CITY OF HOUSTON, TEXAS
GUIDELINES FOR PUBLIC-PRIVATE PARTNERSHIPS

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ARTICLE I. PURPOSE AND SCOPE

The terms "Public-Private Partnership" and "P3" refer generally to agreements between public entities and the private sector by which the private sector makes physical assets or services available to a public entity for an extended term in exchange for fixed payments. Pursuant to the Texas Public and Private Facilities and Infrastructure Act (Chapter 2267, Texas Government Code) (the "Act," as may be amended from time to time), the City of Houston (the "City") has adopted these **Guidelines for Public-Private Partnerships** to create the City's P3 Program and to further the public purposes declared in Section 2267.002(a)-(c) of the Act.

These Guidelines govern the submission and evaluation of "P3 Proposals" (defined in Article III below) by the private sector to partner with the City for the development or operation of certain improvements "necessary or desirable to real property" owned by the City. *See* TEX. GOV'T CODE § 2267.001(10). A successful P3 Proposal will result in an agreement between the private sector and the City for development, completion, financing, operation, or maintenance of a "Qualifying Project" (defined in Article III below).

It is the City's intention to comply with all mandatory provisions of the Act, whether or not these Guidelines refer to such provisions specifically.

ARTICLE II. OTHER LAWS; CONFLICTS OF INTEREST; CITY COUNCIL AUTHORIZATION

A. These Guidelines do not supersede laws, regulations, or executive orders issued by the governments of the United States, the State of Texas, or the City, specifically including:

1. Chapter 271, Texas Local Government Code, for any "Project" (defined in Article III below) including a "civil works project" within the meaning of Section 271.181(2), Texas Local Government Code;

2. The Texas Professional Services Procurement Act (Chapter 2254, Texas Government Code); and

3. The City's Procurement Manual dated January 24, 2014 (the "Procurement Manual," which may be modified from time to time by the Procurement Governance Board).

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

B. These Guidelines specifically incorporate by reference Sections 2267.005 ("Conflict of Interest"); 2267.0051 ("Prohibited Employment With Former or Retired Governmental Entity Employees"); and 2256.0052 ("Prohibited Employment of Responsible Governmental Entity Employees") of the Act.

C. These Guidelines specifically incorporate by reference Pages 13-14 of the Procurement Manual ("Quiet Period / No Contact").

D. These Guidelines are effective upon approval of the City Council of the City (the "City Council").

E. Except as may be provided in these Guidelines, no agreement falling within the scope of these Guidelines shall be binding upon the City without prior approval by the City Council.

ARTICLE III. DEFINITIONS

These Guidelines specifically incorporate by reference the definitions in Section 2267.001 of the Act. Any variance between the capitalization of terms in the Act and in these Guidelines is

immaterial. In the event of a substantive conflict between definitions in the Act and in these Guidelines, the Act shall control. In addition to definitions appearing in the Act and elsewhere in these Guidelines, for the purposes of these Guidelines the terms listed below have the meaning stated.

City's Procurement Website is http://purchasing.houstontx.gov/index.shtml.

Confidential Materials means trade secrets, financial records, and proprietary or other confidential information exempt from disclosure under the Act or under Section 552.101, Texas Government Code.

P3 Plan means a P3 Proposal responsive to an invitation from the City's "P3 Representative" (defined in Article VII below) following the City's review of a "Pre-Proposal Letter" (defined in Article X(A)(1) below).

P3 Procurement Record means a document or other record in any form directly related to a P3 Proposal. Notwithstanding the previous sentence, **P3 Procurement Record** does not include (a) information excepted or otherwise exempt from the public disclosure requirements of the Texas Public Information Act (Chapter 552, Texas Government Code), or (b) information not constituting a procurement record within the meaning of Section 2267.066(f) of the Act.

P3 Proposal means any stage of a proposal, whether or not in response to a P3 Solicitation, from a private entity to enter into a P3 Contract with the City for the development or operation of a Qualifying Project.

P3 Solicitation means a request for proposals ("RFP") issued by the City for a Qualifying Project.

Procurement Governance Board means the City's Procurement Governance Board established by the Executive Order signed by Mayor Annise Parker on May 15, 2014.

Project means either a Qualifying Project or a proposed Qualifying Project, depending on context.

Proposer means a private person or entity that plans to submit or that has submitted a P3 Plan or a P3 Proposal to the City.

P3 Contract means an agreement between a public entity and a private entity by which the private entity makes physical assets or services available to the public entity for a term of twenty or more years in exchange for periodic payments.

Qualifying Project means a service or an improvement to real property provided or proposed to be provided by a private entity to the City by means of a P3 Contract, in accordance with the Act.

Solicited P3 Proposal means a P3 Proposal submitted to the City in response to a P3 Solicitation, as contemplated by Section 2267.053(b) of the Act.

Unsolicited P3 Proposal means a P3 Proposal submitted to the City but not in response to a P3 Solicitation, as contemplated by Section 2267.053(a) of the Act.

ARTICLE IV. RULES OF CONSTRUCTION; ADDITIONAL DEFINITIONS

A. These Guidelines shall be construed under the laws of the State of Texas and the City of Houston. All references to statutes, ordinances, regulations, executive orders, administrative procedures, and similar authorities shall be construed to include any amendments or revisions of the said laws.

B. All references in these Guidelines to a person or entity shall include the person's or entity's successors and authorized designees.

C. Criteria and procedures prescribed by these Guidelines may not be listed in order of importance.

D. These Guidelines specifically incorporate by reference the rules of construction and definitions in Section 1-2 of the City's Code of Ordinances, specifically including the constructions or definitions of "gender," "nontechnical and technical words," "number," "or, and," "person," and "tense."

ARTICLE V. OVERVIEW OF P3 PROGRAM

A. A person may not develop or operate a Project unless the person contracts with the City as prescribed by these Guidelines and applicable law. *See* TEX. GOV'T CODE § 2267.051(a).

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

C. Participation in the P3 Program is initiated either by responding to a P3 Solicitation or by submitting an Unsolicited P3 Proposal in the manner prescribed by these Guidelines. The City encourages private entities to submit Unsolicited P3 Proposals consistent with the purpose and scope of these Guidelines.

D. The City will exercise full due diligence in the evaluation of P3 Proposals and will examine carefully the qualifications, capabilities, resources, and other attributes of a Proposer and its team. Proposers will be held strictly accountable for representations made and information provided to the City regarding their qualifications and experience.

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

F. P3 Proposals may include in-kind consideration in an amount not less than the fair market value of the real property interest, including but not limited to construction of new facilities, alteration and restoration of existing facilities, and environmental remediation.

G. Proposers submitting Confidential Materials to the City shall do so in hard copy only, enclosed in a separate, sealed envelope addressed and either mailed or delivered to the P3 Representative and marked "CONFIDENTIAL P3 PROGRAM MATERIALS. TO BE OPENED BY [Insert Name of P3 Representative] ONLY." Failure to so mark Confidential Materials may lead to disclosure of the information as a publicly available record. The duty lies with the Proposer to identify and mark any Confidential Materials submitted to the City.

H. Absent an ordinance passed by the City Council, the City may not enter into more than three Comprehensive P3 Agreements (defined in Article XI below) in the same fiscal year.

I. Absent an ordinance passed by the City Council, the City may not enter into a Comprehensive P3 Agreement unless the Proposer is reasonably likely to expend more than $25 million to provide the Qualifying Project.

J. Absent a legally enforceable written agreement executed by an authorized representative of the City, the City will not be responsible for any costs incurred in the preparation, submission, or presentation of a P3 Proposal.

ARTICLE VI. TEXAS PUBLIC INFORMATION ACT; RELATED MATTERS

The Act requires the City to take appropriate action under the Texas Public Information Act ("TPIA") to "protect confidential and proprietary information provided by a private entity" submitting a P3 Proposal. *See* TEX. GOV'T CODE § 2267.053(g). Similarly, information in the City's custody (including memoranda, staff evaluations, or other records prepared by City staff or by outside advisors or consultants) related to the evaluation or negotiation of a P3 Proposal may be exempt from public disclosure if disclosure before or after the execution of an Interim P3 Agreement or a Comprehensive P3 Agreement (defined in Article XI below) would adversely affect the financial interest or bargaining position of the City. Proposers are cautioned, however, that the statutory protections against public disclosure of confidential or proprietary information are not absolute. *See, e.g.*, TEX. GOV'T CODE § 2267.066(c). If the City receives a request for information related to a P3 Proposal, the City will comply with the TPIA, as may be modified by the Act. In some instances, action by the Proposer may be advisable. A Proposer concerned about public disclosure of Confidential Materials should be well-informed regarding the pertinent provisions of the TPIA and the Act and consult the Proposer's legal counsel as necessary or prudent.

ARTICLE VII. CITY'S P3 REPRESENTATIVE

A. The City's Chief Procurement Officer shall serve as the City's representative ("P3 Representative") to administer the City's P3 Program and, as required by Section 2267.052(b)(1) of the Act, confer with persons considering submission of a P3 Proposal. The P3 Representative shall be available during the City's regular business hours, by appointment only. Requests to meet with the P3 Representative regarding matters within the scope of these Guidelines should be submitted in writing to the following address:

Chief Procurement Officer
City of Houston
Mailing Address: P.O. Box 1562, Houston, Texas 77251
Physical Address: City Hall, 901 Bagby St., Concourse Level, Houston, Texas 77002

B. The P3 Representative may designate in writing another employee of the City to act in his stead with regard to any particular P3 Proposal.

C. No later than 120 days after the effective date of these Guidelines and every 90 days thereafter, the P3 Representative shall provide to the City Council a written report regarding the status of the City's P3 Program. In addition, to report on activities of the City's P3 Program the P3 Representative shall appear before the City Council's Budget and Fiscal Affairs Committee as requested by the Committee's Chair.

ARTICLE VIII. CITY'S P3 OVERSIGHT COMMITTEE

A. As required by Section 2267.052(c)(2) of the Act, the City has established a P3 Oversight Committee consisting of qualified professionals providing "independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any [P]roposal ...." The members of the Committee are as follows:

Position 1 (Chair):	The P3 Representative.
Position 2:	A representative designated in writing by the Director of the City's General Services Department.
Position 3:	A representative designated in writing by the Director of the City's Public Works & Engineering Department.
Position 4:	A representative designated in writing by the Director of the City's Finance Department.
Position 5:	An attorney licensed to practice law in Texas designated in writing by the City Attorney.
Position 6:	A representative designated in writing by the Director of the City's Planning & Development Department.
Position 7:	A representative designated in writing by the Mayor.
Position 8:	A citizen representative designated in writing by City Council.

B. No designation to the Committee shall be effective until (1) the City Council has been advised in writing of the proposed designation and the proposed designee's qualifications for the position and (2) the City Council has been provided no less than fourteen days to submit to the Mayor a written objection to the proposed designation. The Mayor shall give due consideration to each such objection and may revise any designation as the Mayor sees fit.

C. Members of the Committee do not serve for specific terms. Subject to Section VIII(B) immediately above, new members may be designated to the above Positions by the Mayor or by the respective Department Director as needed. Names of the members of the Committee and any changes in the Committee's membership will be announced at the City's Procurement Website as promptly as circumstances allow.

D. At the instruction of the Director of the City's Finance Department, a "municipal advisor" as defined by Title 15, Section 78*o*-4(d)(4), United States Code, may serve as a non-voting, *ex officio* member of the Committee.

E. As required by Section 2267.052(c-1) of the Act, for the evaluation of any P3 Proposal with an estimated cost of $5 million or more for the construction or renovation of a facility, the City shall retain an architect, a professional engineer, and a certified accountant, none of whom shall be employees of the City, to advise members of the Committee serving in Positions 2, 3, and 4, respectively.

F. The Committee is not subject to the Texas Open Meetings Act (Chapter 551, Texas Government Code). *See* TEX. GOV'T CODE § 551.001(3).

ARTICLE IX. SOLICITED P3 PROPOSALS

A. A P3 Solicitation shall be by RFP. These Guidelines do not govern all RFPs issued by the City. **These Guidelines pertain only to a Request for Proposals for a Public-Private Partnership.**

B. A P3 Solicitation may be preceded by a Request for Information ("RFI") or a Request for Qualifications ("RFQ") if the P3 Representative reasonably concludes doing so is likely to serve the City's interests. In such event, the P3 Oversight Committee shall determine from responses to the RFI or the RFQ whether the City will proceed with the P3 Solicitation and, if so, shall identify one or more Proposers eligible to respond further to the P3 Solicitation.

C. In most instances, a P3 Solicitation will require submission of the same information required for a P3 Plan. *See generally* these Guidelines at Sections X(B) & (C).

D. Before issuing a P3 Solicitation, the City shall analyze the adequacy of the information to be supplied by the P3 Solicitation, as required by Section 2267.052(b)(9) of the Act. If the analysis indicates additional information is likely to encourage competition among private entities, the City shall revise the P3 Solicitation to include such information, subject to Section 2267.053(g) of the Act. The P3 Representative shall prepare a brief summary of the analysis required by this Section IX(D), which summary shall be a P3 Procurement Record.

E. P3 Solicitations shall follow the City's procurement policies and procedures stated in the Procurement Manual, except as may be modified by mandatory provisions of the Act. Additional procedures and requirements applicable to a particular Solicited P3 Proposal will be specified in the P3 Solicitation, which may or may not address every provision of these Guidelines. While it is the City's duty to state the requirements for responding to a P3 Solicitation, it is the Proposer's obligation to determine from the P3 Solicitation the extent to which these Guidelines apply and to request clarification from the P3 Representative as may be necessary or prudent.

F. At a minimum, each P3 Solicitation shall:

1. State that the City will "make a best value determination in evaluating the proposals received and consider the total project cost as one factor in evaluating the proposals," as required by Section 2267.053(b-1) of the Act;

2. State that the City's evaluation of Solicited P3 Proposals will consider the factors listed in Section 2267.053(b-1) of the Act, as applicable to the Project;

3. State that the City's evaluation of Solicited P3 Proposals will consider the extent to which the Project is likely to serve the public, according to the factors listed in Section 2267.053(c)(1)–(3) of the Act;

4. Include specific references to provisions in the Procurement Manual addressing the submission of information the Proposer may consider confidential or proprietary; and

5. Provide not less than 45 days nor more than 180 days to respond to the P3 Solicitation, although the P3 Representative may extend the deadline for responses "to accommodate a large-scale project," as authorized by Section 2267.052(b)(11)(B) of the Act.

G. Notwithstanding Section IX(F)(5) of these Guidelines, a P3 Solicitation arising from an Unsolicited P3 Proposal submitted in accordance with Article X of these Guidelines should require responses no more than 90 days after issuance of the P3 Solicitation, absent unusual circumstances as reasonably determined by the P3 Representative,

H. The P3 Oversight Committee shall evaluate each Solicited P3 Proposal.

1. In most instances, the Committee will complete its evaluations not later than 90 days after the Solicited P3 Proposals are received by the P3 Representative. As authorized by Section 2267.052(b)(4) of the Act, this timeline may be adjusted for Solicited P3 Proposals considered a priority by the City.

2. The Committee shall consider the extent of competition evidenced by Solicited P3 Proposals responsive to the P3 Solicitation. If the Committee reasonably concludes the Solicited P3 Proposals do not reflect competition among Proposers sufficient to provide the City with good value, the P3 Representative may amend, supplement, or withdraw the P3 Solicitation. *See* TEX. GOV'T CODE § 2267.052(b)(10).

3. During its evaluation of a Solicited P3 Proposal, the Committee may communicate with a Proposer to clarify information in the Solicited P3 Proposal or to confirm the Proposer understood the requirements of the P3 Solicitation. The Committee shall maintain a record of each such communication, which record shall be a P3 Procurement Record.

4. After evaluating the Solicited P3 Proposals, the Committee shall (a) accept a Solicited P3 Proposal for negotiation to an Interim or Comprehensive Agreement, in accordance with Articles XI and XII of these Guidelines, or (b) reject all of the Solicited P3 Proposals.

5. For the purposes of these Guidelines, the Committee's acceptance of a Solicited P3 Proposal pursuant to Section IX(H)(4) above constitutes an acceptance for "conceptual stage evaluation" within the meaning of Section 2267.055(a) of the Act.

Accordingly, upon the Proposer's receipt of notice of the acceptance, the Proposer shall provide "each affected jurisdiction" with copies of the Solicited P3 Proposal, the City's notice of the acceptance, and Section 2267.055 of the Act. This Section IX(H)(5) does not apply to a P3 Proposal limited to a "service contract" as defined by Section 2267.001(13) of the Act.

6. Additional criteria and procedures for the evaluation of Solicited P3 Proposals shall be as described in the P3 Solicitation but shall not be inconsistent with the Act.

I. Not later than three days after the Committee's acceptance of a Solicited P3 Proposal, the P3 Representative shall deliver to the office of each member of the City Council either a hard copy or an electronic copy of the Proposal (minus any Confidential Materials).

J. As required by Section 2267.066(a) of the Act, not later than ten days after the Committee's acceptance of a Solicited P3 Proposal pursuant to Section IX(H)(4) above, the P3 Representative shall:

1. Post a copy of the said Solicited P3 Proposal (minus any Confidential Materials) on the City's Procurement Website, with a link to a copy of these Guidelines;

2. Make every reasonable effort to post a copy of the said Solicited P3 Proposal (minus any Confidential Materials) on either TexasOnline or the official website of the State of Texas; and

3. Publish in a newspaper of general circulation in the City (i) a summary of the said Solicited P3 Proposal prepared by the Proposer and (ii) the location of copies of the said Solicited P3 Proposal available for public inspection during the City's business hours.

K. Notwithstanding any provision to the contrary in these Guidelines, no employee, consultant, or agent of the City may publish, make available for inspection, or otherwise reveal to any person not employed by or in privity with the City, any Confidential Materials except (a) as required by the Texas Public Information Act; (b) as required by court order; or (c) with the written agreement of authorized representatives of the Proposer and any other entity with a legally enforceable proprietary or legal interest in all or part of the information.

L. Consistent with Section 2267.053(a) of the Act, any requirement stated in the Act but not stated in the P3 Solicitation or in these Guidelines shall be deemed waived by the City.

M. If an RFQ within the scope of Section IX(B) above was issued before the City Council's approval of these Guidelines, the RFQ is presumed valid if the resulting P3 Solicitation complies with these Guidelines.

ARTICLE X. UNSOLICITED P3 PROPOSALS

Section 2267.053(a) of the Act authorizes the City to receive, evaluate, and accept for negotiation Unsolicited P3 Proposals from private persons to design, develop, finance, lease, acquire, install, construct, expand, improve, renovate, equip, operate, or maintain a Qualifying Project. **This**

Article X addresses only Unsolicited P3 Proposals.

A. PRE-PROPOSAL LETTERS

1. A person intending to submit an Unsolicited P3 Proposal first shall submit to the P3 Representative a "Pre-Proposal Letter" not exceeding ten pages. The Pre-Proposal Letter shall describe the Project generally and summarize the anticipated material terms of the P3 Proposal. Within 45 days after receiving the Pre-Proposal Letter, and after conferring as may be appropriate with professionals employed or retained by the City, the P3 Representative shall notify the Proposer whether the City is willing to consider entering into a P3 Contract for the Project. If yes, the P3 Representative shall either request additional information or invite the Proposer to submit a P3 Plan as described in this Article X.

2. By written notice to the Proposer, the P3 Representative may extend the 45-day deadline imposed by Section X(A)(1) of these Guidelines. Absent unusual circumstances, the P3 Representative shall issue no more than one such extension resulting in a total review period not exceeding 75 days. The P3 Representative shall document the reason(s) for any review period exceeding 75 days, which documentation shall be a P3 Procurement Record.

B. P3 PLANS

A P3 Plan should convey the nature of the Project, the experience and capacity of the Proposer's development team, and the financial and implementation strategies offered to ensure successful completion of the Project.

1. Cover Letter and Executive Summary.

   A cover letter not exceeding five pages signed by an authorized representative of the Proposer and summarizing key components of the Project, including descriptions of the general nature of the Project, the Proposer's qualifications and experience with similar projects, and the community benefits likely to result from the Project.

2. Information Required by Statute.

   As applicable to the Project, information sufficient for the City to evaluate the P3 Plan according to the factors addressed by Section 2267.052(b)(5)–(8)(A) of the Act, together with all information listed in Section 2267.053(a)(1)–(12) of the Act.

3. Additional Information Regarding Qualifications.

   Information evidencing the Proposer's thorough understanding of the complexities of the Project as well as management and operational expertise sufficient to complete the Project in a timely and professional manner.

4. Additional Information Regarding Development Plan.

   To the extent not already supplied, provide the following:

a. A plan for the development, financing, and operation of the Project, specifically including an anticipated schedule of funds required, in what amounts, at what times, and from what sources.

b. A summary of all anticipated third-party business arrangements (as examples only, agreements for ground leases, build-to-suit, long-term maintenance, employee leasing, or parking management).

c. Preliminary schedules for:

   i. Obtaining required permits or approvals from any federal, state, or local agencies; and

   ii. Requesting and obtaining any financial or other commitments from public or not-for-profit sources.

d. For a P3 Plan involving an improvement to real property:

   i. A conceptual design including, at a minimum, the following:

      (a) Conceptual renderings (drawings, computer aided models, aerial sketches, photomontages, or other) from which the City may deduce the nature and general character of the improvement and its relationship to the subject property and surrounding improvements;

      (b) A conceptual site plan encompassing the subject property and portions of contiguous properties from which the City may deduce the landscape and urban design concepts of the improvement, major pedestrian entrances and proposed outdoor areas, and a circulation plan (for walking, cycling, public transportation, and motor vehicles) illustrating how the improvement will relate to public rights-of-way both to and within the site;

      (c) A preliminary facility program describing the improvement's mix of uses, estimating square footage for each use and addressing likely parking needs; and

      (d) Preliminary exterior building elevations illustrating massing, openings, and related elements.

   ii. A preliminary schedule for initiation, construction phasing, completion, and acceptance by the City.

   iii. A proposed timeline for significant responsibilities to be performed by the City.

e. A representation (to which the City is likely to give significant weight) regarding the full availability of all human, financial, and material resources necessary for

completion of the Project in a timely and professional manner.

f. A statement regarding any special terms, conditions, or contingencies the Proposer is offering to or requesting from the City.

g. A comprehensive utilization plan that defines the methodology that will ensure MWSBE and Hire Houston First maximum opportunity to participate in the City of Houston P3 Programs. The Plan shall include, but not be limited to the following:

   i. Establishing a monitoring system to ensure that all contractors, sub-contractors, consultants, and vendors comply with the City of Houston Hire Houston First MWSBE programs.

   ii. Develop an availability/capability matrix for local firms and MWSBEs.

   iii. Identify skills and areas of expertise that are likely to be needed but do not appear to be available currently for local firms and MWSBE enterprises.

   iv. Conduct targeted outreach programs to assure that all local firms, MWSBEs and all interested parties are aware of the P3 opportunity.

   v. Encourage the formation of business alliances among MWSBEs, Hire Houston First firms, and larger firms which provide opportunities.

   vi. Assisting local firms and MWSBEs with bonding, insurance, and financing needs; conducting in-depth assessments of local firms and MWSBEs to determine technical, financial, and managerial capabilities and provide assistance based on needs through identification through mentor firms.

5. Project Analyses.

The project analyses should support the business case of the Project. As applicable and to the extent not already supplied, provide the following:

a. Location and Site Analysis.

   i. An explanation of how the design of the improvement and the attributes of the site will generate significant social, financial, and economic benefits.

   ii. A general description of properties in the immediate vicinity of the Project, together with an explanation of the impact (both economic and non-economic) the Project is likely to have on the said properties both during and after construction.

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

b. Market and Competitive Analysis. A preliminary analysis supporting the revenue

assumptions and economic viability of the Project, including forecasts of supply and demand. (If the P3 Oversight Committee accepts the P3 Plan, the City may require a more detailed analysis.)

c. Life-Cycle Cost Analysis. A preliminary analysis enabling the City to estimate the total long-term cost of the Project and the lowest cost of ownership consistent with the City's goals for functionality, durability, design, and overall quality of the asset. (If the P3 Oversight Committee accepts the P3 Plan, the City may require a more detailed analysis.)

d. Project Schedule. A conceptual timeline identifying all stages of project development from design to completion and acceptance by the City.

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

6. Additional Information Regarding Financial Matters.

To the extent not already supplied, provide the following:

a. Financial Analysis.

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

ii. A description of the sources and anticipated amounts of working capital to pay operating costs from start-up through completion and acceptance by the City.

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

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

b. Project Budget. A development budget using standard estimating techniques detailing any anticipated land acquisitions, pre-development costs, and hard and soft costs from initial design through completion and the City's acceptance of the Project. The budget should include cost estimates for relocation of any utility facilities to be displaced as a result of the Project.

c. Proforma Financial Statements.

i. A discounted cash flow analysis for the entire term of the Project, including estimates of costs, operating expenses, capital reserves (including, as applicable, replacement and re-tenanting reserves), net operating income, debt service, partnership or joint venture percentages, disposition benchmarks, calculations of net present value, and internal rate of return.

ii. A projected balance sheet, statement of losses and earnings, and income statement for the first year of the Project following the City's acceptance.

7. Additional Information Regarding Community Impact.

To the extent not already supplied, provide the following:

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

b. A description of the Proposer's plans to comply with the City's Minority, Women, and Small Business Enterprise ("MWSBE") program as applicable to the Project.

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

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

e. A description of the Project's anticipated non-financial benefits to the City.

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

8. Summary of P3 Plan for Public Notice.

A Summary of the P3 Plan not exceeding 2,000 characters. The City shall publish the Summary as required by Section 2267.066(a)(2)(B) of the Act and Section X(C)(2)(c) of these Guidelines.

9. Miscellaneous.

This optional Section may be used to present additional information such as letters of recommendation, letters of interest from prospective lenders or tenants, further information concerning the Proposer's Team, and other information supporting the P3 Plan.

10. Addenda.

This optional Section may be used to present documents cited or referenced in the P3 Plan.

C. NOTICE OF P3 PLANS

1. Not later than three business days after receiving a P3 Plan, the P3 Representative shall deliver to the office of each member of the City Council either a hard copy or an electronic copy of the P3 Plan (minus any Confidential Materials).

2. As required by Sections 2267.052(b)(11) and 2267.066(a) of the Act, not later than ten days after receiving a P3 Plan, the P3 Representative shall:

   a. Post a copy of the P3 Plan (minus any Confidential Materials) on the City's Procurement Website, with a link to a copy of these Guidelines;

   b. Make every reasonable effort to post a copy of the P3 Plan (minus any Confidential Materials) on either TexasOnline or the official website of the State of Texas; and

   c. Publish in a newspaper of general circulation in the City (i) a Summary of the P3 Plan prepared by the Proposer and (ii) the location of copies of the P3 Plan (minus any Confidential Materials) available for public inspection during the City's business hours.

3. As noted above, notwithstanding any provision to the contrary in these Guidelines, no employee, consultant, or agent of the City may publish, make available for inspection, or otherwise reveal to any person not employed by or in privity with the City, any Confidential Materials except (a) as required by the Texas Public Information Act; (b) as required by court order; or (c) with the written agreement of authorized representatives of the Proposer and any other entity with a legally enforceable proprietary or legal interest in all or part of the information.

4. As may be advisable for a particular P3 Plan, the P3 Representative may ask the City Council or a Committee of the City Council to hold a public hearing on a P3 Plan before or after the P3 Oversight Committee's evaluation of the P3 Plan pursuant to Section X(D) of these Guidelines. A public hearing conducted pursuant to this Section X(C)(4) shall not substitute for a mandatory public hearing required by Section XI(C) or by Section XII(D) of these Guidelines.

D. EVALUATION BY P3 OVERSIGHT COMMITTEE

1. Within 45 days after receiving a P3 Plan, the P3 Representative shall respond with a letter notifying the Proposer whether or not the City requires additional information to evaluate the P3 Plan. As authorized by Section 2267.053(d) of the Act, the letter also shall request payment of a "P3 Review Fee" to cover the City's reasonable expenses of processing, reviewing, and evaluating the P3 Plan, which expenses may include fees to be paid to financial, legal, technical, or other advisors or consultants. The P3 Review Fee shall not be less than $2,500.

2. After receipt of the Review Fee, the P3 Representative shall submit copies of the P3 Plan to the P3 Oversight Committee.

3. The Committee shall evaluate the P3 Plan based on the following criteria:

a. The factors listed in Section 2267.053(b-1) of the Act, as applicable to the Project.

b. The extent to which the Project is likely to serve the public, according to the factors listed in Section 2267.053(c)(1)–(3) of the Act.

c. For a P3 Plan involving an improvement to real property, the extent to which the Project:

i. Strikes an appropriate balance between functionality and design quality;

ii. Provides flexibility to accommodate reasonably foreseeable changes in technologies necessary for efficient operation of the Project;

iii. Provides flexibility to accommodate long-term variances in the number of City residents likely to be served by the Project; and

iv. Is consistent with the City's long-term goals for sustainability and protection of the environment.

d. Whether the entirety of the information responsive to Section X(B) of these Guidelines indicates clearly that the benefits of the completed Project will outweigh the Project's liabilities, including short-term and long-term financial costs to the City.

e. Whether, in the Committee's reasonable judgment, a randomly selected group of 100 well-informed citizens of the City, having carefully considered the P3 Plan in its entirety, would be likely to conclude that the benefits of the completed Project will outweigh the Project's liabilities, including short-term and long-term financial costs to the City.

4. Subject to applicable state law, at any time during its evaluation the Committee may request additional information from, or a meeting with, the Proposer to seek clarification regarding the P3 Plan.

5. Not later than 120 days after receipt of the Review Fee, the Committee shall notify the Proposer in writing whether the Committee has accepted or declined the P3 Plan.

a. For the purposes of these Guidelines, the Committee's acceptance of a P3 Plan constitutes the City's acceptance of a P3 Proposal for "conceptual stage evaluation" within the meaning of Section 2267.055(a) of the Act. Accordingly, no later than five business days after the Proposer's receipt of written notification of acceptance of its P3 Plan, the Proposer shall provide "each affected jurisdiction" with copies of its P3 Plan, the Committee's notice of acceptance, and Section 2267.055 of the Act. This Section X(D)(5)(a) does not apply to a P3 Plan limited to a "service contract" as defined in Section 2267.001(13) of the Act.

b. Not later than 60 days after the Committee has issued written notification of

acceptance of a P3 Plan, the City shall issue an RFP for the Qualifying Project.[1] The substance of the RFP shall be generally consistent with the substance of the Proposer's P3 Plan and may incorporate by reference all or part of the P3 Plan.[2]

c. Procedures for the issuance of and response to the RFP described in Section X(D)(5)(b) immediately above shall comply with Article IX of these Guidelines, except that the Proposer of the original Unsolicited P3 Proposal may incorporate its P3 Plan by reference into its response to the RFP.

d. Upon written notification that the Committee has declined a P3 Plan, the P3 Representative shall return to the Proposer its P3 Plan, all accompanying or otherwise related documents, and all fees paid, as required by Section 2267.051(c) of the Act.

ARTICLE XI. INTERIM P3 AGREEMENTS

Section 2267.058(a) of the Act requires that the terms of each Qualifying Project be documented in a comprehensive agreement ("Comprehensive P3 Agreement") between the private sector entity and the governmental entity. After conferring as may be appropriate with professionals employed or retained by the City, the P3 Representative will determine if a Comprehensive P3 Agreement should be preceded by an interim agreement ("Interim P3 Agreement") to the extent authorized by Section 2267.059 of the Act.

A. If the P3 Representative determines that an Interim P3 Agreement is in the best interests of the City, the P3 Representative shall designate one or more professionals employed or retained by the City to negotiate the terms of the said Agreement.

B. Negotiation of an Interim P3 Agreement should be completed not later than 60 days after the P3 Oversight Committee's acceptance of a Solicited P3 Proposal pursuant to Section IX(H)(4) of these Guidelines. As authorized by Section 2267.052(b)(4) of the Act, this timeline may be adjusted for P3 Proposals considered a priority by the City.

C. As required by Section 2267.066(d) of the Act, not later than the 30th day before the City enters into an Interim P3 Agreement, the City Council or a Committee of the City Council shall hold a public hearing to consider the proposed Interim Agreement. Not less than ten business days before the public hearing, the P3 Representative shall deliver to the office of each member of the City Council either a hard copy or an electronic copy of the proposed Interim P3 Agreement. In addition, and in keeping with Section 2267.066(e) of the Act, the P3 Representative shall post the proposed Interim P3 Agreement at the City's Procurement Website not less than five business days before the public hearing.

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[1] "A responsible governmental entity that accepts an unsolicited proposal for a qualifying project" must solicit "additional proposals through a request for qualifications, request for proposals, or invitation to bid." TEX. GOV'T CODE § 2267.053(a-1).

[2] In other words, acceptance by the Committee converts an Unsolicited P3 Proposal into a P3 Solicitation.

D. The City may not enter into an Interim P3 Agreement without prior approval by the P3 Oversight Committee and by the City Council.

ARTICLE XII. COMPREHENSIVE P3 AGREEMENTS

A. The City shall accept no liability arising from or otherwise related to a Qualifying Project prior the City's entering into a legally enforceable Comprehensive P3 Agreement stating all rights and obligations of the parties.

B. The P3 Representative shall designate one or more professionals employed or retained by the City to negotiate the terms of a Comprehensive P3 Agreement.

1. At a minimum, every Comprehensive P3 Agreement shall:

   a. Include a declaration of the specific public purpose to be served by the Project, as required by Section 2267.053(b-2) of the Act;

   b. Require compliance with the City's MWSBE program by making good-faith efforts to meet either the established City-wide MWSBE goals or the MWSBE goal specific to the Qualifying Project;

   c. Include a date by which performance of the Comprehensive P3 Agreement must begin, as required by Section 2267.053(f) of the Act;

   d. Impose on the Contracting Person all obligations stated in Sections 2267.057(b) & (f) of the Act;

   e. If and as requested by the Contracting Person, provide the Contracting Person with any one or more of the powers and rights stated in Sections 2267.057(c)–(e) of the Act;

   f. Comply with Section 2267.058 of the Act;

   g. As applicable, require compliance with Section 2267.0605 of the Act ("Performance and Payment Bonds Required"); and

   h. Recite the substance of Sections 2267.065(b), (c) & (d) of the Act.

2. No Comprehensive Agreement may include a term inconsistent with Section 2267.061 of the Act ("Material Default; Remedies").

3. Negotiation of a Comprehensive P3 Agreement should be completed not later than 90 days after the P3 Oversight Committee's acceptance of a Solicited P3 Proposal pursuant to Section IX(H)(4) of these Guidelines. In a manner not inconsistent with these Guidelines or with the Act, this timeline may be adjusted for a Comprehensive P3 Agreement that is preceded by an Interim P3 Agreement or, as authorized by Section 2267.052(b)(4) of the Act, for a Comprehensive P3 Agreement considered a priority by the City.

C. Not later than ten days after the P3 Oversight Committee has approved a proposed Comprehensive P3 Agreement, the P3 Representative shall give public notice of the said proposed agreement in the manner described in Section X(C)(1) of these Guidelines.

D. As required by Section 2267.066(d) of the Act, not later than the 30th day before the City enters into a Comprehensive P3 Agreement, the City Council or a Committee of the City Council shall hold a public hearing to consider the said Agreement. Not less than ten business days before the public hearing, the P3 Representative shall deliver to the office of each member of the City Council either a hard copy or an electronic copy of the proposed Comprehensive P3 Agreement.

E. As required by Section 2267.066(e-1) of the Act, if a public hearing required by Section XII(D) of these Guidelines results in a revision of a Comprehensive P3 Agreement, not later than the 30th day before the City enters into the final Comprehensive P3 Agreement, the City Council or a Committee of the City Council shall hold a public hearing to consider the revised proposed Comprehensive P3 Agreement. Not less than ten business days before the public hearing, the P3 Representative shall deliver to the office of each member of the City Council either a hard copy or an electronic copy of the revised proposed Comprehensive P3 Agreement.

F. The City may not enter into a Comprehensive P3 Agreement without prior approval by the P3 Oversight Committee and by the City Council.

[END]

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