

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering and Construction Management Department
AGENDA DATE: July 17, 2012

CONTACT PERSON/PHONE: R. Alan Shubert, 915-541-4423

DISTRICT AFFECTED: City Wide

SUBJECT:

That the City hereby adopts the City of El Paso Public-Private Partnership Guidelines for the development or operation of qualifying projects to provide public services and facilities.

BACKGROUND / DISCUSSION:

The proposed resolution establishes local guidelines for a Public-Private Partnership Program for the purpose of encouraging private investment within the city, facilitating public projects and providing greater flexibility to contract with the public sector to provide public services. The proposed guidelines outline statutory requirements for qualifying projects, specify general provisions for proposals and identify the evaluation criteria to be applied for selection.

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

BOARD / COMMISSION ACTION:

(N/A)

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____



Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, the 82nd Legislature of Texas enacted S.B. 1048, entitled the Public and Private Facilities and Infrastructure Act, Chapter 2267, Texas Government Code for the purpose of encouraging private entity participation, creativity and completion and to guide the selection of qualifying projects in the public-private partnership development program, including the adoption of guidelines by local governments;

WHEREAS, on May 22, 2012, the City Council of El Paso directed City staff to prepare local guidelines for a proposed Public-Private Partnership Program;

WHEREAS, on City staff has proposed that the Council adopt this resolution approving the City's Public-Private Partnership Guidelines for the development or operation of qualifying projects to provide public services and facilities, as attached as *Exhibit A* to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City hereby adopts the City of El Paso Public-Private Partnership Guidelines for the development or operation of qualifying projects to provide public services and facilities, which is attached hereto as *Exhibit A* and incorporated herein by reference.

ADOPTED this _____ day of _____, 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E. City Engineer
Engineering and Construction Management

EXHIBIT A

**THE CITY OF EL PASO
PUBLIC-PRIVATE PARTNERSHIP GUIDELINES**

CITY OF EL PASO

**LOCAL GUIDELINES FOR
PUBLIC PRIVATE PARTNERSHIPS**

Approved July __, 2012

City Contact Person:

Alan Shubert, City Engineer or his designee
Engineering and Construction Management Department
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901
(915) 541-4428

I. INTRODUCTION

The City of El Paso (“the City”) is authorized by Texas law¹ to adopt local guidelines for the purpose of encouraging private investment within the city, facilitate financing public projects and provide the city with the greatest possible flexibility to contract with the public sector to provide public services.

The City of El Paso has adopted these Guidelines to furnish interested private entities with a fair and uniform framework to:

1. respond to solicited proposals;
2. submit unsolicited proposals; and
3. provide a fair and transparent evaluation and selection process for both solicited proposals and unsolicited proposals in accordance with Texas law.

A. **DECLARATION OF PURPOSE.**

The City’s purpose is to work cooperatively with private entities to encourage intensive, high quality development of municipal facilities, including facilities in underdeveloped and underutilized real estate assets owned by the City and encourage consistent and compatible development which enhances the value of City assets.

Consistent with the legislative and statutory purpose, these Guidelines are based on the following:

1. there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of municipal facilities, technology and other public infrastructure that serve a public need and purpose;
2. existing methods of procurement in which Qualifying Projects as defined in Section I-B below are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed may not be sufficient;
3. there are inadequate resources to develop new facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of El Paso, and there is demonstrated evidence that partnerships between the City and private entities or other persons

¹ Effective September 1, 2011, the 82nd Texas Legislature enacted S.B. 1048, entitled the *Public and Private Facilities and Infrastructure Act*, Chapter 2267, Texas Government Code.

can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

4. financial incentives exist under state and federal tax and other laws that encourage the City to enter into partnerships with private entities or other persons to develop Qualifying Projects; and

5. authorize private entities or other persons to develop or operate one or more Qualifying Projects may serve the public safety, benefit, and welfare of the City by making the projects available to the public in a more timely or less costly fashion.

B. PUBLIC PRIVATE PARTNERSHIPS AND QUALIFYING PROJECTS

The City's goal is to encourage the development of needed municipal facilities and the redevelopment of underdeveloped and underutilized properties, to share risk and expense, and participate in cash flow performance by entering into public-private partnerships.

The City's Public Private Partnership Program is flexible to allow proposals for the best use on any property given marketplace realities. The specific terms of any public-private partnership will be negotiated and described in a contractual agreement between the City and a private sector person or entity ("Private Partner") in order to ensure timely delivery of services or facilities in a cost-effective manner, including innovative approaches that might not otherwise be possible using traditional sources of public financing. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared to deliver a service or facility for the use of the general public, e.g., planning, designing, financing, constructing, operating, maintaining, and owning, and each sector shares in the potential risks of the timely and efficient delivery of the service or facility.

To be considered as a Public-Private Partnership development project, the proposed project must meet the definition of a "Qualifying Project" which is defined by state law as either:

1. any recreational facility, public building, mass transit facility, port facility, vehicle parking facility, public work, or other similar facility authorized by law, currently available or to be made available to the City 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

2. unimproved, underdeveloped or underutilized properties owned by the City which may be developed or improved through a public-private partnership.

The City may accept Unsolicited Proposals or issue a Solicitation for any Development Opportunity it identifies. Select property interests, such as a long-term, non-subordinated ground lease, may be available to a Private Partner for private office, retail/commercial, recreational/entertainment, and residential development with the objective of generating

sustainable non-tax revenue sources and allowing the City to participate in the increase in value of its real estate assets over time.

II. DEFINITIONS.

Unless otherwise specified, whenever the following terms are used in these Guidelines, they 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.

"City" means City of El Paso.

"Comprehensive Agreement" means the comprehensive agreement between the contracting person and the City that is required prior to the development or operation of a Qualifying Project.

"Competing Proposal" means a Proposal received in response to a notice issued by the City that it has received an Unsolicited Proposal.

"Conceptual Proposal" means a proposal for a Qualifying Project accepted by the City.

"Conceptual Stage" means the initial phase of Qualifying Project evaluation when the City makes a determination whether a Qualifying Project serves a public purpose, meets the criteria for a Qualifying Project, assesses the qualifications and experience of a Private Entity, reviews the Qualifying Project for financial feasibility, and warrants further pursuit.

"Contracting Person" or "Private Partner" means a Private Entity that enters into a Comprehensive or Interim Agreement with the City on a specific P3 Project.

"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" 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 may request additional information regarding a Qualifying Project prior to entering into competitive negotiations with one or more private entities to develop an Interim or comprehensive agreement.

"Develop" or "Development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a Qualifying Project.

"Development Opportunity" or "Development Opportunities" means a potential Qualifying Project on city-owned or other property that leverages existing public resources for Development of office, retail/commercial, recreational/entertainment, residential, parking, public works or

other project that generates sustainable non-tax revenue sources for municipal uses, enhances the value of City's real estate assets over time, increases the city's tax base, creates significant public benefits and/or otherwise fulfills a public purpose.

"Interim Agreement" means an agreement, before or in connection with the negotiation of the comprehensive agreement, authorized by these Guidelines between the City and a Contracting Person for the development or operation, or both, of a Qualifying Project. The Interim 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.

"Lease Payment" means any form of payment, including a land lease, by the City to the Private Partner the use of a Qualifying Project.

"Lifecycle Cost Analysis" means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, estimates of sufficient capital improvement reserves, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate a Qualifying Project.

"P3" means Public-Private Partnership.

"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, including a "Proposer" that submits an unsolicited proposal or a "Respondent" that submits a proposal in response to a solicitation.

"Private Partner" or "Contracting Party" means a Private Entity that enters into a Comprehensive or Interim Agreement with the City on a specific P3 Project.

"Proposer" means a Private Entity that submits an unsolicited proposal or responds to a City solicitation for a Public-Private Partnerships Project.

"Public-Private Partnership Program" or "P3 Program" means the City's public-private partnership program implemented in accordance with the Act.

"Qualifying Project(s)" means (i) any recreational facility, public building, mass transit facility, vehicle parking facility, public work, or other similar facility authorized by law currently available or to be made available to the City 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 development or improvements necessary or desirable to unimproved, underdeveloped or underutilized real estate owned by the City.

"Respondent" means a Private Entity that submits a proposal in response to a solicitation issued by the City.

"Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that support the development or operation of a Qualifying Project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the Qualifying Project.

"Service contract" means a contract between a governmental entity and a Contracting Person for the delivery of services to be provided as a part of a Qualifying Project in exchange for service payments or other consideration.

"Service payment" means a payment to a contracting person of a Qualifying Project under a service contract.

"Solicitation" means a written request for services, issued by the City, soliciting responses including but not limited to: bids, business plans (RBP), expressions of interest (REI), ideas (RFI), offers (RFO), proposals (RFP), qualifications (RFQ), or any combination thereof.

"Unsolicited Proposal" means a proposal initiated by a Private Entity for a Qualified Project for City review, consideration and approval that is not a proposal in response to a written Solicitation issued by the City.

"User Fee" means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a Qualifying Project under a comprehensive agreement.

III. GENERAL PROVISIONS.

A. OVERVIEW

The Public-Private Partnership process may be initiated by either a City Solicitation or an Unsolicited Proposal submitted by a Private Entity requesting review, consideration and approval.

The City may invite bids or proposals from Private Entities for purposes that constitute a Qualifying Project. The procedures and requirements applicable to any particular solicited bid or proposal shall be specified in the written Solicitation for that proposal. The response to any written Solicitation shall require the submittals in the format as set out in Section IV, of these Guidelines.

The City is also authorized to accept, evaluate or negotiate with Private Entities on any Unsolicited Proposals to design, develop, finance, lease, acquire, install, construct, expand, improve, renovate, equip, operate, or maintain a Qualifying Project. All proposals received without issuance of a Solicitation shall be treated as an Unsolicited Proposal, including any proposals which results from any general publicity of the City's needs that encourage interested parties to submit proposals or competing proposals received in response to a notice issued by the City that it has received an Unsolicited Proposal.

The P3 process for either a Solicited or Unsolicited Proposal requires a two-part proposal that consists of 1) an initial Conceptual Proposal (Part 1); and 2) a subsequent Detailed Proposal (Part 2). The Conceptual Proposal and the Detailed Proposal shall each contain specified information on the Private Entity's qualifications and experience, project characteristics, project financing, anticipated public support or opposition, project benefit, value, and compatibility, as more specifically described in Section VI of these Guidelines. In addition, any Solicited or Unsolicited proposal for a Qualifying Project shall specifically and conceptually identify any facility, building, infrastructure or improvement included in the proposal.

The Private Partner can be involved in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and/or management. Depending on the circumstances of each Qualifying Project, types of public-private partnerships, may include but are not limited to: Build-Own-Operate (BOO), Build-Operate-Transfer (BOT) or Build-Transfer-Operate (BTO), Buy-Build-Operate (BBO) and types of contract services, include but are not limited to: Operations and Maintenance; Operations, Maintenance and Management; Design-Build-Operate (DBO) including Design-Build-Operate-Transfer and Design-Build-Own-Operate; Developer Financing; Enhanced Use Leasing including Lease-Develop-Operate and Build-Develop-Operate; Lease-Purchase; Turnkey and other methods allowed by law.

The P3 Program is a flexible development tool that allows the use of innovative financing techniques. The P3 Program is intended to encourage proposals that offer private financing in support of the Qualifying Project, which may include commensurate risk to the Private Entity, but may also benefit the Private Entity and City through innovative approaches to project financing, development and use. Proposals may include in-kind consideration, in an amount that is not less than the fair market value of the real property owned by the City; including but not limited to construction of new facilities, alteration and restoration of existing facilities, and environmental remediation.

Private Entities may or may be required to include innovative financing methods, including the imposition of User Fees or other forms of service payments, in its proposal.

As further described in Section IV, all proposals should provide a concise description of the Private Entity's capabilities to complete the Qualifying Project and the benefits derived by the City from the Qualifying Project. Project benefits are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the Qualifying Project. Any proposals submitted to the City must include a comprehensive scope of work and a financial plan for the Qualifying Project, containing enough detail to allow an analysis by the City of the

financial feasibility of the Qualifying Project. For specific applications, the City may request in writing, clarification to the submission based on any criteria established by the City. The cost analysis in a proposal should not be based solely on the financing plan, as the City may determine to finance the Qualifying Project through other available means.

The City shall undertake 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.

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

B. PROPOSAL REVIEW FEES

Any Private Entity submitting an Unsolicited Proposal or a Competing Proposal shall pay a preliminary review fee to the City in the amount of Five Thousand and No/100 Dollars (\$5,000.00) at the time it submits the proposal to the City, by check, money order, credit card or electronic transfer. The fees will cover the internal costs of processing, reviewing and evaluating the proposal. The City through its Engineering and Construction Management Department shall review the proposal in accordance with Section VII, of these Guidelines. If the proposal is summarily rejected during preliminary review, the review fee shall be returned to the Private Entity; otherwise, the review fee is non-refundable.

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

C. CONE OF SILENCE AND CITY CONTACT PERSON

The City's Cone of Silence/Anti Lobbying Policy was adopted to ensure a fair and competitive solicitation environment by preventing communication between City officials, employees, or representatives and parties involved in the solicitation process that could create an unfair advantage to any party with respect to the award of a city contract.

The Cone of Silence period begins on the day that the City issues, advertises or otherwise provides notice of any solicitation or proposed project, including, but not limited to, a formal or informal solicitation for a competitive sealed bid, highest qualified bid (including best value bids and competitive sealed proposals), request for proposal (RFP), request for qualifications (RFQ), Design-Build, Public-Private Partnership or any other procurement method authorized by law, and ends on the day that a recommendation of a contract award is placed on the City Council agenda. The Cone of Silence period for an Unsolicited Proposal and any Competitive Proposal under the City's Public-Private Partnership program shall begin on the date that the City receives the Unsolicited Proposal.

The Cone of Silence/Anti Lobbying Policy prohibits any communication or lobbying activities during the Cone of Silence period, by any person, including but not limited to, bidders, lobbyists or consultants of bidders, service providers or potential offerors, proposers or vendors and any the following:

1. City Staff and City consultants, including any employee of the City of El Paso, any person retained by the City of El Paso as a consultant on the project, or any person having participated in the development, design, or review of documents related to the project.
2. City Officials, including the Mayor, Council Representatives and their respective staff.
3. Members of the City's Selection Committee, whether City employees or outside experts appointed or selected by the City.

The Cone of Silence/Anti Lobbying Policy does not apply to:

1. Questions of Process and Procedure, including oral communications with the Purchasing Manager, the Procurement Analyst or Contract Administrator designated in the solicitation, provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document. A minimum of ten (10) days will be provided for questions during solicitation unless otherwise stated in the Solicitation Schedule of Events in the documents.
2. Pre-Proposal/Pre-Bid Conferences, including oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations, and public presentations made to the Mayor and Council Representatives during a duly noticed public meeting.
3. Written Communications, to the Procurement Analyst or Contract Administrator identified in the solicitation.

FOR THE PURPOSES OF AN UNSOLICITED PROPOSAL OR COMPETING PROPOSALS, THE PROHIBITION ON COMMUNICATIONS BEGINS ON THE DATE THAT THE UNSOLICITED PROPOSAL IS RECEIVED BY THE CITY AND SHALL CONTINUE UNTIL THE DATE THAT AN ITEM IS POSTED ON THE CITY COUNCIL'S AGENDA TO APPROVE AN INTERIM OR COMPREHENSIVE

AGREEMENT FOR A PROJECT.

A person who knowingly or intentionally lobbies in violation of the provisions of this policy, or who shall knowingly obstruct or prevent compliance with this policy shall be guilty of a misdemeanor. Furthermore, any person who knowingly or intentionally violates the provisions of this policy, with respect to the solicitation or award of a discretionary contract may be prohibited by the city council from entering into any contract with the city for a period not to exceed three years.

Designated City P3 Program Contact:

A Private Entity may address any questions about the City's Public Private Partnership Program to Alan Shubert, City Engineer, or the designated P3 Program administrator, Department of Engineering and Construction Management, El Paso City Hall, 2 Civic Center Plaza, 4th Floor, El Paso, Texas 79901.

D. TEXAS PUBLIC INFORMATION ACT.

The City is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. Most information collected, assembled, or maintained by the City in connection with the transaction of official business is public information subject to disclosure upon written request. The Public Information Act exempts certain categories of information from required public disclosure. The Office of the Attorney General determines whether information may be withheld, not the City.

All information provided to the City will be handled in accordance with the Act and the requirements of the Texas Public Information Act while in the City's possession. All documents submitted by a Private Entity should be regarded as public records and subject to disclosure; provided however, such documents will be held in confidence by the City as required by the Act and to the requirements of the Public Information Act.

PRIVATE ENTITIES ARE CAUTIONED THAT ONCE A PROPOSAL (SOLICITED OR UNSOLICITED) IS OPENED, ALL INFORMATION CONTAINED THEREIN WILL BE AVAILABLE TO THE PUBLIC UNLESS THE INFORMATION IS EXCEPTED FROM THE REQUIREMENTS OF THE PUBLIC INFORMATION ACT.

Private Entities who claim that information contained in a bid should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General.

A Private Entity should identify those portions of a proposal that the Private Entity considers to be trade secrets or confidential commercial, financial, or proprietary information. If any information contained in the Solicited or Unsolicited Proposal qualifies for an exception because it falls into one of the categories above it should be clearly marked "CONFIDENTIAL" and the

basis of the claim of confidentiality should be stated. Data so identified will be maintained as a protected record, to the extent permitted by law. Blanket statements regarding the confidentiality of information may not be sufficient to protect the confidentiality of information submitted. Cost estimates relating to a proposed transaction prepared by or for the City with regard to any proposed P3 Project are not open to public inspection.

1. Trade Secrets: Under the Public Information Act, in order for confidential and proprietary information and trade secrets to be considered exempt from disclosure, the Private Entity should do each of the following:

- a. Invoke such exclusion upon submission of the information or other materials contained within the proposal for which protection is sought;
- b. Specifically identify the data or other materials for which protection is sought with conspicuous labeling;
- c. State the reasons why protection is necessary; and
- d. Fully comply with any applicable provisions of Texas law with respect to information the Private Entity contends should be exempt from disclosure.

2. Public Inspection. With regard to P3 Proposals, trade secrets, financial records, or other records of a Private Entity or the contracting person excluded from disclosure under Government Code Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the City and a Private Entity or the contracting person.

While inspection of documents submitted to a governmental entity are generally subject to inspection by members of the public any inspection of P3 procurement transaction records is subject to reasonable restrictions to ensure the security and integrity of the records.

IV. CONCEPTUAL PROPOSAL PREPARATION AND SUBMISSION

A. FORMAT

To the greatest extent possible the Conceptual Proposal submitted shall be sufficient to convey the experience and capacity of the development team and each member of the 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.

All proposals shall be **HAND-DELIVERED** to the Department of Engineering and Construction Management, City Hall, 2 Civic Center Plaza, 4th Floor, El Paso, Texas 79901. The City will not accept document by fax, email or other electronic transmittal. Responses to any solicitation received at the Engineering and Construction Management Department after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Engineering and Construction Management Department are delivered directly to the Department. U.S. Postal Service deliveries, including Express Mail, are only

delivered to the Mail Room at City Hall and may or may not be delivered by the Mail Room to the Engineering and Construction Management Department by the time and place bids are opened. The Private Entity accepts all responsibility for delivering its offer to address stated above within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

1. All proposals must be organized in the manner outlined in this Section and submitted with the applicable Review Fee. No page limitation is imposed, but brevity is appreciated. All proposals shall be submitted as one (1) original and seven (7) 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. **CONFIDENTIAL MATERIALS.** Any documents submitted by a Private Entity that contain trade secrets, financial records, proprietary or other confidential records exempt from disclosure under Government Code Section 552.101 shall be submitted in a separate, sealed envelope, designated on the cover as **CONFIDENTIAL MATERIALS**. A cover letter listing all exempt material shall be attached. Clearly mark any material believed to be a trade secret, confidential or proprietary information protected from disclosure under applicable law - such material must be clearly marked in all caps as **CONFIDENTIAL**.

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 should be organized in the following order and tabbed sections, as further described in this Section IV. All submittals, at a minimum shall provide this information unless the requirement(s) is waived in writing by the City.

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: Community Impact
TAB 7: Miscellaneous/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".
- 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 El Paso, Attn: Engineering and Construction Management Department, 2 Civic Center Plaza, El Paso, TX 79901, in a sealed envelope marked:

FOR SOLICITED PROPOSALS:

DO NOT OPEN IN MAILROOM

Public Private Partnership Solicitation
Title of the Solicitation
Solicitation #
Respondent's Name
Mailing Address

FOR UNSOLICITED PROPOSALS:

DO NOT OPEN IN MAILROOM

Property ID
Proposer's Name
Mailing Address

NOTE: ONCE A PRIVATE ENTITY HAS SUBMITTED A SOLICITED OR UNSOLICITED PROPOSAL, THE CITY'S CONE OF SILENCE APPLIES AND THE PRIVATE ENTITY OR ANY REPRESENTATIVE MAY NOT CONTACT MEMBERS OR STAFF OF THE CITY, ANY ELECTED OR APPOINTED OFFICIAL, OR CITY EMPLOYEE, EXCEPT THE CONTACT PERSON DESIGNATED IN SECTION III, D.

B. 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:

1. Identify the Private Entity or consortium of Private Entities who will be directly involved in the Qualifying Project;
2. Identify the principal(s) include the title(s), mailing address, phone number, and email address for each;
3. 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

4. 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.

5. Private Entity Contact Information:

- a. Physical address (if a consortium, include the address of each partner or member);
- b. Mailing address (if a consortium, include the address of each partner or member);and
- c. Primary phone and facsimile number.

6. 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.

C. TAB 2: PRIVATE ENTITY AND TEAM

1. Identify the Private Entity: Identify the legal structure of the Private Entity or consortium of private entities and its members or principals making the proposal; and

2. 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.

3. Identify the Team to the extent a team is created:

- a. Provide a list of all team members, 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.
- b. Identify the firms that will provide design, construction and completion guarantees and warranties.
- c. Provide an organizational chart that clearly illustrates the team and identifies the role of each team member, including design professional, consultant or major contractor(s) or subcontractor(s), participating in the development or operation of the Qualifying Project; and
- d. Describe the management structure and the role each team member, partner and any prospective professional, consultant or major contractor(s) or subcontractor(s) will fulfill in the development or operation of the Qualifying Project.

NOTE: ALL MEMBERS OF THE PROPOSER'S OR RESPONDENT'S TEAM, INCLUDING MAJOR CONTRACTOR(S) OR SUBCONTRACTOR(S) AND CONSULTANTS KNOWN TO THE PROPOSER OR RESPONDENT MUST BE IDENTIFIED IN THE PROPOSAL SUBMITTED FOR THE CONCEPTUAL STAGE REVIEW. IDENTIFIED TEAM MEMBERS MAY NOT BE SUBSTITUTED OR REPLACED ONCE A QUALIFYING PROJECT IS APPROVED AND COMPREHENSIVE AGREEMENT ENTERED INTO, WITHOUT THE WRITTEN APPROVAL OF THE CITY.

D. TAB 3: QUALIFICATIONS AND FINANCIAL CAPACITY

The Private Entity must provide demonstrable experience in the development and operation of Qualifying Projects of similar complexity, scope and scale to the proposed. 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:

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

2. Describe the design, construction and completion guarantees and warranties;

3. Provide resumes and work experience of each team member;

4. For the Private Entity and each major subcontractor or subcontractor on the Team, provide a statement listing five to ten (5-10) prior projects and clients within the past five (5) years and contact information for each. Such prior projects list should focus on any projects similar in scope and size to the Qualifying Project and the most recent projects. For each project identified, provide at least the following information:

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

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

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

d. Identify the construction lender and description of the development cost including a brief explanation of the approach and type of financial structure used to finance the

project, including identification of sources and amounts of debt and equity, and public subsidies and incentives, if any.

- e. All performance evaluation reports for the Private Entity and the major contractor(s) or subcontractor(s) or other documents that are in its possession evaluating the performance for the listed projects in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful Qualifying Project development, operation, and completion.
- f. A description of public involvement process and challenges or obstacles, if any, arising from the process, and how the Private Entity overcame such challenges or obstacles.

5. 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.

6. A qualification statement that reviews all relevant information regarding technical qualifications and capabilities, resources and business integrity of the Private Entity, including but not limited to, bonding capacities and insurance coverage.

7. A qualification statement that includes a mandatory disclosure* by the Private Entity for the past five (5) years any of the following conduct:

- a. Bankruptcy filings;
- b. Liquidated damages;
- c. Fines, assessments or penalties;
- d. Judgments or awards in contract disputes;
- e. Contract defaults and/or contract terminations;
- f. License revocations, suspensions and/or other disciplinary actions;
- g. Prior debarments or suspensions by a governmental entity;
- h. Denials of prequalification or findings of non-responsibility;
- i. Safety past performance data, including fatality incidents;
- j. Experience ratings;
- k. Modification ratings;

- l. Recordable injury rate;
- m. Workday incidence rate;
- n. Alleged violations of any federal, state or local civil law;
- o. Alleged violations of any federal, state or local criminal law;
- p. Criminal indictments or investigations;
- q. Legal claims filed by or against the Private Entity; and
- r. Claims on payment and performance bonds.

*The City reserves the right to request a copy of all notices of default, termination, claims of damage received on projects, and claims against performance and payment bonds, received within the past five years as a part of the Proposal Detail Stage.

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

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

- a. Portfolio: Composition of current real estate portfolio, including the size, value, years of ownership, and asset performance compared to initial *proforma* statements; and any other relevant information.
- b. Pending Projects: A listing and description of all pending projects under enforceable funded contracts, including the status, development schedule, financing method, sources, and amounts, and financial commitments required of the Private Entity.
- c. Reports and Certified Financial Statements: Provide the most recent credit report or Dun & Bradstreet report and certified financial statements for the past four (4) years of each Private Entity or consortium of private entities and each partner with an equity interest of twenty percent or greater. Certified financial statements shall include balance sheets, income statements and statements with changes in financial position of any parent organizations and any materially relevant subsidiaries, identification of any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and contingent liabilities.

- d. Statement of Public Trading: If the entity is publicly traded, include as part of the electronic copy (searchable PDF format on CD), the stock exchange and trading symbols and a copy of the most recent 10K.
- e. Funding Source Action: Disclose whether any funding sources or financial institutions have threatened to take or have taken adverse action against the Private Entity, such as loan acceleration, foreclosure, terminating or restricting the use of funds, anytime during the past five years.

E. 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:

1. Concept Plan

- a. Concept Renderings: Provide a concept design (plan, computer aided model, aerial sketch, photomontage, etc.) that characterizes the context of the urban design of the Qualifying Project. The concept drawings shall clearly illustrate the relationship of the Qualifying Project to the principal street and surrounding developments.
- b. Concept Site Plan: The site plan, in a scale of not less than 1"=32', shall encompass the subject property and portions of contiguous parcels, if any, and clearly illustrate topography in a 1:2,000 or other appropriate scale, include landscape and urban design concept(s), and should be drawn as a ground floor plan of the site. The preliminary site plan shall indicate all major pedestrian entrances, horizontal and vertical circulation systems, wall openings, 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.
- c. Elevations: Provide exterior building elevations, illustrating the massing, openings, materials, colors, and related elements, and any roof top structures or equipment.

2. Project Overview

The Qualifying Project overview, at a minimum, must:

- a. Describe the proposed business arrangements (i.e. performance based infrastructure, participation rent, concessions, parking management agreements, service agreements, etc.).

- b. Describe the plan for the development, financing and operation of the Qualifying Project showing the anticipated schedule of which funds will be required.
- c. Describe the type and amount of user fees, lease payments, and other service payments over the term of any applicable Interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- d. Describe the implementation strategy for the Qualifying Project.
- e. 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.
- f. To the greatest extent possible the overview must describe the following items:
 - i. Operational and management plan, if applicable;
 - ii. Anticipated cost per square foot, phase, and use;
 - iii. Existing conditions and anticipated site preparation;
 - iv. Other opportunities that will benefit the viability of the Qualifying Project;
 - v. Adjacent uses and emerging projects that impact the value or influence the use of the Qualifying Project;
 - vi. Connections to public transportation; and
 - vii. Availability and existing capacity of public infrastructure and required extensions or improvements.

3. 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.

- a. State the terms offered and any contingencies requested by the Private Entity for the Qualifying Project.
- b. To the extent the Private Entity has identified federal, state, or local funding sources, include a description of such sources. Identify any additional terms or conditions to

be included as part of the negotiation process. Include discussion of any trades or swaps of property and special legislation or plan amendments required to facilitate the Qualifying Project.

- c. Identify any additional terms or conditions to be included as part of the negotiation process, including discussion of any trades or swaps of property and special legislation or plan amendments required to facilitate the Qualifying Project.

F. 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.

- a. Describe how the proposed design of the improvements and the attributes of the site will demand the maximum income; and
- b. List any public utility facilities that will be affected by the Qualifying Project and a statement of the plans to accommodate the affected facilities.

2. Market and Competitive Analysis.

- a. Provide a market study that supports the revenue assumptions and viability of the Qualifying Project. Study should indicate feasibility through a forecast of the supply and demand relationship, including but not limited to, geospatial data and geographic information, demographic and psychographic data, traffic counts, rent levels, absorption rates, and identify underserved trade areas for the project type. Include any supporting due diligence studies, analyses, or reports.
- b. Submit detailed market information for any specialized or non-standardized use.

3. Financial Analysis

- a. Explain the financing plan of the Qualifying Project including the identity of each source(s), the amount of debt and equity to be used to capitalize the Qualifying Project, and the relationships (e.g., outside lender, parent company, etc.). Include each of the following:
 - i. Loan commitment letters and contact information for funding sources;
 - ii. The sources and anticipated amounts of working capital to cover operating costs and to adequately maintain operations from the start-up through completion; and
 - iii. 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.

- b. 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.
- c. 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.
- d. Include a sensitivity analysis depicting the impacts due to escalations of expenses and revenue growth, and changes in financing terms or interest rates.
- e. Include a list of underlying assumptions and explain the methodology used for such assumptions incorporated in the plan.
- f. Indicate if there is a method to refinance for cost savings. Indicate which party or parties would receive the benefit of any cost savings from a refinancing, e.g. would the savings go to the City, would the savings be shared and to what extent, or would the contracting person be the sole beneficiary.
- g. Outline the financial penalties, if any, that would result should the City terminate a Qualifying Project early or restructure the cash flows.
- h. Identify the need, if any, for the City to provide either its general obligation debt financing or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized bond rating agency. If the unenhanced rating is not investment grade, the City may require the use of credit enhancements. In the event that any Qualifying Project is supported or financed through the issuance of obligations that are deemed to be tax-supported debt of the City, or if financing such a Qualifying Project may impact the City's debt rating or financial position, the City shall select its own finance team, source, and financing vehicle.
- i. If the Private Entity has chosen an underwriter(s), provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc. If the Private Entity has not yet chosen an underwriter(s), the City reserves the right to have input into the selection of that underwriter(s).

4. Political and Legal Analysis

- a. Provide an explanation of how the Qualifying Project will complement or comply with the City's goal to encourage the development of needed municipal facilities and the redevelopment of underdeveloped and underutilized properties, to share risk and expense, and participate in cash flow performance by entering into public-private partnerships.
- b. Identify allocations of risk and liability between City and Private Entity, and assurances for timely completion of the Qualifying Project.
- c. Identify the proposed risk factors and methods for dealing with these factors including a description of methods and remedies associated with any financial default.
- d. Identify and fully describe any work required or otherwise proposed to be performed by the City.
- e. Describe the proposed method for securing property interests required for the Qualifying Project.
- f. List all permits and approvals required for the development and completion of the Qualifying Project from federal, state, or local agencies.
- g. State assumptions related to ownership, legal liability, law enforcement and operation of the Qualifying Project and the existence of any restrictions on the City's use of the Qualifying Project.
- h. 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.

G. TAB 6: COMMUNITY IMPACT

1. Identify the community benefits, including the economic impact and tax revenues, the Qualifying Project will have on the City.
2. Estimate the number of jobs generated for area residents and level of pay and fringe benefits of such jobs.
3. Project the number and value of subcontracts generated for area subcontractors.
4. Identify any anticipated public support or opposition for the Qualifying Project, including any affected jurisdictions. Support from the public or affected jurisdictions should be demonstrated through resolution of organizations, letters, or other official communications.

5. Identify any anticipated adverse social, economic, environmental and transportation impacts of the Qualifying Project measured against the City's land use and building policies, design standards and any applicable ordinances. Specify the strategies or actions to mitigate known impacts of the Qualifying Project. Indicate if environmental and archaeological assessments have been completed.

6. Identify the projected positive social, economic, environmental and transportation impacts of the Qualifying Project.

7. Identify contingency plans for addressing public needs in the event that all or some of the Qualifying Project is not completed according to projected schedule.

8. Any additional information as the City may reasonably request.

H. TAB 7: MISCELLANEOUS/ADDENDA

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.

NOTE: THE PRIVATE ENTITY, AT ITS SOLE DISCRETION, MAY INCLUDE ITEMS REQUIRED IN THE DETAILED STAGE SUBMITTAL BELOW AS PART OF ITS CONCEPTUAL STAGE SUBMITTAL.

V. DETAILED PROPOSAL (PART 2) - PREPARATION AND SUBMISSION

A. SUBMISSIONS AND FORMAT

Detailed Stage submissions shall supplement the Conceptual Proposal submissions from the Private Entity. Submissions for the Detailed Stage evaluation shall be consistent with the format outlined in Section IV of these Guidelines, and shall include any omitted submittals, substantial changes resulting from negotiations and refinements, or tasks identified during Conceptual Stage evaluation, unless a waiver of the requirement or requirements is agreed to by the City.

B. MANDATORY SUBMISSIONS

Unless previously submitted, the following items shall be submitted as part of the Detailed Stage submission:

1. Include a lifecycle cost analysis specifying methodology and assumptions of the Qualifying Project and the proposed start date, anticipated commitment of all parties, equity, debt, and other financing mechanisms, and a schedule of revenues and costs. The lifecycle cost

analysis shall include, but not be limited to, a detailed analysis of the projected return, rate of return, expected useful life of the facility, and estimated annual operating expenses.

2. Detailed analysis of the financial feasibility of the Qualifying Project, including its impact on similar facilities operated or planned by the City. Include a detailed description of any financing plan for the project, a comparison of that plan with financing alternatives available to the City, and all underlying data supporting any conclusions reached in the analysis of the selection by the Private Entity of the financing plan proposed for the Qualifying Project.

3. Additional material and information as the City deems appropriate.

VI. EVALUATION AND SELECTION CRITERIA

A. EVALUATION OF CONCEPTUAL PROPOSALS

Any Conceptual Proposals, whether solicited or unsolicited, shall be reviewed by the City Engineering and Construction Management Department to determine whether:

1. The proposed P3 Project serves the City's public purpose;
2. The proposed P3 Project meets the City's annual, capital improvement or other development policies, plans, goals or objectives;
3. Public funds and/or private financing is reasonably available for the proposed P3 Project;
4. The proposed P3 Project is economically feasible and cost effective; and
5. The extent that the proposed P3 Project on its face meets the Evaluation Criteria set forth in Section B, below.

The City may at its sole discretion determine whether to fully evaluate any Unsolicited Conceptual Proposal or make its determination that the City will not accept the proposed P3 Project proposal.

The City Engineering & Construction Management Department shall prepare a summary recommendation to the City Manager. The City Manager shall consider the recommendation and determine if the Conceptual Proposal will be rejected or presented to the City Council at any regular or special meeting, in open or executive session as may be legally appropriate.

After reviewing the original Solicited or Unsolicited Conceptual Proposal received by the City, and any Competing Proposals submitted during the notice period, the City may determine:

- a. Not to proceed further with any proposal; or
- b. To proceed to the Detailed Stage evaluation (Part 2) of review with any Conceptual Proposal – solicited, unsolicited or competing - or multiple proposals.

If the City decides not to further evaluate the Conceptual Proposal, any review fee submitted by a Proposer shall be returned.

The City reserves the right at all times to reject any proposal at any time for any reason in its sole discretion.

Any discussions between the City and any Private Entity(ies) about the need for infrastructure improvements in or related to any Conceptual Proposal shall not limit the ability of the City to later determine to use standard procurement procedures to meet its infrastructure needs.

B. EVALUATION CRITERIA.

The following factors will be considered in conducting a full evaluation of either the Conceptual or Detailed Proposals to determine whether the Private Entity possesses the requisite qualifications and experience will include, along with the specified information required under Section IV, above:

1. Qualifications And Experience.

- 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 available public and private personnel, logistical resources, City bonding capacity, and the ability to complete the Qualifying Project in a timely and professional manner;
- d. Demonstrated record of successful past performance on projects of similar size and scope, 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 will include the following, if applicable:

- 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 needs and project schedules;
- c. Data and reports resulting from project analyses;
- d. Operation of the Qualifying Project;
- e. Technology; technical feasibility;
- f. Conformity to laws, regulations, and standards;
- g. Environmental impacts;
- h. Condemnation impacts;
- i. Federal, state and local permits; and
- j. 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 include:

- a. Total project 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.

NOTE: IN THE EVENT THAT ANY QUALIFYING PROJECT IS FINANCED THROUGH THE ISSUANCE OF OBLIGATIONS THAT ARE DEEMED TO BE TAX-SUPPORTED DEBT OF THE CITY, OR IF FINANCING SUCH A QUALIFYING PROJECT MAY IMPACT THE CITY'S DEBT RATING OR FINANCIAL POSITION, THE CITY SHALL SELECT ITS OWN FINANCE TEAM, SOURCE, AND FINANCING VEHICLE.

4. Community Impact.

Factors to be considered in evaluating the Qualifying Project's community impact include:

- a. Community benefits, including the economic impact the Qualifying Project will have on the City in terms of tax revenue, the number of jobs generated and level of pay and fringe benefits of such jobs;
- b. Stakeholder input;
- c. Community support or opposition, or both;
- d. Compatibility with existing and planned facilities; and
- e. 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 include:

- 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 any City-owned 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 plans to employ local contractors and residents; and
- g. Other criteria that the City deems appropriate.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS

The Engineering and Construction Management Department is responsible for negotiating any Interim or comprehensive agreement. The City may use Department and other City staff, attorneys, advisors or consultants or contract with independent consultants or attorneys to review the terms of the proposed Interim Agreement or Comprehensive Agreement, at the City's sole discretion. Review criteria shall include, but not be limited to, the scope, total cost, and duration of the Qualifying Project. Timelines for the City's review will be developed consistent with the scope of the Qualifying Project.

The City Council shall approve any Interim or Comprehensive Agreement entered into pursuant to the P3 program between the City and the Private Partner (aka Contracting Party). Any Interim or Comprehensive Agreement shall define the rights and obligations of the City and the Private Partner/Contracting Person with regard to the Qualifying Project. Prior to entering a Comprehensive Agreement, an Interim Agreement may be entered into that permits a Private Entity to perform project-related activities related to the Qualifying Project that may or may not be compensable, on such terms and conditions set forth in such Interim Agreement.

The City shall have no liability for development or operation of the Qualifying Project prior to entering into a Comprehensive Agreement, except as the City may have expressly agreed in the Interim Agreement.

The Private Partner may commence developing or operating the Qualifying Project **ONLY following** the execution of a Comprehensive Agreement between the Private Entity and the City.

A. MINIMUM INTERIM AGREEMENT TERMS

The scope of an Interim 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(ies) through financial and revenue analysis;
6. The timing of the negotiation of the Comprehensive 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 Agreement.

B. MINIMUM COMPREHENSIVE AGREEMENT TERMS

The Comprehensive Agreement will define the rights and obligations of the City and the Private Partner with regard to the Qualifying Project. The terms of the Comprehensive Agreement shall be tailored to address the specifics of the Qualifying Project and shall include, but not be limited to, the following:

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, including development or operation in phases;

2. The review and approval of plans and specifications for the Qualifying Project by the City;

3. The rights of the City to inspect the Qualifying Project to ensure compliance with the Comprehensive Agreement;

4. The maintenance of a policy or policies of comprehensive general liability insurance or self-insurance in form and amount satisfactory to the City and reasonably sufficient to insure coverage of the Qualifying Project and of the tort liability to the public and employees, and to enable the continued operation of the Qualifying Project;

5. The City's monitoring of the practices of the Private Partner 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 Private Partner in the event that the Comprehensive Agreement is terminated or there is a material default by the Contracting Person including the conditions regarding the assumption of the duties and responsibilities of the Private Partner by the City and the transfer or purchase of property or other interests of the Private Partner by the City;

8. The terms under which the Private Partner will file financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but generally not less than annually during the development, construction and operation of the Qualifying Project;

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, if any;

11. A schedule of the current user fees or lease payments, if any;

12. Classifications according to reasonable categories for assessment of user fees, if any;

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 Partner and the amount of any such payments for the Qualifying Project.

16. A periodic reporting procedure that incorporates a description of the impact of the Qualifying Project on the City.

17. Default and termination

18. Any changes in the terms of the Interim or Comprehensive Agreement as may be agreed upon by the parties from time to time shall be added to the Interim or Comprehensive Agreement only by written amendment.

19. Other requirements of the P3 program or applicable law or that the City deems appropriate.

C. ADDITIONAL PROVISIONS - COMPREHENSIVE AGREEMENT

Depending on the nature of the proposed Project, the City may require the following be addressed in the Comprehensive Agreement:

1. The Private Partner will assume single-point responsibility and liability for all planning, designing, financing, constructing, operating, and maintaining the Qualifying Project.

2. The Contracting Person shall perform a comprehensive geotechnical investigation of subsurface conditions at the Qualifying Project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the Private Partner in the Comprehensive Agreement.

3. The City encourages the Private Partner to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed

maximum price with saving sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated into the Comprehensive Agreement.

4. The City may enter into Comprehensive Agreements with private entities that have formed business associations such as joint ventures, limited partnerships and limited liability companies. However, the City may require that one or more of the principal members of the business association provide a performance guaranty of all obligations undertaken in the Comprehensive Agreement. This requirement is in addition to the statutory requirement for posting a performance bond. Private Entities interested in entering Public-Private Partnerships with the City under the P3 program must be willing to provide this security if their proposal is submitted as part of a business association or other entity that limits the liability of its members, owners or partners.

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

6. Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals play a critical role in the competitive evaluation process and the ultimate selection of a proposal by the City. Accordingly, as part of the Comprehensive Agreement, the Contracting Person 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 authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information and data provided for the proposal, the Contracting Person shall immediately notify the City of same. Any violation of this Section of the Comprehensive Agreement shall give the City the right to terminate the Comprehensive Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

VIII. NOTICE, POSTING AND HEARING REQUIREMENTS

A. PUBLIC NOTICE OF DECISION TO ACCEPT AND CONSIDER UNSOLICITED PROPOSALS

Upon receipt of any Unsolicited Proposal(s) and payment of the required fee by the Private Entity(ies), the City will determine whether to accept the Unsolicited Proposal for Conceptual Stage evaluation pursuant to the procedures in Section VI, above.

The City reserves the right to reject any and all proposals at any time.

To encourage competition and partnerships in accordance with its stated goals, if the City chooses to accept an Unsolicited Proposal for Conceptual Stage evaluation, it shall post a notice in a public area regularly used by the City for posting of public notices for a period of not less than forty-five (45) days and advertise the notice on the City's website and a newspaper of

general circulation, as required by law. The notice shall state that the City (i) has received and accepted an 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(s), and identify the proposed location(s).

B. NOTICE AND ACCESS TO ACCEPTED PROPOSALS

Not later than the 10th day after the date the City Council accepts a Proposal submitted by Proposer or Respondent, the City shall post public notice of the Proposal as follows:

Posting shall be on the City's website and by publication in a newspaper of general circulation, which will include a summary of the Proposal, the location where a redacted copy of the Proposal is available for public inspection, and the contact person.

Trade secrets, financial records, or other designated records of the contracting person excluded from disclosure 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 Proposer/Respondent.

C. HEARING, NOTICE AND ACCESS TO INTERIM OR COMPREHENSIVE AGREEMENTS

In addition to the other posting requirements, during the Proposal review process, not later than thirty (30) days prior to entering into an Interim or Comprehensive Agreement, the City Council shall hold a public hearing on the Proposal.

Once the negotiation phase for an Interim or a Comprehensive Agreement is complete and a decision to award has been made by the City, the City shall make the Interim or Comprehensive Agreement and P3 procurement records available for public inspection in the following manner:

Posting the agreement on the City's website or by another manner considered appropriate by the City to provide maximum notice to the public of the opportunity to inspect the Proposal including a summary of the proposed Comprehensive Agreement, the location where a redacted copy of the proposed Comprehensive Agreement is available for public inspection, and the contact person.

For purposes of this subsection, P3 procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means. Cost estimates relating to a Qualifying Project prepared by or for the City are not open to public inspection.

Any inspection of P3 procurement transaction records under this Section is subject to reasonable restrictions to ensure the security and integrity of the records.

This Section applies to any accepted Proposal regardless of whether the process of bargaining results in an Interim or Comprehensive Agreement.

G. USE OF PUBLIC FUNDS

The City's constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any Interim or Comprehensive Agreement entered into under the P3 Program. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into any Qualifying Projects.

H. APPLICABILITY OF LAWS

The laws of the United States and the State of Texas are incorporated in these Guidelines by reference for all purposes. Compliance by each Private Entity is mandatory.

I. 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.