

ORDINANCE NO. 1479

AN ORDINANCE OF THE CITY OF NORTH MIAMI, FLORIDA RELATING TO PUBLIC PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS; AMENDING CHAPTER 7, ARTICLE III "PROCUREMENT CODE" TO ADD DIVISION 11 ENTITLED "PUBLIC PRIVATE PARTNERSHIPS"; ADOPTING POLICIES AND PROCEDURES REGARDING PUBLIC PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS CONSISTENT WITH STATE LAW; ESTABLISHING PROCEDURES TO APPLY THE CONE OF SILENCE TO SOLICITATIONS FOR PUBLIC PRIVATE PARTNERSHIPS AND PROVIDING THAT THE CITY COUNCIL MAY BY A SUPERMAJORITY VOTE WAIVE THE APPLICATION OF CITY PROCUREMENT CODE IN CONNECTION WITH PUBLIC PRIVATE PARTNERSHIPS; LIMITING AVAILABILITY OF BID PROTESTS IN PUBLIC PRIVATE PARTNERSHIP SOLICITATIONS; AUTHORIZING THE CITY MANAGER TO PREPARE AND ADVERTISE REQUESTS FOR QUALIFICATIONS AND/OR PROPOSALS FOR PUBLIC PRIVATE PARTNERSHIPS; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of North Miami, Florida has established a Procurement Code which is set forth at Chapter 7, Article III of the City of North Miami Code of Ordinances providing 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 authorizes public-private partnerships ("P3");

WHEREAS, 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, while not specifically defined in the P3 Statute, P3s 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; sharing risk and expense among public and private partners; encouraging efficiencies and innovation in design, construction, operations, and maintenance; maximizing financing and cash flow initiatives; and providing other benefits to the public; and

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

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. City Code Amended. Chapter 7, Article III of the City of North Miami Code of Ordinances entitled “Procurement Code”, is hereby amended as follows:

CHAPTER 7. FINANCE

ARTICLE III. PROCUREMENT CODE

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DIVISION 11. PUBLIC PRIVATE PARTNERSHIPS

Sec. 7-202. - Public-private partnerships; Unsolicited Proposals.

(1) Policy and Intent. The City Council hereby fully adopts, for the City and for the benefit of the residents of the City, the legislative findings and intent set forth in Section 255.065, Florida Statutes, as may be amended from time to time, relating to unsolicited proposals and public private partnerships. This Section of the Code is cumulative and supplemental to all other authority and power vested in City. This Section of the Code provides an alternative method of contracting and shall not be deemed to limit the power or authority of the City Council or the City Manager to procure, finance, operate or maintain any public improvement or services. The public records and public meeting exemptions provided by Florida Statutes, Sections 119.071, 255.065(15), and 286.0113 shall apply to proposals, unsolicited proposals and public meetings set forth in this Section.

(2) Definitions. Except as otherwise specifically set forth herein, the City adopts the definitions set forth in Section 255.065, Florida Statutes, (including the capitalized terms within the definitions set forth below of special application to the City), as may be amended from time to time. For purposes of this Section, the following definitions shall apply to the City:

a. “Authorizing Resolution” is a resolution passed by the City Council upon its own initiative or upon a recommendation of the City Manager to treat a project identified in an unsolicited proposal or a Qualifying Project as a P3 Qualifying Project and/or to authorize the preparation and advertisement of solicitation documents.

b. “City Manager” wherever used in this Section shall be deemed to include the City Manager and his or her designee(s).

c. “Non-P3 Qualifying Project” are those Qualifying Projects approved for publication via the unsolicited proposal process set forth in this Section or any other procurement vehicle issued by the City but are not deemed a P3 Qualifying Project via an Authorizing Resolution.

d. “P3” is a contractual arrangement between the City and a Private Entity to design, build, finance, operate, and/or maintain an improvement for public use or purpose whereby risks, finances or funding, and expertise and ingenuity are shared between the City and the Private Entity.

e. “P3 Qualifying Project” is a Qualifying Project as that term is defined in Section 255.065, Florida Statutes, or any residential, retail, commercial, hospitality or other private facilities and uses as appropriate and necessary to achieve the public purposes intended for a P3 Qualifying Project or other project for a public purpose, use or benefit on a cost model acceptable to the City, which the City Council determines is appropriate for a P3 in the Authorizing Resolution.

f. “Responsible public entity” shall mean the City of North Miami, Florida, inclusive of all of its agencies, committees and instrumentalities.

g. “Selection Committee” shall mean a group of persons appointed by the City to evaluate and make recommendations as to proposals received in response to solicitations initiated by unsolicited or solicited proposals that may be received in accordance with this Section.

h. “Value for Money Analysis” or “VfM Analysis” is a process used to compare the financial impacts of a P3 method of delivery with the financial impacts for the traditional public delivery alternative. Generally, the VfM will estimate the present value of the life-cycle cost of a project where the City finances, designs, builds, maintains and/or operates such project through the procurement process commonly used by the City for the procurement of similar goods and services versus the present value of payments to be made to a private entity for undertaking the same project as a partner of the City. A VfM may also assess the value of any risks retained by the City, opportunity costs, and ancillary costs borne by the City, or efficiencies, technology or expertise gained from the private entity, in using a P3.

(3) Procurement Procedures. This Section shall govern both: (i) unsolicited proposals received by the City which are to be treated as Non-P3 Qualifying Projects and procured through the procedures set forth herein; and (ii) all P3 Qualifying Projects, whether originating via an unsolicited proposal or initiated by the City.

a. Unsolicited Proposals.

i. A private entity may submit an unsolicited proposal to the City for a Qualifying Project at any time. The process for unsolicited proposals is governed by this Section of this Code. The unsolicited proposal must include:

1. An initial application fee in an amount of twenty-five thousand dollars (\$25,000.00) paid by cash, cashier’s check, or other non-cancelable instrument. Personal checks may not be accepted. The application fee is to cover the costs of processing, reviewing and evaluating the proposal, including the fees and costs for private consultants to assist in the evaluation. The application fee is non-refundable. The City may require additional fees from the private entity if a supplemental payment is required for the City’s evaluation.

2. All material and information set forth in Section 255.065(4), Florida Statutes. Additionally, the private entity must provide: (a) information on how the project would benefit small and community based contractors within the City; (b) a listing of all local businesses (as defined in applicable City ordinances) which are proposed to participate in the project and the proposed scope of each; and (c) a listing of all proposed obligations and requirements of the City and any other governmental agencies, including but not limited to, contributions to project financing, staffing and permitting.

3. A list of all private entities the proposer intends to use as development, construction, design, or operations partners; consultants; marketing and public relations firms; property utilization analysts; public finance analysts; legal consultants and government relations consultants.

4. An overview of the proposed project, including:

- a. Design concept renderings and a concept site plan and elevations that collectively illustrate the location, size and context of the proposed project;
- b. Summary of the preliminary programming of facilities, including, if any, the mix of uses, square footages, total parking spaces, parking allocations, and types of parking (ex., structured or surface);
- c. Identification of any known or suspected synergies and incompatibilities between the proposed project and any other existing, planned or contemplated public facility within the City or any neighboring city or affected jurisdiction and the manner in which the Private Entity anticipates addressing same; and
- d. Identification of any additional terms or conditions to be included as part of the negotiation process.

ii. If a proposer asserts information included in an unsolicited proposal contains confidential information, including trade secrets, claimed to be exempt from disclosure under applicable Florida public records laws, it must be submitted in a separate, sealed envelope, and

conspicuously labeled as “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET” or “EXEMPT FROM PUBLIC RECORD PRODUCTION – CONFIDENTIAL”. Proposer must include in the sealed envelope a cover letter listing all material designated as confidential and clearly mark each page of any material believed to be a trade secret or confidential or proprietary information in all capital letters and bold font as **“CONFIDENTIAL.”** In addition, said proposer must, simultaneously with the submission of any confidential or trade secret materials, provide a sworn affidavit from a person with personal knowledge attesting that the materials submitted constitute trade secrets or otherwise confidential information under Florida law, and the factual basis for same. If any person or entity requests the City to produce or disclose any of said designated confidential information, the City will initially refrain from disclosing the confidential information in its possession, advise the proposer of the request for the information, and afford the proposer an opportunity to protect its assertion that said confidential information is exempt from all applicable Florida public records laws. If the proposer fails to timely seek a protective order from a court of law, and/or is unsuccessful in obtaining a protective order, the City will produce the requested information in its possession. The proposer shall indemnify and defend the City and its employees and agents from any and all claims, causes of action, judgments, damages, costs, and liabilities, including attorney’s fees, litigation expenses and court costs, relating to the non-disclosure of a private entity’s purported confidential information. The City can only agree to advise the proposer of such request for the records, and give the proposer an opportunity, at the proposer’s sole and exclusive cost, to defend the request for disclosure of confidential information in a court of competent jurisdiction or other applicable forum and the City does not represent that it will refrain from producing such confidential information if, in its sole and exclusive opinion, the City believes disclosure is required under law.

iii. Within thirty (30) days of receipt of any unsolicited proposal, the City Manager may elect to not evaluate the unsolicited proposal, in which case the City must return the application fee. If the City Manager elects to evaluate an unsolicited proposal, the City Manager may seek the advice of City staff, outside advisors, or consultants using the City Manager’s delegated authority under City Council approved contracts with the City, or any combination thereof, with

relevant experience in determining whether to accept the unsolicited proposal for publication of a solicitation for the same project purpose and/or whether to enter into an agreement with the private entity or any competing proposer. The City Manager may require the private entity to provide a technical study as set forth in Section 255.065(3)(f), Florida Statutes. In determining whether to recommend the unsolicited proposal for publication of a solicitation for the same project purpose as either a P3 Qualifying Project or as a Non-P3 Qualifying Project, the City Manager may take into consideration such factors as: whether the proposed project is in the public's best interest; the costs of the proposed project and its funding sources and financial viability; whether the proposed project may be accomplished through the use of City resources; the need for the proposed project; the scientific, technical or socioeconomic merits of the unsolicited proposal; the contribution of the proposal to the City's goals and objectives; the cost, if any, to the City to proceed with implementation of the proposed project; and any other information the City deems appropriate for such evaluation.

iv. If the initial application fee does not cover the City's costs to evaluate the unsolicited proposal, the City Manager may request in writing the additional amounts the City Manager deems reasonably necessary to fully evaluate the unsolicited proposal. The private entity must remit the requested additional amounts within thirty (30) days of receipt of the request for additional fees or the City Manager shall stop the review of the unsolicited proposal and recommend its rejection to the City Council. At the completion of the review of the unsolicited proposal, the City Manager shall refund any portion of the application fee paid which in the discretion of the City Manager exceeded the costs associated with evaluating the unsolicited proposal.

v. If the City Manager elects to evaluate an unsolicited proposal that has been submitted with the application fee and all of the information and materials required pursuant to this Section, the City Manager shall have ninety (90) days or other reasonable amount of time to evaluate the unsolicited proposal. At the completion of the review period, if the City Manager wishes to pursue consideration of the unsolicited proposal, the City Manager shall place an item on the City Council meeting agenda containing a recommendation to: (1) publish a solicitation for a

P3 Qualifying Project for the same project purpose as the unsolicited proposal as set forth herein; (2) publish a solicitation for a Non-P3 Qualifying Project for the same project purpose as the unsolicited proposal in accordance with the City's general procurement rules; or (3) to take any other such action as may be appropriate. In the event that the City Council decides to publish a Request for Qualifications under this Section for the same project, as opposed to publishing a notice inviting competing bids for the same project purpose as the unsolicited proposal, the unsolicited proposal shall automatically be deemed rejected.

vi. The City Council shall have final discretion in its determination of whether to publish a solicitation for the same project purpose as an unsolicited proposal. Any City Council determination to treat the unsolicited proposal as a P3 Qualifying Project shall be made in accordance with the factors set forth in paragraph (b) below. Any portion of a meeting of the City Council during which an unsolicited proposal is discussed is exempt from Section 286.011, Florida Statutes, and s.24(b), Art. I of the State Constitution in accordance with Section 255.065(15), Florida Statutes.

vii. In the event the City Council determines to issue a solicitation or invite competitive proposals for the same project purpose as an unsolicited proposal for a Non-P3 Qualifying Project, the solicitation shall contain a description of the project purpose consistent with the unsolicited proposal and sufficient criteria to allow a comparison of the unsolicited proposal with other proposals which may be offered in response to the solicitation. The solicitation for the Non-P3 Qualifying Project for the same project purpose approved for publication shall be published in the manner and for the time periods set forth in all applicable laws, including those periods of extension which may be authorized by the City Council by resolution and in accordance with paragraph (c) below.

b. Authorizing Qualifying Projects as P3 Qualifying Projects.

i. A P3 Qualifying Project requires City Council approval via an Authorizing Resolution. Approval of a Qualifying Project as a P3 Qualifying Project must be justified based on: a favorable initial comparative analysis of the relative benefit-cost of developing the Qualifying

Project, utilizing alternative development approaches, with the results of such analysis reflected in financial and economic terms; the complexity of the Qualifying Project; the schedule and budget challenges; risk shifting; and creative financing opportunities available through or with a private entity. Unless otherwise prohibited by law, the City Council may waive any conditions imposed by the provisions of this Section upon a four-fifths-vote and in accordance with Section 7-120 of the Code.

ii. If the City Council approves a Qualifying Project as a P3 Qualifying Project, then the City Council may provide guidance for special factors to be considered before publication of the unsolicited proposal or the P3 solicitation such as criteria and material assumptions to be used for the VfM Analysis, design and construction, labor considerations, or any other factor related to the specific project. Any proposed Authorizing Resolution may set forth the proposed material assumptions and parameters to be approved by the City Council.

iii. The City Manager may undertake a VfM Analysis on all P3 Qualifying Projects prior to or after publication of the applicable unsolicited proposal or solicitation utilizing the material assumptions and parameters approved by the City Council, or in conjunction with the evaluation of proposals received in response to the City's publication or solicitation. The City shall only seek competitive proposals for unsolicited proposals for P3 Qualifying Projects or Non-P3 Qualifying Projects or issue solicitations for P3 Qualifying Projects or Non-P3 Qualifying Projects where the project is in the best interest of the City.

iv. If the City determines it is interested in further considering any unsolicited proposal, it shall publish publicly a notice of receipt of same and invite competing proposals during a competitive proposal period. Said period shall be not less than 21 days and shall be of a duration the City shall specify in its sole and exclusive option, but no more than 120 days after the initial date of publication. The public notice of receipt shall minimally state the City has received an unsolicited proposal and will accept other proposals for the same type of project or concept. If more than one unsolicited proposal is received for the same or similar project or concept, only one public notice shall be required for the proposed project. At the City's sole

and exclusive option, the public notice may require competitive proposals to provide more details about the project than the unsolicited proposal contained. The notice shall be posted on the City's website, published in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks, and advertised in any other manner considered appropriate by the City to encourage competition and provide maximum notice to private entities interested in submitting competing proposals. A copy of the notice will also be mailed to each local government reasonably identified as one who may be impacted by the proposed project and in accordance with Section 255.065, Florida Statutes.

Proposers submitting competitive proposals in response to the notice shall comply with any other requirements specified in the notice and pay a proposal application fee of \$25,000. The initial Private Entity proposer(s) who submitted the unsolicited proposal(s) may also supplement its proposal in response to the notice providing such further details about the unsolicited proposal as may be required by the notice. The initial proposer(s) shall not be required to pay an additional application fee for the supplemented proposal and the proposal shall not be on less favorable terms to the City than the initial proposer(s)' initial unsolicited proposal.

- After the public notification and competitive period has expired, the City may determine:
- a. Not to proceed further with any proposal;
 - b. Reject any proposal determined by the City to be non-responsive; or
 - c. To proceed to the Detailed Stage with any or all of the initial unsolicited proposal(s) and any or all of the competitive proposals. In this event, the City shall rank the proposals received in order of preference. In ranking the proposals, the City may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, finance plans and any other factor the City determines to be relevant to the evaluation. Part of the ranking process, at the City's discretion, may require submission of a Detailed Proposal for evaluation by the City from every proposer whose proposals the City may consider. The Detailed Proposals shall supplement the initial proposal.

Before awarding a Comprehensive Agreement, the City shall hold a public meeting on the proposal to be awarded. The City shall provide notice of the public meeting in accordance with applicable law.

v. The City Manager's recommendation with respect to the RFQ process shall be exempt from, and not subject to, bid protests under Section 7-158 of this Code.

c. Publishing Solicitations for P3 Qualifying Projects and for Non-P3 Qualifying Projects Not Founded Upon an Unsolicited Proposal

i. All solicitations the City may issue for P3 Qualifying Projects not borne out of an unsolicited proposal shall consist of two separate but related competitive processes to select a qualified proposer. The first shall be a Request for Qualifications ("RFQ"), after which the City shall short-list and select the preferred proposers on the basis of their qualifications to contract for and perform the P3 Qualifying Project, according to the criteria listed in the RFQ. The second shall be a Request for Proposals ("RFP"), published only to the short-listed proposers resulting from the RFQ, who may offer substantive proposals to contract for and perform the P3 Qualifying Project. Each of the RFQ and RFP processes shall be separately published and evaluated, and the City Manager shall be authorized, but not required, to utilize a separate selection committee for the evaluation of each. The Cone of Silence provided for under section 7-192 of the City Code shall be imposed upon advertisement of the P3 Qualifying Project RFQ and terminate upon the City Manager presenting a final recommendation under the RFQ to the City Council. The Cone of Silence shall subsequently be imposed upon publication of the RFP and terminate upon the City Manager presenting a final recommendation to the City Council in connection with the RFP Process.

ii. Design Professionals. As to any publication or solicitation for a P3 Qualifying Project or Non-P3 Qualifying Project that involves architecture, engineering, or landscape architecture, the City must select and hire an architect, a landscape architect, or a qualified engineer licensed

in Florida to:

1. Review the initial and subsequent proposals to ensure that the Qualifying Project meets certain quality standards, proper space utilization, proper budget estimates, reasonable design and construction schedules, and sustainable design and construction standards consistent with public projects; and

2. Prepare a design criteria package to be included in the solicitation, which design criteria package must include the criteria set forth in Section 255.065(3)(c), Florida Statutes.

Such professionals shall advise the City through completion of the design and construction of the Non-P3 Qualifying Project or P3 Qualifying Project, as applicable.

iii. Advertisement for P3 Qualifying Projects Not Founded Upon an Unsolicited Proposal.

1. Upon the adoption of an Authorizing Resolution, the City Manager is delegated the authority to prepare and advertise RFQs for P3 Qualifying Projects. Upon advertisement of the RFQ, the City shall not accept or evaluate an unsolicited proposal for the same project.

2. The City Manager, upon reviewing the recommendation(s) of the Selection Committee resulting from the RFQ, shall: (a) approve the selection of no more than four proposers from proposers competing under the RFQ (the “short-listed proposers”) as qualified to proceed to participate in the RFP; (b) reject all recommended proposers and re-advertise the RFQ for the P3 Qualifying Project; or (c) reject all recommended proposers and proceed no further on soliciting the P3 Qualifying Project.

3. If the City Manager approves the short-listed proposers, the City shall prepare the RFP for the P3 Qualifying Project seeking proposals only from the approved short-listed proposers and provide the proposers a reasonable amount of time to respond to the RFP as set forth in the solicitation. The City Manager may also issue necessary addenda, clarifications and corrections

to the RFP.

4. The City may, at its option, include in the RFP a stipend to be paid to short-listed proposers who have submitted compliant proposals but were not selected for contract award as consideration for the proposers' submission of intellectual property in the proposals and the time, effort and expense in responding to the RFP. Such stipend shall be paid only subject to the terms and conditions specified in the approved RFP. Prior to providing a stipend payment to an unsuccessful proposer, the unsuccessful proposer shall grant the City a non-exclusive, perpetual right to use the proposer's intellectual property submitted in response to the RFP or authorize a third-party to use such intellectual property in any future City project. Such grant shall include, but not be limited to, any ideas, concepts, designs or approaches submitted by the unsuccessful proposer. The City may also, at its option, include in the RFP the ability of proposers to incorporate technical innovation and creativity into their proposals and may solicit alternative technical concepts in addition to proposals for the solicited project provided that the RFP does not materially change the nature and scope of the project.

5. The City Manager shall publish notice of the RFQ for the P3 Qualifying Project, in accordance with the provisions of any of the applicable solicitation documents and the requirements of law. The RFP shall be provided only to the short-listed proposers. The City shall determine the timeframe during which it will accept proposals on a project-by-project basis based on the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which proposals may be received; however, the timeframe for allowing proposals must be at least 21 days but no more than 120 days after the initial date of publication. The City Council may by majority vote alter the time periods to accept proposals to more adequately suit the needs of the project. To the extent required by Section 255.065, Florida Statutes, a copy of the notice must be sent to each local government in the affected area.

iv. Evaluation and Award of P3 Qualifying Projects and Non-P3 Qualifying Projects, Whether Initiated By Unsolicited Proposal or Not.

1. After the deadline for submitting proposals has expired, the Selection Committee shall evaluate and rank proposals in order of preference based on the criteria advertised for the project and as otherwise set forth in this Section. The Selection Committee may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. Except where federal or state law mandates to the contrary, Section 7-151 of the City's Code of Ordinances shall apply to the evaluation of solicited and unsolicited proposals. The Selection Committee may then begin negotiations with private entities as set forth in the solicitation document in order to reach an interim and/or comprehensive agreement. The Selection Committee shall be appointed by the City and the City Manager shall notify the City Council of the appointment.

2. The City, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a comprehensive agreement with a private entity. Such rejection of proposals may be made by the City Manager or by the City Council upon the City Manager's recommendation or upon the City Council's own initiative.

3. Before approving a comprehensive agreement, as such term is described below and in Section 255.065, Florida Statutes, with any private entity, the City must determine that the proposed project is in the public's best interest; and has adequate safeguards in place to ensure that (A) additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the City, and (B) there is opportunity for the City or the private entity to add capacity to the proposed project. For Qualifying Projects that fall within the definition of Section 255.065(1)(i), Florida Statutes, the City must also determine that the project is for a facility that is owned or will be owned by the City as provided by Section 255.065(3)(d). This does not preclude the City from procuring projects on a public private partnership basis outside the definition of Section 255.065(1)(i) pursuant to the terms of this Section.

4. Any award of a contract for a Non-P3 Qualifying Project or for a P3 Qualifying Project under

this Section, be it an interim agreement, as such term is described below and in Section 255.065, Florida Statutes, or a comprehensive agreement, shall be first approved by the City Council.

5. The only recommendations that can be protested under this Section utilizing the bid protest procedures provided for in the Code are recommended contract awards arising from the publication of solicitations for the same project purpose as an unsolicited proposal or a solicitation for a P3 Qualifying Project. Such protest procedures may be waived, however, in accordance with the Code.

6. Nothing in this Section shall affect the City Manager's authority to recommend a waiver of competitive proposals when the City Manager determines such waiver to be in the best interest of the City.

7. If the City requests a more detailed evaluation after receipt of proposals in response to a publication based upon an unsolicited proposal or in response to an RFP, then the City may require the proposers to provide:

- a. A life cycle cost analysis specifying methodology and assumptions supporting same; the source and amount of all equity, debt, and other financing mechanisms funding the design, construction, operations and maintenance of the proposed project; and a schedule of anticipated revenues and costs during project operations and the manner in which said costs would be funded and revenues distributed. The life cycle cost analysis shall include a detailed analysis of the projected rate and amount of return, expected useful life of the facility, and estimated annual operating and maintenance expenses.
- b. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the City or neighboring jurisdictions, and include a detailed description of any financing plan for the

project, comparing that plan with financing alternatives available to the City, and all underlying data and assumptions supporting any conclusions reached in the analysis of the financing plan proposed for the project. The analysis shall also include any feasibility studies that support assumptions about project usage, revenue and costs.

- c. Identify all assumptions underlying the proposal.
- d. Identify any work or contributions required from the City.
- e. Identify all impacts on the City's debt burden.
- f. State the estimated project cost to the City over the proposed project's life cycle.
- g. Additional material and information as the City deems appropriate.

v. Contracting for P3 Qualifying Projects and Non-P3 Qualifying Projects. Any contract with a private entity for a Non-P3 Qualifying Project or a P3 Qualifying Project must, at a minimum, ensure: that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, compliance with Section 255.05, Florida Statutes; the most efficient pricing of the security package that provides for the performance and payment of subcontractors; and that the comprehensive agreement addresses termination upon a material default by the private entity.

1. Interim Agreement. Before or in connection with the negotiation of a comprehensive agreement, the City may enter into an interim agreement with the private entity proposing a Non-P3 Qualifying Project or a P3 Qualifying Project, all in accordance with the provisions of Section 255.065(6), Florida Statutes, as may be amended. The interim agreement permits a proposer or other private entity to perform activities, which may be compensable, related to the proposed project, usually in the nature of continued due diligence activities to inform the ultimate decision maker about the project's feasibility. The interim agreement is a discretionary step, not necessary in all cases, but available should the City determine more investigation or due diligence is necessary about the proposed project before entering into a

comprehensive agreement. The City shall not be bound to enter into a comprehensive agreement merely because it entered into an interim agreement. However, before developing or operating the proposed project, the proposer shall enter into a comprehensive agreement with the City.

2. Comprehensive Agreement. Any comprehensive agreement entered into between the City and a private entity for a Non-P3 Qualifying Project or a P3 Qualifying Project must comply with the provisions set forth in Section 255.065(7)(a), Florida Statutes, as may be amended, and may also include those provisions set forth in section 255.065(7)(b), (8) and (9), Florida Statutes, as may be amended. The City shall not be liable for development or operation of a proposed project before entering into a comprehensive agreement, which must be approved by the City Council.

1. As part of any comprehensive agreement, the City may provide services to the private entity, but the City must be fully reimbursed for the provision of any such services.

2. The full faith and credit of the City may not be pledged to secure the financing of the private entity for any Non-P3 Qualifying Project or any P3 Qualifying Project. The assumption of the development or operation of a Non-P3 Qualifying Project or of a P3 Qualifying Project does not obligate the City to pay any obligation of the private entity from sources other than revenues from the Non-P3 Qualifying Project or the P3 Qualifying Project, as applicable, unless otherwise stated in the comprehensive agreement.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are repealed.

Section 3. **Conflict.** All ordinances or parts of ordinances in conflict herewith be and

the same are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Codification. It is the intention of the City Council of the City of North Miami and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 9th day of February, 2022.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 22nd day of February, 2022.


PHILIPPE BIEN-AIME
MAYOR

ATTEST:



VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM

AND LEGAL SUFFICIENCY:



JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Estimé-Irvin

Seconded by: Timothe

Vote:

Mayor Philippe Bien-Aime
Vice Mayor Alix Desulme, Ed.D.
Councilman Scott Galvin
Councilwoman Kassandra Timothe, MPA
Councilwoman Mary Estimé-Irvin

<u>X</u>	(Yes)	_____	(No)
<u>X</u>	(Yes)	_____	(No)
<u>X</u>	(Yes)	_____	(No)
<u>X</u>	(Yes)	_____	(No)
<u>X</u>	(Yes)	_____	(No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.