Public-Private Partnership ("P3 Program") Guidelines

City of San Antonio, Texas

2012

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I. INTRODUCTION

As the population of the City of San Antonio continues to grow, there is an increasing need to revitalize its urban core and for the development and construction of new public facilities. Unfortunately, given the current fiscal environment, the ability to develop these needed facilities has been diminished. 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* (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:

- Enables local governments to develop predictable process to receive both solicited and unsolicited proposals
- Creates a consistent, repeatable, predictable process for alternative project delivery
- Ensures transparency and accountability to the public
- Increases competition and value delivery
- Provides checks and balances to reduce project delivery problems
- Spurs innovation and creative project approaches

A. GUIDELINES OVERVIEW

The Act became effective September 1, 2011, and is codified as Chapter 2267 of the Texas Government Code. On June 14, 2012, the City Council passed Resolution No. 2012-06-14-0018R, electing to utilize public-private partnerships. Now, pursuant to City Ordinance No. 2012-11-01-0856 and in accordance with Section 2267.052 of the Act, the City Council has adopted these P3 Program Guidelines (the "Guidelines") for the purpose of encouraging private entity participation, creativity, and competition, and to guide the selection of "qualifying projects" as defined in the Act, in the City's P3 Program. These Guidelines will furnish the private sector with a fair and uniform format:

1. To respond to solicited proposals;
2. To submit unsolicited proposals; and
3. To provide for a fair and transparent evaluation and selection process for both solicited proposals and unsolicited 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.

B. QUALIFYING FACILITIES AND PROJECTS

The goal of the P3 Program is to: 1) encourage redevelopment of underdeveloped and underutilized properties; 2) share risk and expense between the City and the contracting private entity; and 3) participate in cash flow performance by organizing public-private partnerships. A public-private partnership is documented through an interim and/or comprehensive development agreement between 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," as defined in the Act.

The City may, from time to time, identify qualifying projects consisting of underdeveloped or underutilized properties owned by the City for inclusion in the P3 Program. To encourage consistent and compatible development which 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. Select property interests, such as a long-term, non-subordinated ground lease, may be marketed to private entities (i.e. office, retail/commercial, recreational/entertainment, and/or residential developers) with the objective of soliciting or receiving development proposals that demonstrate potential to generate sustainable non-tax revenue sources and which allows the City to participate in the increase in value of its real estate assets over time.

C. DESIGNATED CONTACT

The City of San Antonio designates the following representative to meet with private entities who are considering submitting a proposal:

Debbie Sittre, Assistant Director
Capital Improvements Management Services Department
210-207-8140

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

II. GENERAL PROVISIONS

A. ABBREVIATIONS

Unless otherwise specified, whenever the following abbreviations are used in these Guidelines, they have the meanings set forth below:

CIMS	Capital Improvements Management Services
P3	Public-Private Partnership
RFP	Request for Proposals
RFQ	Request for Qualifications

B. 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*, S.B. 1048, 82nd Legislature, Chapter 2267, Texas Government Code.

"Comprehensive Development Agreement" shall have the same meaning as defined in the Act A Comprehensive Development Agreement requires approval by the City Council through a duly passed City Ordinance.

"Conceptual Proposal" means a five page proposal for a qualifying project accepted for evaluation by the City of San Antonio.

"Conceptual Stage Review" means the initial phase of evaluation of a conceptual proposal when the City makes a determination: 1) whether a proposal meets the criteria for a qualifying project in accordance with the Act; 2) whether the qualifying project serves a public purpose or satisfies a public use; 3) whether the proposing entity possesses the qualifications and experience necessary to undertake the qualifying project; 4) whether the qualifying project is financially feasible and warrants further evaluation.

"Contracting Person" means an individual person, corporation, general partnership, Limited Liability Company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity that enters into an Interim or Comprehensive Development Agreement with the City.

"Cost-Benefit Analysis" means the City or its designated consultant's financial assessment of the detailed proposal along with its nonfinancial benefits.

"Detailed Proposal" means a proposal for a qualifying project accepted by the City beyond a conceptual level of review that defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

"Detailed Stage Review" means the second phase of qualifying project evaluation where the City has completed the conceptual stage and accepted the proposal as a qualifying project but is requesting additional information regarding a qualifying project prior to considering entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

"Interim Development Agreement" shall have the same meaning as defined in 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, 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.

“Oversight Committee” means a city designated committee consisting of qualified professionals of the City in accordance with §2267.052(c)(2) of the Act., but not limited to representatives from the CIMS Department (Licensed Architect or Professional Engineer), the Executive Leadership Team, Finance Department or Office of Management and Budget (Certified Public Accountant) and the City Attorney’s Office.

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

"Private Entity" means a non-governmental entity 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. A private entity includes a “Respondent” that submits a proposal in response to a solicitation and a “Proposer” that submits an unsolicited proposal.

"Proposer" means a private entity that submits an unsolicited proposal.

"Qualifying Project(s)" has the same meaning as defined in the Act and may mean (i) any mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public works, waste treatment facility, hospital, school, fire station, police substation, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or (ii) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

"Respondent" means a private entity that submits a proposal in response to a solicitation by the Governmental Entity.

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

C. GENERAL PROPOSAL SUBMISSION PROCESS

A person submitting either a solicited or unsolicited proposal requesting approval of a Qualifying Project shall specifically identify any facility, building, infrastructure or improvement included in the proposal. Although the City may identify development opportunities, they are not exclusive, and private entities are encouraged to submit proposals consistent with the goals set out in the P3 Program.

The process for receipt and review of a proposal is initiated by either: 1) a solicitation by the City; or 2) the receipt of an unsolicited proposal by a private entity requesting review, consideration and approval. In both cases, the proposal should provide general information on the private entity’s qualifications and experience, the project characteristics, project financing, anticipated public support or

opposition, project benefit, value, and compatibility.

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 and/or other relevant information in order to complete the cost-benefit analysis required of every proposal to develop a qualifying project. For solicited or unsolicited proposals, the City may, at any time, request in writing for the respondent or proposer to clarify 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 for proposals and unsolicited proposals 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 and its whole team 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.

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. 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 or comprehensive 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 or comprehensive agreement would adversely affect the financial interest or bargaining position of the proposer or responder may be exempt from public disclosure. These provisions, however, do not prevent disclosure of all other information in an interim or comprehensive

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 solicited or unsolicited proposal, the Office of the Attorney General will determine whether the requested information may be protected from public disclosure, not the City.

III. SOLICITED PROPOSALS – LIMITED APPLICATION OF GUIDELINES

A. GENERAL INFORMATION

All RFP's or RFQ's issued by the City shall be by issuance of a written solicitation. Any submissions that are not received in response to a solicitation shall be deemed an unsolicited proposal under these Guidelines. The City shall not be liable for any cost incurred by the private entities in preparing, submitting or presenting a solicited proposal.

The procedures and requirements applicable to any particular solicited proposal shall be definitively specified in the written solicitation which may or may not contain all of the provisions provided in these Guidelines. It is the Respondent's obligation to determine from the individual written solicitation the extent of applicability of these Guidelines. It is the City's duty to clearly state the requirements of a response to a written solicitation.

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

1. IDENTIFICATION OF THE PRIVATE ENTITY AND/OR TEAM

a. Identify the Private Entity or Team:

i. Identify the legal structure of the private entity or consortium of private entities and its members or principals making the proposal; and

ii. 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 qualifying projects of similar complexity, scope and scale to the proposed 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) from that of consultants and other team members.

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, but not be limited to, a Project Analysis to include the following: (1) location and site analysis, (2) marketing and competitive analysis, (3) community impact, and (4) construction schedule:

5. PROJECT FINANCING

Project financing is an integral part of any solicitation. The City may require, but not be limited to, any or all of the following in a solicited proposal: financial analysis, project budget, proforma financial statements and bond requirements.

Any other information required by the Act but not requested in the solicitation shall be deemed waived by the City in accordance with Section 2267.053.

B. PROPOSAL EVALUATION AND SELECTION CRITERIA

The evaluation and selection criteria for City solicited P3 projects shall be particularly described within the RFP or RFQ written solicitation. All solicited RFP's and RFQ's shall be analyzed by qualified professionals of the City or by qualified professionals retained by the City to provide an independent analysis in accordance with §2267.052(c)(2) of the Act.

Should the City select to pursue a solicited proposal for negotiation of an interim or 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 notify the selected respondent and request that they submit their proposal to the City identified affected jurisdiction, if any.

IV. UNSOLICITED PROPOSALS – FULL APPLICATION OF GUIDELINES

Section 2267.053(a) of the Act authorizes the City to receive, evaluate and select for negotiations unsolicited proposals from private entities to design, develop, finance, lease, acquire, install, construct, expand, improve, renovate, equip, operate, or maintain a qualifying project. When such proposals are received it is the City's intention to fully apply these Guidelines.

A. CONCEPTUAL REVIEW PHASE

A person or entity wishing to submit an unsolicited proposal must first submit a Pre-Proposal Letter not longer than ten (10) pages to the City's CIMS Department Contract Administrator. The

Pre-Proposal Letter should identify the Qualifying Project and summarize the concept of the proposal. Within thirty (30) days of receiving the Pre-Proposal Letter, the City shall perform a cursory review of the proposed project and shall notify the proposer in writing through a Proposal Request Letter or Proposal Denial Letter whether the City will entertain a detailed proposal of the Qualifying Project. Should the City indicate that it will evaluate such a proposal, the proposer will then be instructed to submit a more detailed proposal based upon these Guidelines and the information provided below.

It should be noted by the proposer that the Act requires a copy of the detailed proposal be provided to affected jurisdictions in accordance with Section 2267.055.

B. FORMAT FOR SUBMISSIONS OF DETAILED PROPOSAL

1. All proposals must be organized in the manner outlined. No page limitation is imposed, but brevity is appreciated. All proposals shall be submitted as one (1) original and two (2) copies and one (1) electronic copy (searchable PDF format on CD). 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 Government Code Section 552.101 in a separate, sealed envelope, designated on the cover as **CONFIDENTIAL MATERIALS**. Failure to mark confidential or proprietary information may lead to is its disclosure as publicly available records. The duty lies with the proposer or respondent 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 and Team
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 8½" 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. Label: All submissions shall be addressed to City of San Antonio, Department of Capital Improvements Management Services, to the attention of the Contracts Administrator, P.O. Box 839966, San Antonio, TX 78283-3966, in a sealed envelope marked:

P3 PROGRAM UNSOLICITED PROPOSAL
DO NOT OPEN IN MAILROOM Proposer'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.

C. SUBSTANCE OF PROPOSAL

To the greatest extent possible, the conceptual stage submittal shall be sufficient to convey the experience and capacity of the development team, the overall quality and character 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 Proposer 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 or consortium of private entities 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 three (3) to five (5) page executive summary that highlights the key components of the qualifying project; including but not limited to describing the private entity, it's qualifications and experience with similar projects, highlights of the proposal and qualifying project analyses, and the community impact and benefits of the qualifying project.

2. TAB 2: PRIVATE ENTITY AND TEAM

a. Identify the Private Entity:

i. Identify the legal structure of the private entity or consortium of private entities and its members or principals making the proposal; and

ii. 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.

b. Identify the Team:

i. 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;

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

iii. 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

iv. Describe the management structure and the role each team member, partner and any prospective professional, consultant or major subcontractor (over $1 million) will fulfill in the development or operation of the qualifying project.

3. TAB 3: QUALIFICATIONS AND FINANCIAL CAPACITY

a. The private entity must provide demonstrable experience in the development and operation of qualifying projects of similar complexity, scope and scale to the proposed. 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) from that of consultants and other team members. To substantiate experience and ability to perform the following information shall be provided:

i. Describe the length of time in business, business experience, public sector experience, and other engagements of the private entity or consortium of private entities;

ii. Resumes and work experience of each team member;

iii. Provide a statement listing all prior projects and clients for the past five (5) years;

iv. Provide at least three (3) development and financial references (name, title, entity, telephone number and contractual relationship) that can be contacted with respect to current and past project experience;

v. 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;

vi. Provide the composition of current real estate portfolio, including the size, value, years of ownership, and asset performance; and any other relevant information; and

vii. 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.

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 principle street and surrounding developments.

ii. Concept Site Plan: The site plan shall encompass the subject property and portions of contiguous parcels, include landscape and urban design concept(s). 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 walking, cycling, public transportation, and motor vehicles. Summarize the preliminary programming of facilities, including if any, the mix of uses, square footage(s), total parking spaces, parking allocations (shared or exclusive), and types of parking e.g. structured or surface.

iii. Elevations: Provide exterior building elevations, illustrating the massing, openings, and any related elements.

b. 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, construction phasing, completion and opening 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;

c. Terms, Special Conditions and Other Considerations

This Section is reserved for a description of any special conditions the proposal may offer to, or request from the City.

i. Terms: State the terms offered for the qualifying project.

ii. Contingencies: State any contingencies or conditions requested by the private entity.

5. TAB 5: PROJECT ANALYSES

In this Section include the project analyses that support the business case of the qualifying project. The Project Analysis Section 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) political and legal analysis:

a. Location and Site Analysis

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

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.

b. Market and Competitive Analysis

i. Provide a market study that supports the revenue assumptions and viability of the qualifying project. To indicate feasibility forecast the supply and demand relationship, including but not limited to demographic data, traffic counts, rent levels, and absorption rates. Include any supporting due diligence studies, analyses, or reports.

c. Construction Schedule

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

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

d. Political and Legal Analysis

i. Provide an explanation of how the qualifying project will complement or comply with the City's SA 2020 Plan.

ii. List all permits and approvals required for the development and completion of the qualifying project from federal, state, or local agencies.

iii. 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: PROJECT FINANCING

a. Financial Analysis

i. Explain the financing plan for the qualifying project including identifying the source(s) and amount of debt and equity to be used to capitalize the qualifying project, the relationships (e.g., outside lender, parent company, etc.).

ii. Provide the following information:

- Loan commitment letters and contact information for funding sources;

- The sources and anticipated amounts of working capital to cover operating costs and to adequately maintain operations from the start-up through completion; and

- Letters from lending institutions, not more than three months old that demonstrate the existence of liquid assets or suitable unencumbered lines of credit to carry out the predevelopment activities. Evidence of the private entity's liquid assets or some acceptable form of equity shall be equal to the equity requirements of the prospective construction lender.

iii. Use of Federal, State or Local Funding: To the extent the private entity has identified federal, state, or local funding sources; describe such sources.

b. Project Budget

i. Using standard estimating techniques provide a development budget detailing any anticipated land acquisition(s), the anticipated pre-development costs, and hard and soft costs from construction through occupancy.

ii. The budget should include cost estimates to pay for the relocation of any utility facilities which will be displaces as a result of project development.

c. Proforma 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-tenanting reserves, net operating income, debt service, partnership percentages, disposition benchmarks, and calculations of net present value, internal rate of return.

ii. Provide projected balance sheet, statement of losses and earnings, and income statement for the first year of operation.

d. Bond Requirements

i. Provide executed bond as required by the City's solicitation to proceed with review of proposal.

7. TAB 7: COMMUNITY IMPACT

a. State the community benefits, including the economic impact and tax revenues, the qualifying project will have on the City.

b. Estimate the number of jobs to be generated for area residents and level of pay and fringe benefits of such jobs.

c. Project the number and value of subcontracts generated for area subcontractors.

8. TAB 8: MISCELLANEOUS

Use this Section to present additional information such as letters of recommendation, letters of interest from prospective lenders or tenants, 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 in these Guidelines shall be deemed waived by the City in accordance with Section 2267.053 of the Act.

V. DETAILED EVALUATION PHASE AND SELECTION CRITERIA

A. DETAILED EVALUATION PHASE

Following submission of a detailed proposal and a cursory review, the City's CIMS Department Contract Administrator shall notify the proposer through a Letter of Interest if any additional information is needed to evaluate the proposal. Additionally, the proposer shall at that time be assessed a preliminary review fee in accordance with Section 2267.053(d) of the Act of Two Thousand Five Hundred and No/100 Dollars ($2,500.00). The fee shall be issued to the City and shall be used to cover the internal and/or external costs of processing, reviewing and evaluating the proposal. The Letter of Interest shall define the terms of payment.

Once the proposer has submitted the detailed proposal and fee, the City's CIMS Department will submit a copy of the detailed proposal to the Oversight Committee. Within 30 days from receipt of the detailed proposal and fee, the Oversight Committee shall evaluate the detailed proposal and determine if the detailed proposal should be presented to the Executive Leadership Team (ELT) for a determination of whether a recommendation to proceed to an Interim or Comprehensive Development Agreement shall be made to the City Council. The proposer shall be notified in writing of the City's decision either to make such recommendation or to not pursue the Qualifying Project as presented in the detailed proposal. Upon declination, the City shall return all submitted documents to the proposer.

At any time during the detailed evaluation, the City may request additional information or a meeting with the proposer to seek clarification regarding the submitted detailed proposal.

B. SELECTION CRITERIA AND EVALUATION FACTORS

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

1. **QUALIFICATIONS AND EXPERIENCE**, such as the following**:**

a. Experience working with the public sector on public-private real estate development 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. The extent that the timing of the qualifying project is consistent with the City's SA2020 Plan;

c. Operation of the qualifying project;

d. Technology; technical feasibility;

e. Environmental impacts;

f. Federal, state and local permits; and

g. Maintenance of the qualifying project.

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; operator's past performance with similar plans and similar projects; 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;

d. Estimated project cost and life-cycle cost analysis; and

e. 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 proposed cost of the qualifying project;

c. The general reputation, industry experience, and financial capacity of the private entity;

d. The proposed design of the qualifying project;

e. Opportunity cost of taking an alternative action;

f. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;

g. The private entity's plans to employ local contractors and residents; and

h. Other criteria that the City deems appropriate.

VI. POSTING AND HEARING REQUIREMENTS/COMPETETING PROPOSALS

A. NOTICE AND ACCESS TO ACCEPTED PROPOSALS

In accordance with Section 2267.066 of the Act, within ten (10) business days of the City: 1) accepting a solicited proposal or proposals for negotiation; or 2) receiving a detailed unsolicited proposal and fee; 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 Clerk’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 Section 552.101 of the Texas Public

Information Act may not be posted or made available for public inspection except as otherwise agreed to by the City and the respondent or proposer.

In addition to making the proposal available for review through the City's website and at the City Clerk's Office, the City shall also state that the City: (i) has received and accepted a solicited or unsolicited proposal under the P3 program; (ii) intends to evaluate the proposal; (iii) may negotiate an interim or comprehensive agreement with the private entity based on the proposal; and (iv) will accept for simultaneous consideration any competing proposals that comply with the Guidelines adopted by the City. The notice also shall summarize the qualifying project or projects, and identify their proposed locations.

B. PUBLIC HEARING ON ACCEPTED PROPOSALS

In accordance with Section 2267.066(d) of the Act, during the proposal review process of a solicited or unsolicited proposal and not later than thirty (30) days prior to entering into an interim or comprehensive development agreement, the City shall hold a public hearing on the proposal.

C. COMPETING PROPOSALS

Should a third-party seek to submit a competing proposal for the City's consideration, it shall do so in accordance with Article IV of these Guidelines, including submission of the required fee but excluding the requirement of submitting a Pre-Proposal Letter and receiving a Proposal Request Letter. It shall be presumed that the Project has been selected to proceed to the Detailed Evaluation Stage of the unsolicited proposal process.

After reviewing the original proposal, and any competing proposals submitted during the notice period, the City may determine:

1. Not to proceed further with any proposal;

2. To proceed with the original proposal;

3. To proceed with a competing proposal; or

4. To proceed with multiple proposals.

VII. COMPREHENSIVE AND INTERIM DEVELOPMENT AGREEMENTS

Sections 2267.058 and 2267.059 provide for the City and private entity to enter into a comprehensive development agreement and, if needed, an interim development agreement. Any comprehensive development agreement or interim 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 facility 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 a qualifying project that the parties deem appropriate prior to the execution of a comprehensive development agreement.

Any interim development agreement entered into pursuant to the P3 program 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 between the City and the contracting entity 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 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 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 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 or applicable law or that the Commission deems

appropriate.

Should the City determine after a full evaluation of a solicited or unsolicited proposal, that an interim or comprehensive development agreement is to be negotiated; it will designate its negotiating team and engage the respondent or proposer. Upon concluding negotiations, the proposed interim or comprehensive agreement shall be posted on the City's website and made available at the City Clerks 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.

VIII. 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 or comprehensive development agreement to its City Council for consideration. No agreements shall be valid prior to the approval of the City Council through a duly passed City Ordinance.

IX. 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.