support of an accepted public purpose or activity;
4. An improvement, including equipment, of a building that will be principally used by the City or the public at large or that supports a service delivery system in the public sector;
5. A water, wastewater, reclaimed water, or surface water management facility or other related infrastructure; or
6. A comprehensive, transit-oriented community strategically designed to enhance urban connectivity and functional integration near a major transportation hub. Such a project may feature a mix of public spaces, residential (including affordable and workforce housing), office, retail, restaurant and hospitality, and is designed to create a vibrant and welcoming environment for both residents and visitors, and to foster improved connectivity between key City facilities and the broader Downtown Boca Raton area, enhancing mobility and community interaction, and contributing to the City's economic vitality.

**"Revenue"** means income, earnings, Facility Use Fees, Lease Payments, and/or other payments relating to the development or operation of a Qualifying Project. Additionally, the term "Revenue" includes funds obtained through grants or other financial support from federal, state, or local government entity, or their agencies, allocated in support of a Qualifying Project.

### **III. UNSOLICITED PROPOSALS**

#### **A. General**

This policy is intended to create a process to guide the City's evaluation of Proposals that offer solutions, private financing, innovations, and efficiencies in support of a Qualifying Project. It aims to allocate risk between the City and the Private Entity, and benefit the public.

All Unsolicited Proposals shall be sent to the attention of the City Manager and, upon receipt, the City Manager shall notify the Council in writing with a Notice of Receipt.

## **B. Content of Proposals**

1. General. A Private Entity submitting a Proposal shall specifically identify all facilities, buildings, infrastructure, and improvements included in the Proposal. Private Entities are urged to incorporate innovative financing methods in their Proposal, such as Facility Use Fees or other forms of payments, which may complement or substitute payments from the City. This policy serves as a flexible development tool that supports the use of innovative financing techniques. Additionally, the Private Entity can assume various roles in the Qualifying Project, ranging from designing to financing, construction, operation, maintenance, and management. Depending on the specific needs and circumstances of the Qualifying Project, the Private Entity is encouraged to explore various public-private partnership structures as appropriate and permitted by law.

2. Summary of Content Requirements. Proposals should be prepared in a straightforward and cost-effective manner. They shall provide a concise description of the Private Entity's qualifications and capabilities to successfully execute the Qualifying Project, as well as the anticipated benefits to the City. Minimum content requirements for the Proposal include:

- a) a detailed description of the Qualifying Project,
- b) a description of the method by which the Private Entity plans to secure any necessary property interests required for the Qualifying Project,
- c) a conceptual plan that details how the Private Entity intends to secure firm commitments from potential finance providers, where relevant, to ensure timely and successful financial closing of the Qualifying Project. Such conceptual plan shall include a list of anticipated timelines and milestones to secure financial commitments and close on the financing of the Qualifying Project. In addition, the conceptual plan shall include:
  - i. If known, a list the anticipated lenders/financiers, such as banks, bond issuers, federal programs, life insurance companies, pension funds, or private placements, detailing their expected involvement (in approximate percentage terms), how they were selected, and why they were preferred;
  - ii. contingency plans for addressing any financing shortfalls or issues with finance providers unable to fulfill their commitments;
  - iii. details of the funding sources from previous public-private partnerships or projects of a similar scale, demonstrating relevant experience and financial reliability.
- d) the name and address of the Private Entity and the contact details of the Project leader who can provide additional information concerning the Proposal;
- e) the sources of proposed Facility Use Fees, Lease Payments, and any other payments that the Private Entity is anticipating, and
- f) any additional supplemental materials or information that the City may reasonably request to support the evaluation of the Proposal.

3. Format. Proposals shall be submitted on 8.5 x 11 inch (letter size) paper (except for Architectural or Engineering drawings and renderings) in the following format:

- a) Pages shall be numbered and include a paginated table of contents corresponding to the tabbed sections identified below.
- b) The submittal shall be organized into tabbed sections as follows:

TAB 1: Cover Letter

TAB 2: All Private Entities associated with the Proposal

TAB 3: Qualifications, Experience, and Financial Capacity

TAB 4: Qualifying Project Information

TAB 5: Financial Terms

TAB 6: Project Analysis

TAB 7: Community Impact

TAB 8: Miscellaneous

TAB 9: Addenda

4. Method of submission. All Proposals shall be hand-delivered to the following address in a sealed, opaque envelope, clearly marked as an Unsolicited Proposal with the property ID(s) (common name, address, and folio numbers), the Private Entity's name and mailing address, contact person and the Proposal date along with the Application Fee:

Original copy to:  
City Manager  
c/o City Clerk's Office, Room 360  
201 West Palmetto Park Road  
Boca Raton, Florida 33432

12 copies to:  
City Clerk's Office, Room 360  
201 West Palmetto Park Road  
Boca Raton, Florida 33432

1(one) electronic copy (searchable PDF format on a flash drive or other similar electronic media) to:  
City Clerk's Office, Room 360  
201 West Palmetto Park Road  
Boca Raton, Florida 33432

All submittals shall be in the format requested by this section unless a waiver of any particular requirement or requirements is agreed to by the City in writing in advance of the submission.

### **C. Additional Details on Contents**

1. TAB 1 – Cover Letter. The cover letter shall include the following information and be signed by the authorized representative of the Private Entity:
  - a) A brief description and purpose of the Qualifying Project, including the public benefit to be derived.
  - b) Identify all Private Entities who will be directly involved in the Qualifying Project by name, detailing the scope of services they will be providing, along with their addresses, email addresses, and telephone numbers.
  - c) Identify the principal(s) of each Private Entity directly involved in the Qualifying Project, including their titles, mailing address, phone numbers, and email addresses.
  - d) Identify the key contact person(s) and contact information for purposes of the Proposal.
2. TAB 2 - All Individuals and/or Entities on the Private Entity Team. Provide a list of all individuals and/or entities the Private Entity intends to use as consultants, including legal counsel, marketing and public relations firms, real estate brokers, property management firms, property utilization analysts, public finance analysts, and government relations consultants. For each consultant, include their company name, name of primary contact, title, address, telephone, and email address.
3. TAB 3 - Qualifications, Experience, and Financial Capacity. The Private Entity must provide, as to each individual, entity and consultant participating in the Proposal, a statement of qualifications and experience. This should cover projects of similar complexity, scope, and scale to the Qualifying Project. The Proposal must also describe, as to each individual and/or entity participating on the Private Entity team, relevant experience with respect to other public-private partnership projects of any type.
4. TAB 4 – Qualifying Project Information. The Private Entity must provide the following:
  - a) A detailed overview of the Qualifying Project, including its public purpose and the public benefits it will provide.
  - b) Design concept renderings, a concept site plan, and elevations that collectively illustrate the location, size, and context of the Qualifying Project.
  - c) A summary of the preliminary plans for Project development, including, if any, the mix of uses, square footage(s), total parking spaces, parking allocations (specify if they are shared or exclusive), and types of parking (e.g. structured or surface).
  - d) Identification of any known or suspected synergies and incompatibilities between the Qualifying Project and any other existing, planned, or contemplated public facility within the City or any neighboring jurisdiction, and the manner in which the Private Entity anticipates addressing same.

- e) The proposed term of the Comprehensive Agreement.
- f) Identification of any additional terms or conditions to be included as part of the negotiation process.
- g) The method by which the Private Entity plans to secure any necessary property interests required for the Qualifying Project.
- h) If known, the names of the anticipated lender(s)/financier(s) and the financing arrangement anticipated.
- i) Details of any proposed legislative text amendments to the City's Comprehensive Plan or Code of Ordinances, Future Land Use Map Amendments, rezonings, variances or modifications that may be necessary for the implementation of the Qualifying Project. Additionally, any proposed amendments to the Downtown Development of Regional Impact, Ordinance No. 4035 (as amended), necessary for the Project should also be included.

5. TAB 5 – Financial Terms. This section of the Proposal should clearly state the financial terms of the Qualifying Project, including the proposed Revenue, payments, or other remuneration to the City over the proposed term.

6. TAB 6 - Project Analysis. This section of the Proposal should state the financial and business aspects of the Qualifying Project and should generally summarize why the Proposal offers the City better value for money over the Qualifying Project's life cycle compared to traditional procurement methods, including the City funding the Project itself.

7. TAB 7 - Community Impact

- a) Identify all anticipated community benefits.
- b) Identify all known stakeholders for the Qualifying Project.
- c) Discuss the Qualifying Project's compatibility with existing and planned facilities.
- d) Describe how the Private Entity will manage community outreach, input, and communications with all stakeholders.

8. TAB 8 – Miscellaneous. Use this section to present additional information supporting the Proposal.

9. TAB 9 – Addenda. Use this section to present details of any item cited or referenced in the Proposal.

**D. Option for Comprehensive Initial Submission**

A Private Entity has the flexibility to submit all information required for the Detailed Stage evaluation (as set forth in Section V of this policy) along with its Proposal during the Initial Stage. This approach allows the entity to streamline its submission process, providing a thorough and comprehensive

presentation of the project's scope, financial details, operational plans, and anticipated impacts from the outset. Nothing in this policy mandates that the submission of a Proposal be segmented into two distinct stages —Initial and Detailed. Should a Private Entity wish to present all the necessary detailed information upfront, it may do so.

Private Entities must understand that the accuracy and reliability of representations, information, and data supplied in support of, or in connection with a Proposal play a critical role in the evaluation process and selection process. Accordingly, as part of the Comprehensive Agreement, the Private Entity and its team members shall certify that all material representations, information, and data provided in support of or in connection with a Proposal are true and correct. Such certifications shall be made by the Private Entity's authorized representative knowledgeable about the information provided in the Proposal. If material changes occur with respect to any representations, information and data, the Private Entity shall immediately notify the City in writing. Any violation of this section shall give the City the right to terminate the Agreement, withhold any due payments, and seek any other remedy available under the law.

A Comprehensive Agreement may provide for the development or operation of separate phases or segments of a Qualifying Project.

#### **E. Request for Clarifications**

The City may request written clarifications to any submission which shall be promptly provided by the Private Entity.

#### **F. Application Fee**

Contemporaneously with the submission of a Proposal, the Private Entity shall pay an Application Fee to the City in the amount of Twenty-Five Thousand Dollars (\$25,000.00) to cover the costs of processing, reviewing, and evaluating the Proposal, including the fees and costs for private consultants to assist in the evaluation. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted. The Application Fee is non-refundable and shall be delivered to the attention of the City Manager. If extraordinary costs associated with the City's preliminary evaluation of the Proposal are encountered, the City may require additional fees from the Private Entity, which must be paid within 30 days of request by the City. If the City Manager elects not to evaluate the Proposal at all, the City shall return the Application Fee. The City shall be the sole determinant of whether to evaluate a Proposal.

#### **G. Professional Review**

If the Proposal involves architecture, engineering, or landscape architecture, a professional review by a licensed architect, landscape architect, or engineer will be conducted to ensure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards are consistent with public projects. Nothing in this policy shall waive any requirement of Fla. Stat § 287.055, the Consultants' Competitive Negotiation Act.



## **H. Process for Submission and Evaluation**

The City shall provide deadlines for submission of certain requested information related to the Proposal and/or evaluation of the Qualifying Project. Failure to meet such deadlines may result in the rejection of the Proposal by the City.

All Proposals must be organized in the manner outlined in this policy and submitted with the applicable Application Fee. No page limitation is imposed. All Proposals shall be submitted as one (1) original, 12 exact copies, and one electronic copy (searchable PDF format on CD, flash drive or other similar electronic media). The original copy containing original signatures shall be marked ORIGINAL on the cover letter.

## **I. Development Costs.**

The City shall not be liable for any damages or costs incurred by a Private Entity in preparing, submitting, or presenting a Proposal. This includes, but is not limited to, costs associated with research and analysis, professional consultations, the preparation and production of documents, models or presentations, and any travel or accommodation expenses incurred during the process. Private Entities should undertake the submission of Proposals entirely at their own risk, with the full understanding that they are solely responsible for all such expenses regardless of the outcome of the review process or the decision of the City to proceed or not to proceed with any Proposal. Private Entities acknowledge that there is no recourse against the City for any claims, damages, or losses that may arise from these activities.

## **J. Legal Requirements.**

A Private Entity shall comply with applicable provisions of all federal, state, county laws and regulations, City of Boca Raton Code of Ordinances, rules and regulations.

## **K. Handling of Confidential Information in Proposals**

A Private Entity may assert that some trade secrets, financial records, and proprietary or other sensitive business information in its Proposal are confidential information that they claim to be exempt from disclosure under applicable Florida public records laws, including but not limited to Fla. Stat § 119.0715, Fla. Stat. § 688.002, and Fla. Stat. § 812.081. Such information must be submitted in a separate, sealed binder, designated on the cover as CONFIDENTIAL MATERIALS. A Private Entity submitting materials claimed to be confidential shall:

1. Include a cover letter listing all material claimed as confidential;
2. Cite the specific statutory provision that supports the confidentiality claim;
3. Clearly mark each page of any material believed to be a trade secret or other confidential information/document in all capital letters and bold font as CONFIDENTIAL MATERIALS.
4. If a document is not totally confidential but contains non-confidential and confidential information, the Private Entity shall provide a redacted copy of the document and an unredacted copy.

If documents submitted by a Private Entity are not appropriately marked as confidential, or if they do not conform to the statutory definitions of trade secrets or confidential business information Florida law, the City is not required to treat these documents as confidential. Failure to comply with these confidentiality designation requirements shall result in the loss of confidentiality protections for the affected documents in accordance with Florida law.

In the event of a dispute arising from a public records request under Chapter 119, Florida Statutes, concerning a record that the Private Entity asserts is confidential and exempt from disclosure, the Private Entity is solely responsible for defending its claim of confidentiality. This responsibility includes, but is not limited to, the necessity to seek a protective order or pursue other legal remedies to prevent disclosure. The City will notify the Private Entity of any such request and cooperate in the defense efforts, but will not be obligated to engage in legal actions to protect the confidentiality of the record itself. If the Private Entity fails to promptly and effectively respond to defend its confidentiality claim, including properly marking documents as confidential in accordance with relevant Florida statutes, the City will process the public records request in compliance with Florida law.

#### **L. Decision to Proceed Without Engaging in a public bidding process**

Upon the completion of the Initial Stage evaluation, if the City wishes, at its sole and exclusive option, to continue considering the Unsolicited Proposal without engaging in a public bidding process, it may proceed to the Detailed Stage of review for the Unsolicited Proposal in accordance with Section V of this policy.

After completion of the Detailed Stage of review, the City shall conduct two (noticed) public hearings. The first public hearing is to present the Unsolicited Proposal to the community and stakeholders, allowing for public comments and feedback. The second public hearing is for the City Council to determine if the Unsolicited Proposal is in the public interest. In determining whether the public interest is served, the Unsolicited Proposal is evaluated for the public benefits derived from the Proposal, its economic efficiencies and financial structure, the qualifications and experience of the Private Entity, the capacity of the Private Entity to execute the Project, how well the Project aligns with regional infrastructure plans, and public comments received during the public hearings. The City will also issue a statement justifying why the Unsolicited Proposal should proceed and addressing the public comments. If the City decides to proceed with the Unsolicited Proposal, it must publish a report in the Florida Administrative Register for at least seven (7) days that includes the public interest determination, the factors considered in making such determination, and the City's findings based on each considered factor.

Unsolicited proposals will be evaluated on their individual merits as determined by the City and the City retains the discretion to assess each submission as it is received regardless of the number of proposals received or the order of receipt.

### **IV. OPTIONAL PUBLIC BIDDING PROCESS**

#### **A. Engagement in Public Bidding Process**

Following receipt of an Unsolicited Proposal, the City may opt to engage in a public bidding process and seek and accept Proposals for the same or similar Project or concept.

## **B. Public Notification and Proposal Submission**

In the event the City opts to engage in a public bidding process, the City will publish a notice in the Florida Administrative Register and a newspaper of general circulation, stating that it has received an Unsolicited Proposal and will accept Competitive Proposals for the same type of project or concept. This notice will be published at least once a week for two weeks, and the timeframe for accepting Competitive Proposals will be set at a minimum of 21 days but no more than 120 days from the initial date of publication.

## **C. Requirements for Competitive Proposals**

Private Entities submitting Competitive Proposals in response to the notice shall comply with all submission requirements set forth in Section III of this policy, as well as any other requirements specified in the notice. The Application Fee of \$25,000.00 shall be required at the time of submission.

The Private Entity that submitted the initial Unsolicited Proposal prompting the public bidding process shall also submit in response to the notice, providing such further details as may be required by the notice. This entity shall receive a credit for its initial Application Fee and shall thus only be required to pay an additional \$5,000.00.

The City may require additional Application Fees from the Private Entities, due to extraordinary costs associated with the City's evaluation of the Proposals.

## **D. Post-Bidding Deliberations**

After the close of the public bidding process, the City will evaluate all received Proposals to determine the most advantageous approach based on factors including, but not limited to, feasibility, innovation, financial impact, and alignment with public objectives. Based on this evaluation, the City may decide to:

1. Proceed further with any of the submitted Proposals;
2. Only proceed to the Detailed Stage of review for the original Unsolicited Proposal and reject all other Proposals received by the City;
3. Only proceed to the Detailed Stage of review for a Competitive Proposal and reject the original Unsolicited Proposal and any other Competitive Proposal(s); or
4. Proceed to the Detailed Stage with any combination of the initial Unsolicited Proposal and any Competitive Proposals. In this event, the City shall rank the Proposals in order of preference, based upon criteria that include, but are not limited to, professional qualifications, general business terms, innovative design techniques, cost-reduction strategies, financial plans, and any other factor determined by the City in its discretion. As part of this ranking process, and at the City's discretion, each Private Entity whose Proposal is under consideration may be required to submit further information regarding the Proposal. Such information should enhance and supplement the information previously provided in the Proposal, and shall comply with the requirements of Section V of this policy.

## **V. DETAILED STAGE EVALUATION**

Some Qualifying Projects may require more details and more thorough evaluation by the City. For these Projects, the City may request a Detailed Stage evaluation to gather the necessary information. If the City determines that sufficient information has already been provided from the Private Entity in the Proposal, the City may choose to waive the Detailed Stage evaluation or adjust the requirements and scope of the Detailed Stage evaluation as needed.

Each Private Entity invited to participate in the Detailed Stage shall pay an Application Fee of up to \$25,000.00. This fee is intended to cover the costs associated with the City's in-depth evaluation beyond the Initial Stage. The City may require additional Application Fees from the Private Entity if a supplemental payment is required due to extraordinary costs associated with the City's evaluation.

If the City requests a Detailed Stage evaluation, then the City may require the Private Entity to provide any or all of the following information as part of the Proposal depending upon the Qualifying Project's requirements, the information received thus far by the City, or other information as requested by the City:

### **A. Lifecycle Cost Analysis**

A Lifecycle Cost Analysis specifying methodology and assumptions supporting same and the proposed start date of construction. It should set forth the anticipated roles of all parties involved, the sources and amounts of all equity, debt, and other financing mechanisms funding the design, construction, operations, and maintenance of the Qualifying Project. Additionally, it should include a schedule of anticipated Revenues and costs during Project operations, detailing the manner in which said costs would be funded and how Revenues would be distributed. The Lifecycle Cost Analysis shall also include a detailed analysis of the projected rate and amount of return, the expected useful life of the Project, and estimated annual operating and maintenance expenses.

### **B. Financial Feasibility Analysis**

A detailed analysis of the financial feasibility of the Qualifying Project, including its impact on similar facilities operated or planned by the City or neighboring jurisdictions. It must include a detailed description of any financing plan for the Project, comparing that plan with financing alternatives available to the City, and detailing all underlying data and assumptions supporting any conclusions reached in the analysis. The analysis shall also include any feasibility studies that support assumptions about Project usage, Revenue, and costs.

### **C. Prior Project Experience**

For each individual and/or entity participating on the Private Entity team, provide a statement listing all prior projects and clients' names and contact information for the past five (5) years. If any individual and/or entity has worked on more than ten projects during this period, it may limit its prior project list to ten most relevant projects. This list should prioritize: first, all projects similar in scope and size to the Qualifying Project which may include those projects currently in process; second, all other public-private partnerships; and, finally, as many of its other most recent projects as possible. For each prior project identified, provide the following information:

1. Prior client and project identification:

- a) Prior client's name, project name, and project location;
  - b) Contact details of the prior client, including the primary contact's name, address, telephone and fax number, and e-mail address;
  - c) Description of the role of the role in the prior project; and
  - d) Prior project description, including the year completed or estimated completion date if in progress, type, size, unit mix, and major tenants, along with their percentage of space plan allocation.
2. Identify the cumulative dollar amount of the Private Entity's involvement and type of involvement in the prior project, including any changes made, and a brief explanation of the financial structure used to finance the prior project; and
  3. Describe the extent of public involvement in each of the prior public-private partnership projects.

#### **D. Demonstration of Financial Capacity**

The Proposal shall also demonstrate the Private Entity's financial capacity to develop and operate the Qualifying Project as proposed. This includes specifying the sources and amounts of equity and debt capital the Private Entity intends to access to deliver the Qualifying Project in a compliant and timely manner. Each Proposal must state the names of all identified investors and lenders involved in the Qualifying Project.

The Private Entity must identify its bonding capacity, insurance limits, and any factor that may impact its ability to complete the Qualifying Project in a timely and professional manner.

#### **E. Comprehensive Project Plan**

1. Describe the plan for the design, construction, financing, operation, and maintenance of the Qualifying Project, including the anticipated schedule of funds to be paid to the Private Entity during the Project's life cycle, and any anticipated performance-based conditions on said payments, and the manner of measuring these conditions.
2. Describe the type and amount of any Facility Use Fees, Lease Payments, and other payments anticipated over the term of the Comprehensive Agreement, and the methodology and circumstances for changes to these payments over time.
3. Identify all permits and approvals required for the Qualifying Project, and estimate the time needed to secure them.
4. Identify the anticipated duration of design and construction phases, listing major milestones for each phase along with corresponding anticipated dates. Also, identify the anticipated duration during which the Private Entity will operate and maintain the Project, as well as the nature of Project ownership at all stages from inception to expiration of the Comprehensive Agreement.

5. To the greatest extent possible, the Private Entity must describe the operational and management plan for the Qualifying Project. This description shall include: any other circumstances that will increase the viability of the Qualifying Project; adjacent uses and emerging projects that could impact the value or influence the use of the Qualifying Project; connections to public transportation; availability and existing capacity of public infrastructure, as well as required extensions or improvements; any assumptions supporting the representations contained in the Proposal, along the source of information giving rise to each assumption; the means for adding capacity to the Qualifying Project; and measures for ensuring that additional costs or service disruptions will not be imposed on the public in the event of material default or cancellation of any Comprehensive Agreement.
6. Identify the sources and amount of debt and equity to be used to finance the Qualifying Project, and describe the relationships of the funding sources to the Project (e.g., outside lender, parent company, institutional lender, private placement funding, etc.).
7. Identify the sources and anticipated amounts of working capital to cover design, construction, and operating costs, ensuring the Project is adequately maintained from the start-up through completion as defined by the Proposal.
8. Identify any parcels of land or property interests that are required for the Qualifying Project, the anticipated means for securing them, all projected costs (both hard and soft) associated with securing these interests, and the anticipated timing for securing them.
9. Identify all assumptions underlying the Proposal.
10. Indicate opportunities that exist for increasing cost savings beyond the initial proposed financial plan.
11. Outline the financial penalties, if any, that would result should the Private Entity fail to meet certain identified performance standards and milestones.
12. Identify any work required from or otherwise to be performed by the City.
13. Identify any restrictions on the City's use of the Qualifying Project.
14. Identify any federal, state, or local resources or commitments the Private Entity contemplates requesting for the Qualifying Project.
15. Identify any special use of technology, innovations, and efficiencies in project design, construction, operations, and/or maintenance.
16. Identify all impacts on the City's debt burden, and state the estimated cost to the City over the Qualifying Project's life cycle.
17. Identify the ratio of debt to equity in the Private Entity's financing plan, and discuss the stability and terms of loans and investments.
18. Project the number and value of subcontracts generated for area subcontractors and/or small or minority business enterprises.

19. Identify any anticipated adverse social, economic, environmental, and transportation impacts of the Qualifying Project, measured against the City's Comprehensive Plan and any applicable ordinances. Specify the strategies or actions to mitigate known adverse impacts of the Qualifying Project. Indicate if necessary environmental assessments have been completed.
20. Include any information identified in the Proposal that was deferred to the Detailed Stage or which the City has identified as needing further development or assessment.
21. Provide design criteria anticipated for the Qualifying Project as may be requested by the City, including, but not limited to, finishes for the structure(s) and materials and details of LEED compliance.
22. Include additional material and information as the City deems appropriate.

## **VI. INTERIM AND COMPREHENSIVE AGREEMENTS**

### **A. General**

Before the negotiation of any Interim or Comprehensive Agreement, the City will designate specific City staff and consultants to review and negotiate appropriate terms. The terms to be negotiated shall include, but not be limited to, the scope, design, amenities, total cost, and duration of the Qualifying Project. Terms will also include the City's review, approval, and control of Project design and performance standards for construction, operations, and maintenance. Adjustments to compensation may occur should these performance standards not be met. Terms will also include the City's right to inspect construction, operations, and maintenance, and access records relating to the cost of such operations; requirements for periodic financial reporting by the Private Entity on the Project's financial performance; stipulations for events of default and the associated rights and responsibilities; fees, Lease Payments or service payments to be paid under the agreement; and any other terms the City deems appropriate for the Qualifying Project. Timelines for the negotiation with the Private Entity will be developed consistent with the scope and timing of the Qualifying Project.

An Interim Agreement, allowing a Private Entity to perform compensable preparatory activities related to the Qualifying Project, such as diligence activities to assess the Project's feasibility, may precede a Comprehensive Agreement. The Interim Agreement is an optional, discretionary step should the City determine more investigation or due diligence is necessary about the Qualifying Project before deciding to negotiate and enter into a Comprehensive Agreement. The City shall not be bound to enter into a Comprehensive Agreement merely because it entered into an Interim Agreement. However, prior to developing or operating the Qualifying Project, the Private Entity must enter into a Comprehensive Agreement with the City.

Before finalizing a Comprehensive Agreement, the City shall conduct all public hearings as required by law. Any proposed Comprehensive Agreement will be made available to the public prior to acceptance, either through posting the Agreement on the City's website or by any other manner deemed appropriate by the City to provide notice to the public.

The City reserves the right at all times to reject any or all Proposals at any point before execution of a Comprehensive Agreement for any reason, and may opt not to proceed with the Qualifying

Project. If the Project is not pursued, the City may later reopen the process to accept new Proposals for the same Qualifying Project. Discussions regarding needed infrastructure, improvements, or services with Private Entities shall not limit the ability of the City to later decide to use standard procurement procedures in accordance with the Procurement Code and City's Code of Ordinances to meet its infrastructure needs, regardless of whether the Project will be a public-private partnership.

## **B. Interim Agreements**

1. The City is empowered to enter into an Interim Agreement at any stage of the Project development process, as deemed necessary and appropriate. This authority is rooted in the flexibility provided to accommodate the unique demands and preliminary assessments to gauge the feasibility and success of complex Projects.
2. The scope of an Interim Agreement may include, but not be limited to:
  - a) Project planning and development;
  - b) Design and engineering;
  - c) Environmental analysis and mitigation;
  - d) Surveying;
  - e) Ascertaining the availability of financing for the Qualifying Project;
  - f) Conducting geotechnical investigations of subsurface conditions at the Qualifying Project site;
  - g) Setting the timing of the negotiation of the Comprehensive Agreement; and
  - h) Any other provisions related to any aspect of the development or operation of a Qualifying Project that the parties deem appropriate prior to executing a Comprehensive Agreement.
3. The terms of compensation to the Private Entity, if any, under an Interim Agreement shall be negotiated and specifically referenced in the Interim Agreement.

## **C. Comprehensive Agreement**

In the event the City elects to proceed with a Qualifying Project, a Comprehensive Agreement shall be prepared that defines the rights and obligations of the City and the Private Entity regarding the Qualifying Project.

1. Terms. The terms of the Comprehensive Agreement shall be tailored to address the specific Qualifying Project and may include, but not be limited to:
  - a) The delivery of security, including performance and payment bonds, letters of credit, and other forms of security in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the Qualifying Project;



- b) The City's review and approval of the design of the Qualifying Project;
- c) The rights of the City to inspect the construction, operation, and maintenance of the Qualifying Project to ensure compliance with specified performance standards, and adjustments in the compensation to be paid to the Private Entity and/or liquidated damages due from the Private Entity should they fail to meet specified performance standards and/or deadlines;
- d) The maintenance of insurance policies reasonably sufficient to ensure coverage of all aspects of the Qualifying Project, including design, construction, and operations;
- e) The services to be provided by the City and the terms of compensation due to the City for same;
- f) The policies and procedures that will govern the rights and responsibilities of the parties if the Comprehensive Agreement is terminated or there is a material default by the Private Entity, including the conditions for the City's assumption of the Private Entity's duties and responsibilities, and the transfer or purchase of property or other interests of the Private Entity by the City;
- g) The terms under which the Private Entity will file financial statements with the City pertaining to the Qualified Project, prepared in accordance with generally accepted accounting principles, on a periodic basis, but not less than annually;
- h) A schedule of Facility Use Fees or Lease Payments, including the circumstances for and methods of calculating anticipated adjustments over the Project life cycle;
- i) The mechanism for establishing Facility Use Fees, Lease Payments, or payments, if any. Any payments or fees shall be set at a level that are the same for all users under similar conditions and must not materially discourage use of the Qualifying Project;
- j) Service or concession contracts;
- k) Classifications according to reasonable categories for the assessment of Facility Use Fees;
- l) The terms and conditions under which the City is requested to contribute financial resources for the Qualifying Project;
- m) The terms and conditions for assessing existing site conditions and addressing any deficiencies, including the identification of the responsible party for conducting the assessment and taking necessary remedial actions;
- n) The terms and conditions under which capacity for the Qualifying Project may be increased or enlarged;
- o) A periodic reporting procedure incorporating a description of the Qualifying Project's financial and social impact on the City; and

- p) Any other requirements of applicable law or any other terms that the City deems appropriate.
3. Anticipated Construction Specifications in the Comprehensive Agreement. With respect to the construction component of the Qualifying Project, the City generally anticipates addressing the following in the Comprehensive Agreement:
- a) The Private Entity will be expected to assume single-point responsibility and liability for all aspects of the Qualifying Project.
  - b) All risks associated with inadequate geotechnical investigations or misinterpretations of the results such studies, as well as all other unforeseen site conditions, will be the responsibility of the Private Entity, as set forth in the Comprehensive Agreement.
  - c) The City encourages the Private Entity to propose mechanisms for the shared benefit of cost savings realized during construction through value engineering and construction initiatives and efficiencies.
  - d) In addition to any other requirements for performance and payment bonds, the City may require the Private Entity and/or its principal members provide further performance guaranties to cover all obligations specified in the Comprehensive Agreement.

## **VII. PARTICIPATION RESTRICTIONS ON CITY CONSULTANTS AND FORMER EMPLOYEES**

The City requires professional consultants representing the City maintain freedom from conflicting professional or personal interests. This section provides guidance to consultants, firms and individuals directly or indirectly performing services for the City in connection with a Qualifying Project. All firms and individuals performing work or contemplating the performance of work for the City in connection with a Qualifying Project must also comply with existing City conflicts of interest policies and relevant Florida law.

The City will reasonably consider requests for exceptions to this policy on a case-by-case basis upon a showing of good cause for the exception, as set forth below.

### **A. City Representatives**

1. Firms. A firm serving as one of the City's consultants or as a subconsultant in the development of documents, evaluation criteria, or technical criteria for a Qualifying Project (collectively, "City Representative") is prohibited from participating in any capacity on a Private Entity's team for that Qualifying Project. This prohibition extends to affiliates of the City Representative and shall remain in place for a period up to and including, and in limited instances beyond, the date said project is closed and final payment has been rendered, or until the City determines that any such potential conflicts no longer exist.

A firm continuing to serve as one of the City Representatives for a Qualifying Project after the project has been completed is also prohibited from participating on a Private Entity's team for that Qualifying Project or any other Qualifying Project unless the City grants an exception.

It is the intent of the City to separately procure a City Representative for each Qualifying Project. Generally, any design or other consulting firm meeting the requirements for a City Representative

is eligible to participate in such procurement. However, the City will not assign the scope of work for any City Representative to any consulting firm unless the firm consents to serve in this capacity and agrees to be bound by this policy.

2. Individuals. Any individual who works for or has previously worked for a City Representative and was involved in the development of documents, evaluation criteria, or technical criteria for a Qualifying Project is prohibited from participating in any capacity on a Private Entity team for that same Qualifying Project. This prohibition shall remain in place until the date said Project is completed or closed out, final payment has been rendered, or the City determines that any such conflict no longer exists.

Any individual who was an employee of the City within the past 2 years who had any involvement or oversight in the formulation, analysis, or development of documents, evaluation criteria, or technical criteria for the Qualifying Project is prohibited from participating in any capacity on a Private Entity team for that Qualifying Project or any other Qualifying Project sought by the City. This prohibition shall remain in place until the date said Project is completed or closed out, final payment has been rendered, or the City determines that any such conflict no longer exists.

#### **B. Participation of City Consultants and Subconsultants in “Converted” Projects**

1. Firms. A firm serving or who has served as one of the City's consultants or as a subconsultant for one or more projects within the City that is/are later converted to a Qualifying Project may participate on a Private Entity team with the prior written approval of the City Manager. A firm may seek approval by submitting a written request to the City Manager, the facts and detailing circumstances of the requester's involvement in the project, including the level of design completion (percent complete, the number of component design plans by other firms, etc.), the last date of involvement, and the nature of its proposed participation on the Private Entity team for the Qualifying Project.

A firm serving or who has served as one of City's consultants or subconsultants for a Qualifying Project is prohibited from participating on a Proposal team submitting an Unsolicited Proposal for that Project.

A firm serving or who has served as one of the City's primary consultants for a project is also prohibited from participating on a proposal team should the City elect to advertise the project as a Qualifying Project as a result of an Unsolicited Proposal.

2. Individuals. An individual who works or has worked for a City consultant or subconsultant that was involved in a City project that is converted to a Qualifying Project may not directly or indirectly serve in any capacity on a Private Entity team for that Qualifying Project. This restriction remains until the date said project is closed and final payment has been rendered, or until the City determines that any such conflict no longer exists.

Any individual who was an employee of the City within the past 2 years or who had any involvement or oversight of the formulation, analysis, or development of any City Project converted to a P3 Project or development of procurement documents, evaluation criteria, or technical criteria for a City project converted to a Qualifying Project, is prohibited from participating in any capacity on a Private Entity team for that Qualifying Project or any other Qualifying Project sought by the City. This

restriction remains until the date said project is closed and final payment has been rendered, or until the City determines that any such conflict no longer exists.

### **C. Requests for Exceptions**

A firm or individual may seek an exception to this policy by submitting a written request for exception to the City Manager. The decision to approve or deny a request shall be made by the City Manager or his designee within a reasonable time after submission of a complete request.

The request shall describe the facts and circumstances of the requester's involvement in the Qualifying Project and the nature of its proposed participation on a Private Entity team for another Qualifying Project sought by the City. The request shall specifically disclose whether the requester, at any time: (a) was involved in the preparation of procurement documents, technical criteria, or evaluation criteria for the Qualifying Project or any other Qualifying Project; (b) participated in Qualifying Project-related meetings or conference calls with a City Representative or with other City staff; or (c) works or has worked for one of the City Representatives or for the City on a Qualifying Project after the project is closed and final payment has been rendered. The City has the sole discretion to accept or deny any request for exception to this policy.

### **VIII. NON-BINDING NATURE OF PROPOSAL DISCUSSIONS AND SUBMISSIONS.**

No presentation or discussion in connection with any Proposal will be deemed or interpreted as an application for a specific development project. As such, discussions, information exchanged, consensus reached or direction provided, by either the City Council or City staff, shall not be considered or deemed an evaluation or assessment of any conceptual site plan presented.

No comments made, opinions expressed, positions taken, consensus reached, or direction provided by the City Council or City staff will restrict the City Council, any individual Council Member, or City staff in any way from taking, or refraining from taking, any position or action in the future (including, without limitation, ultimately voting for or against any proposal or project in the future). All such future decision-making remains solely in the discretion of the City Council, each individual Council Member, and City staff, respectively, as applicable.

By submitting a Proposal to the City, Private Entities acknowledge that a Proposal will not: create, or form the basis of, a claim of estoppel, vested rights, detrimental reliance, or entitlement of any type or nature; create a presumption that any potential future proposal or draft site plan is complete or consistent with any City Code, requirement, or policy; or serve as an assurance, guarantee or entitlement that a Proposal will be reviewed, processed, or considered at all or in any specific manner, or further reviewed, processed or considered. Further, Private Entities acknowledge that any decision by the City Council to proceed or not proceed with any amendment to the City's Comprehensive Plan or Code or Ordinances, policies, guidelines, or any other actions constitutes a legislative, discretionary decision of the City Council.

Private Entities acknowledge that they are proceeding at his/her/its own risk; bear any and all risk of loss, including, without limitation, losses related to time invested, costs incurred, potential opportunities, and resources expended; and waive any and all claims against the City (for which the City shall not, in any instance, be liable).

Private Entities acknowledge that no forum in connection with any Proposal shall constitute or be construed as a quasi-judicial public hearing related to any site-specific development application or proposal; while a Proposal may relate to a potential future quasi-judicial matter, irrespective of any specific aspects of any presentation, presentations are conceptual and are not governed by, nor subject to, the rules and requirements applicable to quasi-judicial public hearings; no Proposal shall necessitate quasi-judicial notification or compliance with quasi-judicial procedures; no communications shall be deemed ex-parte communications subject to disclosure or other rules; and no actions, comments, or viewpoints expressed or conveyed during or related to any Proposal shall imply or constitute any form of prejudgment, bias or other position or decision by any Council Member (and shall not be utilized, cited to, or relied upon to suggest or substantiate an allegation of prejudgment or bias on the part of any Council Member in relation to any future site-specific development application).

### **IX. FLEXIBLE AND ADAPTIVE POLICY FOR QUALIFYING PROJECT PROPOSALS**

This policy serves as a guideline for the submission, evaluation, and implementation of Proposals for Qualifying Projects. It is established to ensure clarity and consistency in the City's interactions with Private Entities. However, the provisions set forth herein are not exhaustive nor are they binding in a manner that restricts the City's ability to adapt to changing circumstances or unique Project demands. The City reserves the absolute right, at its sole discretion, to modify, amend, or adapt any aspect of this policy at any stage of the Project lifecycle—from initial Proposal review through public hearings, to negotiations and final agreement execution—should it deem such changes necessary to better serve the public interest or to respond to unforeseen challenges or opportunities. Nothing within this policy shall be construed as limiting the City's authority to make decisions or take actions that are deemed in the best interest of the City. The City retains unfettered discretion to depart from the guidelines when circumstances warrant, ensuring that its primary obligation to safeguard and enhance the public health, safety and welfare is met.

Approved by:   
George S. Brown, City Manager

  
Date