

July 14, 2017

To: Mayor and City Commissioners

From: Greg Harrison, City Manager 

Re: Adoption of Public Private Partnership Provisions

Background

Section 255.065 of Florida Statutes, *Public-private partnerships; public records and public meetings exemptions* (the Statute), codifies minimum standards and requirements whereby a government entity may utilize public-private partnerships as a procurement method for qualifying public projects in Florida. The Statute defines a "qualifying project" as follows:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
3. A water, wastewater, or surface water management facility or other related infrastructure; or
4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

Public Private Partnerships (P3s) involve a collaboration between the private and public sector and typically involves all or a combination of factors whereby the private sector may design, finance, build, and possibly maintain and operate public infrastructure for some period of time. It is at the discretion of the government entity as to the form of P3 relationships, which often vary from entity to entity and from project to project, depending on the objective of both parties on entering into

the relationship. The private sector enters into a P3 arrangement with the public sector in return for a promised stream of payments directly from the government entity or indirectly from users over the projected life of the project or some other specified period of time.

The Florida Legislature recognized that there was a need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's best interest to provide for alternative mechanisms to deliver the upgrading or construction of these facilities. The Legislature also found that the public sector may receive "unsolicited proposals" for a qualifying project and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for a qualifying project.

The public sector may therefore formally issue solicitations to attract private partners or may receive "unsolicited proposals" relative to a particular project.

Unsolicited Proposals

Section 255.065 of Florida Statutes outlines procedures to be followed as it applies to the public sectors consideration of unsolicited proposals. The adoption by the City of the attached ordinance will establish a minimum application fee of \$25,000 to be submitted with each unsolicited proposal received, to cover all reasonable costs to be incurred by the City in evaluating the proposal submitted. Additional fees may be required depending on the scope of evaluation determined to be necessary based on the form or complexities of the unsolicited proposal submitted. Evaluation procedures may involve the engagement of a consultant(s) to provide expertise during the evaluation process.

Below is a general outline of the process to be followed should the City receive an unsolicited proposal for a qualifying project:

1. A discussion item is placed on the City Commission agenda to discuss the unsolicited proposal received. The Commission may reject the proposal or approve staff to proceed with the process;
2. The City publishes a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the City is in receipt of an unsolicited proposal and that the City will accept other proposals for the same qualifying project. This Notice shall set forth the criteria by which each proposer would be evaluated and how the private partner would be selected. The entity that submitted the

original unsolicited proposal may submit a more detailed proposal in response to this notice;

3. The Notice shall be out for no less than twenty one (21) days, but no more than one hundred and twenty (120 days) from the publication date. A copy of the notice must be mailed to each local government in the affected areas of the qualifying project and/or any municipality and/or special district in which all or a portion of the qualifying project is located; (**Note:** the unsolicited proposal received initially would be exempt from public records requirements during this period)
4. The City Manager shall appoint an evaluation Committee with appropriate areas of expertise/disciplines to consider all proposals received and the recommendations of the evaluation committee must then be submitted to the City Manager. The City Manager may (1) approve the recommendation of the evaluation committee, written notice of which is provided to each proposer, and the City Manager shall then submit his recommendation to the City Commission; (2) reject the recommendation of the evaluation committee and recommend to the City Commission that the evaluation committee be instructed to re-evaluation the proposals and make further recommendations; or (3) recommend to the City Commission to reject all proposals;
5. The City Commission may reject all proposals or approve the City Manager's recommendation and authorize contract negotiations; and
6. A contract is presented to the City Commission for consideration/approval.

Conclusion

Staff is recommending that the City establish Section 32.47 and 32.48 within its Code of Ordinances in order to establish guidelines for considering Public Private Partnerships and Unsolicited Proposals, in accordance with statutory requirements. Such a measure provides a minimum framework by which the City Commission may consider P3 collaborations, in accordance with Florida statutory requirements. As the City considers various infrastructure initiatives in the near and long term, P3's will be evaluated as a viable option to be considered as the City determines the best course of action to accomplish the financing, design, construction and operation of qualifying projects. P3s can be intricate and complicated mechanisms. However, by incorporating a high level of due diligence and expertise in contemplating these arrangements, the City might be able to leverage the knowledge from the private sector, transfer risk for project development, raise needed capital, provide for off balance sheet financing, and expedite project delivery.

Overall, the City's adoption of this ordinance will signal its receptiveness to public-private partnerships and its willingness to contemplate innovative input from the private sector. Other local governments in South Florida, which have adopted these guidelines, include, but are not limited to City of Tamarac, City of North Lauderdale, City of Miami and Miami-Dade County. Section 255.065 of Florida Statutes has been included as **Attachment 1** to this memorandum for your reference.