



City of North Port

ORDINANCE NO. 2018-59

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, PROVIDING FOR A POLICY FOR THE UTILIZATION OF PUBLIC-PRIVATE PARTNERSHIPS (P3) IN PROCUREMENT BY AMENDING THE CODE OF THE CITY OF NORTH PORT, FLORIDA, CHAPTER 2 – ADMINISTRATION, ARTICLE VIII. – PROCUREMENT, SECTION 2-402 – DEFINITIONS, AND BY CREATING A NEW SECTION 2-420 – PUBLIC-PRIVATE PARTNERSHIPS (P3); AMENDING APPENDIX A – CITY FEE STRUCTURE TO PROVIDE FOR RELATED P3 FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of North Port has established a procurement code in Chapter 2, Article VIII of the Code of the City of North Port, Florida, for the fair and equitable method of administering purchases of goods and services to maximize the purchasing value of public funds; and

WHEREAS, in 2013, the Florida Legislature enacted Chapter 2013-223, Laws of Florida, section 2 of which governs public-private partnerships; in 2016, the Florida Legislature amended those laws via Chapters 2016-153 and 2016-154, Laws of Florida; and which laws are codified as Section 255.065, Florida Statutes (the “P3 Statute”); and

WHEREAS, public-private partnerships (“P3”), while not defined in the P3 Statute, are commonly recognized as contractual agreements between a public body and the private sector that allow for greater private sector participation in the delivery of public projects; and

WHEREAS, there is a public need for timely and cost-effective delivery of projects serving a public purpose, and this need may not be wholly satisfied by existing methods of procurement; and

WHEREAS, P3s have demonstrated they can meet the needs of the public by improving the schedule for project delivery, lowering project costs, and providing other benefits to the public; and

WHEREAS, the City of North Port wishes to encourage investment in the City by private entities, to facilitate funding sources for the development of public projects, and to provide for the greatest possible flexibility in contracting for public projects under the P3 Statute; and

WHEREAS, the City of North Port is a “responsible public entity,” as defined in the P3 Statute, and is authorized to follow the processes described in the P3 Statute to establish a P3 for a “qualifying project,” as defined in the P3 Statute; and

WHEREAS, the P3 Statute recognizes the authority of local governments to create procurement processes for qualifying projects and does not limit a local government's existing authority to enter into agreements with the private sector, including authority from existing home rule powers; and

WHEREAS, the procedures for a P3 project will not apply when the City of North Port procures stand-alone "professional services," as defined in Section 287.055, Florida Statutes, or when it procures professional services in the context of a design-build project, both of which will continue to be procured pursuant to Section 287.055, Florida Statutes; and

WHEREAS, to promote the efficient and effective use of the P3 method of project delivery, the City Commission finds it necessary to adopt uniform procedures to be used by both the City and private entities for the procurement of such projects; and

WHEREAS, the City Commission has determined that the proposed amendments serve the public health, safety, and welfare of the citizens of the City of North Port, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA, AS FOLLOWS:

SECTION 1 – FINDINGS

- 1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.

SECTION 2 – ADOPTION

- 2.01 The City Commission hereby approves and adopts the following amendments and additions to the Code of the City of North Port, Florida:

"CHAPTER 2 – ADMINISTRATION

...

ARTICLE VIII. – PROCUREMENT

...

Sec. 2-402 – Definitions.

...

Invitation to negotiate. A written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate is used when the city determines that negotiations may be necessary for the city to receive the best value.

P3 means a public-private partnership, which is an agreement between the city and a private entity that involves the private sector taking on additional risks of a P3 qualifying project, such as design, construction, finance, long-term operation, and traffic revenue.

P3 conceptual proposal means a P3 unsolicited proposal that includes conceptual information sufficient for the city to determine whether the proposed idea(s) are attractive enough to justify investment of city resources to undertake a process that may lead to formation of a contract to implement the idea(s).

P3 detailed proposal means a proposal (solicited or unsolicited) that contains detail beyond a conceptual level and is sufficient for the City to compare it competitively to others.

P3 proposal review fee means the fee paid by the private entity submitting a P3 unsolicited proposal, by the private entity submitting a P3 conceptual proposal or P3 detailed proposal, or by the private entity submitting a P3 detailed proposal to compete with a P3 unsolicited proposal.

P3 qualifying project means a facility or project that serves a public purpose, or a facility or infrastructure that is used or will be used by the public or in support of a public purpose or activity, as defined in the P3 statute.

P3 solicitation means a city-initiated procurement process seeking offers (bids, proposals, or otherwise) for city projects, which may include processes authorized by: (1) Chapter 2, Article VIII of the Code of the City of North Port; (2) F.S. 255.20 or F.S. 287.055; or (3) any other law or the city's home rule powers.

P3 statute means F.S. 255.065.

P3 unsolicited proposal means a P3 conceptual proposal or a P3 detailed proposal a private entity submits to the city on its own initiative and not in response to a P3 solicitation.

Private entity means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

...”

- 2.02 The City Commission hereby approves and adopts the following amendments and additions to the Code of the City of North Port, Florida:

“CHAPTER 2 – ADMINISTRATION

...

ARTICLE VIII. – PROCUREMENT

...

Sec. 2-420. – Public-private partnerships (P3).

(a) Purpose and scope; applicability.

- (1) This section creates a uniform process for private entities and the city to engage in a public-private partnership consistent with F.S. 255.065.**
- (2) When considering a public project, the city may elect to: follow this P3 process if consistent with F.S. 255.065; follow any other legally available project delivery process; or not pursue the project.**
- (3) The procurement of P3 agreements by the city must follow the provisions of this section. Except for Section 2-402, requirements of other sections of this code do not apply to procurements under this section unless such requirement is expressly included or incorporated by reference in the procurement documents. The city will ensure that generally accepted business practices for exemptions in this section are part of the procurement process or are included in the P3 comprehensive agreement.**
- (4) The city may develop and maintain a separate P3 policy containing more detailed procedures and requirements for entering into P3 agreements, consistent with this section.**
- (5) When the city procures stand-alone “professional services,” as defined in the Consultants’ Competitive Negotiation Act, codified at F.S. 287.055, or when it procures professional services in the context of a design-build project, the city will not follow the P3 process, but instead will comply with F.S. 287.055.**

(b) P3 conceptual proposals.

- (1) Submission of a P3 conceptual proposal is not required; a private entity may forego submitting a P3 conceptual proposal and instead submit an unsolicited P3 detailed proposal.**
- (2) A private entity seeking review of a P3 conceptual proposal must submit the proposal to the city’s finance department. The finance department will forward the proposal to the city manager’s office, which will analyze the city’s potential interest in pursuing the proposed project as a P3.**
- (3) A private entity submitting a P3 conceptual proposal must also simultaneously tender a P3 conceptual proposal review fee. The city will not review a P3 conceptual proposal that is not accompanied by the payment of this fee. Payment**

must be made by cash, cashier's check, or other noncancelable instrument. Personal or business checks will not be accepted.

- (4) A P3 conceptual proposal must contain information sufficient to inform the city about:

 - a. The overall character of the proposed P3 qualifying project;
 - b. The general experience of the private entity; and
 - c. The general strategies to ensure successful project delivery.
- (5) After the city's finance department receives the P3 conceptual proposal, the city manager will place the proposal on a meeting agenda for the city commission's determination as to whether to accept the P3 conceptual proposal for substantive review.

 - a. If the city commission rejects the P3 conceptual proposal without substantive review, the City will return the P3 proposal review fee.
 - b. If the city commission accepts the P3 conceptual proposal for substantive review, the city manager will notify the private entity of the anticipated time required for the city to complete the review of the P3 conceptual proposal.
- (6) If the city accepts the P3 conceptual proposal for substantive review, the city manager will preliminarily assess whether:

 - a. The proposed project is a P3 qualifying project;
 - b. The proposed project delivery model offers advantages over traditional models, for example, lower cost, shorter schedule, increased investment, etc.; and
 - c. The proposed project is reasonably likely to satisfy the criteria established by the P3 statute.
- (7) Upon completing its review of the P3 conceptual proposal, the city will notify the private entity in writing of the city's position regarding the proposed project. The city manager may:

 - a. Decide not to pursue the proposed project;

- b. Decide to pursue the proposed project or a similar project, using other procurement methods (which, if open to private companies, the private entity may compete if otherwise qualified); or
 - c. Decide to continue considering the proposed project under the P3 statute and request that the private entity submit an unsolicited P3 detailed proposal. Such a request does not constitute a formal P3 solicitation, and a responsive proposal is subject to Section 2-420(c).
 - (8) The city's disposition of a P3 conceptual proposal does not limit its discretion or authority with respect to future projects, whether solicited or unsolicited.
- (c) Unsolicited P3 detailed proposals.
 - (1) A private entity seeking review of an unsolicited P3 detailed proposal must submit the proposal to the city's finance department. The finance department will forward the proposal to the city manager's office. The city manager will place the proposal on a meeting agenda for the city commission's preliminary determination as to whether to deem the proposed project a P3 qualifying project. Upon such determination by the city commission, the city manager will analyze whether the city will further pursue the proposal under the P3 statute. The city is not obligated to pursue a project under the P3 statute, even if the project satisfies the statutory definition of a qualifying project.
 - (2) A private entity submitting an unsolicited P3 detailed proposal must also simultaneously tender an initial P3 unsolicited detailed proposal review fee. The city will not review an unsolicited P3 detailed proposal that is not accompanied by the payment of this fee. The P3 proposal review fee for an unsolicited P3 detailed proposal is non-refundable. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal or business checks will not be accepted.
 - (3) If the initial P3 unsolicited detailed proposal review fee is insufficient to cover the city's costs or if the city incurs third-party costs to evaluate the unsolicited P3 detailed proposal, the city will request in writing the additional amounts required. If the private entity does not tender the additional requested amount within thirty (30) days of the date of the written request, the proposal will be deemed withdrawn and the private entity must pay another proposal review fee if it later submits another unsolicited P3 detailed proposal.

- (4) An unsolicited P3 detailed proposal must contain information sufficient to inform the city about the detailed quality and character of the proposed P3 qualifying project, the detailed experience and capacity of the private entity, and the detailed financial and implementation strategies to ensure successful project delivery. This information must include the following:
- a. A description of the private entity, including name, address, website, type of organization, legal structure, and portfolio of prior projects;
 - b. Name and complete contact information of the primary point of contact for the P3 detailed proposal;
 - c. Names and experience of proposed key project personnel;
 - d. Type of support needed, if any, from the city, for example, facilities, equipment, materials, personnel, financial resources, etc.;
 - e. Identification of any proprietary data used and the manner in which it is used;
 - f. Identification of any outside entities or professionals the private entity has or intends to consult with respect to the project;
 - g. The names of all other federal, state, or local agencies receiving the same proposal;
 - h. Identification of any anticipated or pending litigation, claims, or controversies that impact the project, and the scope of the potential impact for each;
 - i. A complete discussion of the objective of the project, the method of approach, the nature of the anticipated results, and the characteristics that make it a P3 qualifying project worthy of pursuit by the city;
 - j. A detailed overview of the proposed business arrangements, including the plan for the development, financing, and operation of the project;
 - k. Information demonstrating the private entity's understanding of and willingness to assume the risks associated with the project, including but not limited to costs, financing, construction, and quality assurance;
 - l. A preliminary project schedule;

- m. A detailed financial analysis of the proposed project; and
 - n. Specification as to when the pricing or terms of the proposal will expire.
- (5) Within one hundred twenty (120) business days after receipt of the unsolicited P3 detailed proposal, the city will notify the private entity in writing of the city's decision either to reject the P3 detailed proposal or to accept the P3 detailed proposal for competitive review. During this period, the city may meet with the private entity to gain a deeper understanding of the P3 detailed proposal, and the city may request that the private entity submit additional information. These meetings will be preliminary in nature and will not include or constitute substantive negotiations of agreement terms.
- (6) If the city determines it requires more than one hundred twenty (120) business days to complete its review and assessment of the unsolicited P3 detailed proposal, it will notify the private entity in writing of how much additional time is required.
- (7) In deciding whether to accept the unsolicited P3 detailed proposal for competitive review, the city manager will consider and determine all reasonable factors, including but not limited to:
- a. Whether the proposed project is a P3 qualifying project;
 - b. Whether the proposed project delivery model offers advantages over traditional models, for example, lower cost, shorter schedule, increased investment, etc.;
 - c. Whether the proposed project is reasonably likely to satisfy the criteria established by the P3 statute;
 - d. Whether the P3 qualifying project is in the public's best interest;
 - e. Whether the P3 qualifying project involves a facility owned by the city or a facility for which ownership will be conveyed to the city;
 - f. Whether the proposal has adequate safeguards in place to ensure additional costs or service disruptions are not imposed on the public in the event of material default by the private entity or cancellation of the P3 qualifying project by the city;

- g. Whether the proposal has adequate safeguards in place to ensure the city or the private entity has the opportunity to add capacity to the P3 qualifying project or other facilities serving similar predominantly public purposes;
 - h. Whether the P3 qualifying project will be owned by the city upon completion or termination of the project and payment of amounts financed;
 - i. Whether there is a public need for or benefit derived from the P3 qualifying project;
 - j. Whether the estimated cost of the P3 qualifying project is reasonable in relation to similar facilities; and
 - k. Whether the proposal will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the P3 qualifying project.
- (8) The city manager may reject an unsolicited P3 detailed proposal at any time. The city has complete discretion and authority to reject any unsolicited P3 detailed proposal it receives.
- (9) If the city decides to accept an unsolicited P3 detailed proposal for competitive review, the city must advertise the potential opportunity and accept competing P3 detailed proposals.
- a. The advertisement must include:

 - 1. A general description of the P3 qualifying project; an invitation to submit a competing P3 detailed proposal for the P3 qualifying project with a P3 solicited detailed proposal review fee;
 - 2. Notice that submittals may propose the identical project, a functionally equivalent project, or an alternative project achieving the same purpose or using the same city resources as the proposed project;
 - 3. Notice about how to obtain more detailed information; and

4. A due date for responding, which ordinarily will be forty-five (45) days after initial publication, but which may be up to one hundred twenty (120) days as the circumstances warrant.

b. The city must advertise the potential opportunity:

1. In the Florida Administrative Register at least once a week for two consecutive weeks;
2. In a newspaper of general circulation within the city at least once a week for two weeks, the first of which shall be published at least twenty-one (21) days prior to the due date for competing proposals;
3. On the city's website in the same manner as competitive P3 solicitations; and
4. At city hall in the same manner as other public notices issued by the city.

- (10) If an unsolicited P3 detailed proposal involves architecture, engineering, or landscape architecture, the city will engage licensed professionals for review and evaluation of the initial and any subsequent proposals, in accordance with F.S. 255.065(3)(a)5.

(d) Solicited P3 detailed proposals.

- (1) The city may on its own initiative issue a P3 solicitation inviting private entities to submit P3 detailed proposals for any opportunity the city identifies as a P3 qualifying project.
- (2) Any P3 solicitation the city issues under the authority of the P3 statute must identify the P3 statute and the city's related code sections as the governing procurement process. The P3 solicitation documents must specify information necessary for interested parties to understand and respond to the P3 solicitation.
- (3) If a P3 solicitation under the P3 statute includes design work, the P3 solicitation must include a design criteria package prepared by a licensed architect, landscape architect, or engineer engaged by the city in accordance with F.S. 255.065(3)(c).
- (4) The city is not obligated to proceed under the P3 statute when soliciting proposals, and may follow any legally available procurement process, regardless

of whether the project constitutes a P3 qualifying project and regardless of whether the ultimate transaction may be characterized as a P3.

(e) Competitive review and negotiation of P3 detailed proposals.

- (1) Whether received in response to a P3 solicitation under the P3 statute or in response to an advertisement concerning an unsolicited P3 detailed proposal, within ten (10) business days after the receipt of all competing P3 detailed proposals, the city manager will designate a negotiation team to conduct negotiations concerning the P3 qualifying project. The negotiation team will consist of at least three (3) persons who collectively have knowledge and experience in contract negotiations, the subject matter related to the P3 qualifying project, public procurement, and project management. No person with a financial interest in the outcome of the negotiation team's efforts or in the P3 qualifying project may participate on the negotiation team.
- (2) The negotiation team meetings are temporarily exempt from Florida's Sunshine Law as provided in F.S. 286.0113(2) and F.S. 255.065(15). The city will record and preserve as required by law any exempt portion of a negotiation team meeting.
- (3) The negotiation team may rely on subject matter experts and city staff for information gathering and administrative work, but the negotiation team alone possesses and exercises authority for all recommendations concerning the P3 detailed proposals.
- (4) The negotiation team will initially review the P3 detailed proposals and determine whether to allow oral presentations, interviews, or discussions to gain a deeper understanding of the P3 detailed proposals. The negotiation team is not required to allow oral presentations, interviews, or discussions. Any oral presentations, interviews, or discussions will be limited to reviewing and discussing information contained in the P3 detailed proposals and will not include or constitute substantive negotiations related to any P3 detailed proposal or the P3 qualifying project.
- (5) Within forty-five (45) business days after its appointment, or after the final oral presentation, interview, or discussion, whichever is later, the negotiation team will rank the P3 detailed proposals in order of preference and forward its ranking recommendations to the city manager for approval. Before ranking the proposals, the negotiation team may meet as often as it deems necessary to discuss details and strategies related to the P3 detailed proposals and the P3 qualifying project. The negotiation team will strive for consensus, but a majority may establish the ranking. The negotiation team may use any reasonable method to rank the P3

detailed proposals and is not required to numerically score them. In ranking the P3 detailed proposals, the negotiation team members will consider the private entity team members' professional qualifications and experience, the proposed general business terms, innovative project delivery terms (including finance, design, construction, maintenance, and operation, as applicable), and any other factors indicated in the advertisement or P3 solicitation.

- (6) Upon the city manager's approval of the negotiation team's ranking, the negotiation team will commence negotiations with the private entity responsible for the top-ranked proposal. If the negotiation team is unable to successfully negotiate a contract for a higher-ranked proposal, contract negotiations will commence with the next ranked proposal. The negotiation team must conduct all negotiations in accordance with the P3 statute.
- (7) The negotiation team may recommend to the city manager that the city and the private entity enter into an interim or comprehensive agreement as described in the P3 statute. The negotiation team and the city manager are not authorized to enter into or otherwise bind the city to an interim or comprehensive agreement. Any negotiated agreement will be brought to the city commission for consideration and approval.
- (8) In deciding whether to enter into a comprehensive agreement, the city commission will consider and determine all reasonable factors, including but not limited to:

 - a. Whether the proposed project is a P3 qualifying project;
 - b. Whether the P3 qualifying project is in the public's best interest;
 - c. Whether the P3 qualifying project involves a facility owned by the city or a facility for which ownership will be conveyed to the city;
 - d. Whether the comprehensive agreement has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default by the private entity or cancellation of the P3 qualifying project by the city;
 - e. Whether the comprehensive agreement has adequate safeguards to ensure the city or the private entity has the opportunity to add capacity to the P3 qualifying project or other facilities serving similar predominantly public purposes;

- f. Whether the P3 qualifying project will be owned by the city upon completion or termination of the project and payment of amounts financed;
- g. Whether there is a public need for or benefit derived from the P3 qualifying project;
- h. Whether the estimated cost of the P3 qualifying project is reasonable in relation to similar facilities; and
- i. Whether the comprehensive agreement will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the P3 qualifying project.

Before entering into a comprehensive agreement, the city will consider the finance plan, the P3 qualifying project cost, revenues by sources, available financing, major assumptions, internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible, and a total cash-flow analysis beginnings with the implementation of the project and extending for the term of the comprehensive agreement, and any other matters which are set forth in F.S. 255.065(3)(e).

(f) Public records.

- (1) Information made or received by the city in connection with the transaction of the city's official business is subject to the Florida Public Records Law. P3 unsolicited proposals received by the city are temporarily exempt from the Public Records Law as provided in F.S. 255.065(15).
- (2) If a private entity believes any information it submits to the city is exempt from the Public Records Law under any additional statutory exemptions, the private entity must expressly identify the statutory basis of the claimed exemption and segregate the exempt information.

Secs. 2-420421 – 2-500. – Reserved.”

- 2.03 The City Commission hereby approves and adopts the following amendments and additions to the Code of the City of North Port, Florida:

“APPENDIX A – CITY FEE STRUCTURE

The following establishes the fees for the city.

A. CITY-WIDE FEES

CITY-WIDE FEES	
...	
Notary fee (per notarized document)	\$ 5.00
<u>Public-private partnership (P3) review fees:</u>	
<u>P3 conceptual proposal review fee</u>	<u>\$ 5,000.00</u>
<u>P3 solicited detailed proposal review fee</u>	<u>\$25,000.00</u>
<u>Initial P3 unsolicited detailed proposal review fee, where the submitting entity has not paid a P3 conceptual proposal review fee for a substantially similar P3 conceptual proposal</u>	<u>\$ 25,000.00</u>
<u>Initial P3 unsolicited detailed proposal review fee, where the submitting entity has already paid a P3 conceptual proposal review fee for a substantially similar P3 conceptual proposal</u>	<u>\$ 20,000.00</u>
..."	

SECTION 3 – SEVERABILITY

- 3.01 If any section, subsection, sentence, clause, phase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4 – CONFLICTS

- 4.01 In the event of any conflicts between the provisions of this ordinance and any other ordinance or portions thereof, the provisions of this ordinance shall prevail to the extent of such conflict.

SECTION 5 – CODIFICATION

- 5.01 In this ordinance, additions are shown as underlined and deletions as ~~strikethrough~~. These editorial notations shall not appear in the codified text.

SECTION 6 – EFFECTIVE DATE

- 6.01 This ordinance shall take effect immediately upon adoption by the City Commission of the City of North Port, Florida.

READ BY TITLE ONLY by the City Commission of the City of North Port, Florida in public session the 11th day of December 2018.

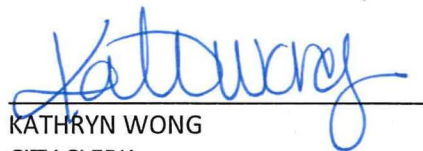
READ BY TITLE ONLY by the City Commission of the City of North Port, Florida in public session the 8th day of January 2019.

PASSED and ADOPTED by the City Commission of the City of North Port, Florida on final reading in public session the 23rd day of April 2019.

CITY OF NORTH PORT, FLORIDA


CHRISTOPHER HANKS
MAYOR

ATTEST:


KATHRYN WONG
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:


AMBER L. SLAYTON
CITY ATTORNEY