

ORDINANCE NO. 21-20

AN ORDINANCE OF THE CITY OF COOPER CITY, FLORIDA, AMENDING CHAPTER 2 OF THE CITY’S CODE OF ORDINANCES, ENTITLED “ADMINISTRATION,” AMENDING ARTICLE X ENTITLED, “COOPER CITY PROCURMENT CODE,” BY CREATING SECTION 2-269, TO BE ENTITLED “PUBLIC PRIVATE PARTNERSHIPS;” ESTABLISHING PROCEDURES FOR THE SUBMISSION AND CONSIDERATION OF UNSOLICITED PROPOSALS IN ACCORDANCE WITH SECTION 255.065, F.S.; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR AN APPLICATION FEE; ESTABLISHING EVALUATION CRITERIA; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.065, F.S. (the “Statute”), establishes a process and procedures for private entities to submit unsolicited proposals to municipalities for certain qualifying projects, as defined by the Statute; and

WHEREAS, the City of Cooper City (“City”) seeks to adopt a process for the City to consider unsolicited proposals and enter into public-private partnerships in accordance with the requirements of state law; and

WHEREAS, the City Commission intends to ensure that the process for considering unsolicited proposals is transparent and consistent with the requirement of the Statute; and

WHEREAS, the City Commission has held a public hearing in accordance with Florida law; and

WHEREAS, following proper notice to the public and after having received input and participation by interested members of the public and staff, the City Commission finds that amending the City’s procurement code to provide establish a process for the consideration of

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unsolicited proposals is in the best interest of the citizens, residents, and business establishments in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COOPER CITY, FLORIDA:

Section 1. **RECITALS ADOPTED.** That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. **CHAPTER 2 OF CITY CODE AMENDED.** That Section 2-269, to be entitled "Public Private Partnerships" of Article X, entitled "Cooper City Procurement Code" of Chapter 2, entitled "Administration" of the City of Cooper City Code of Ordinances, is hereby created to read, as follows:

Sec. 2-269 – Public-Private Partnerships

(1) *Purpose.* A public-private partnership is a contractual agreement between a local government and a private sector person or entity organized for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared and leveraged to deliver a service or facility to be used by the general public.

(2) *Definitions.* For purposes of this section, the words defined in Section 255.065(1), F.S., (entitled "Definitions") including, but not limited to, "qualifying project" and "private entity" shall have the same meaning in this section.

(3) *Conditions for use.* The purchasing agent may receive unsolicited proposals for a qualifying project, subject to the conditions and procedures of this section. Any unsolicited proposal shall include sufficient detail and information for the city to evaluate the proposal in an objective and timely manner, and shall be accompanied by the application fee.

(4) *Proposal contents.* Any unsolicited proposal shall include sufficient detail and information for the city to evaluate the proposal in an objective and timely manner and to determine if the proposal serves a public purpose and meets the criteria set forth in this section.

(a) The following material and information is required to be submitted:

1. A description of the project, including the conceptual design of the facility; or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
2. A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
3. A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
4. The name and address of a person who may be contacted for additional information concerning the proposal.
5. The proposed user fees, lease payments or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments and other service payments over time.
6. Any pricing or financial terms included in the unsolicited proposal must be specific as to when the pricing or terms expire.

(b) The following additional material and information must also be submitted in order for the city to review and evaluate the unsolicited proposal:

1. Description of the need for the project or facility and the public benefit to be served.
2. A site plan indicating the location of the project proposed.
3. The proposed schedule for development of the project and/or the proposed term for operation of the project, along with an estimate of the life cycle cost of the proposed project.
4. A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects.
5. Performance guarantees, if any, and any proposed bonding to be provided by the proposer, including ability to provide statutorily required public construction bonds or performance and payment bonds for construction of public facilities.
6. A listing of all proposed obligations and requirements of the city and any other governmental agencies, including, but not limited to, contributions to the project financing, development approvals and permitting.

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7. Identification of whether the proposal involves turning over any operation, maintenance or other responsibilities to the city, along with an estimate of costs;
8. Statement regarding ability to add capacity to the project if necessary.
9. Proposed safeguards to protect the city from additional costs or service disruption in the event of default or termination of contract.
10. The names of owners, directors and officers of the proposer, and such information as may be necessary to evaluate the qualifications of the critical personnel to be engaged in the project.
11. Information on how the project would benefit small business enterprises and local contractors within the city.
12. A list of all engineering or construction firms to be proposed on the project and their qualifications and a description of their role in the proposal and project.
13. Is signed by a responsible official or other representative authorized to obligate the proposer contractually.

(5) *Application fee.* The city shall charge fees to the private entity proposer to cover the costs of processing, reviewing and evaluating any unsolicited proposal, including a fee to cover the costs of staff time, and attorneys, engineers, consultants and financial advisors retained to evaluate the proposal, advertise, provide recommendations to the city and/or negotiate a contract.

(a) All unsolicited proposals shall be accompanied by an initial application fee of \$15,000.00 payable to the City of Cooper City in the form of a money order or cashier's check or other non-cancelable instrument. Personal checks will not be accepted. Proposals submitted without the application fee shall not be accepted.

(b) The city shall refund the application fee if the city determines that it will not evaluate the unsolicited proposal.

(6) *Commission consideration.* If the city receives an unsolicited proposal for a qualifying project pursuant to this section and the city manager deems it to be in the best interests of the city to further evaluate the proposal or negotiate an agreement based on the proposal, the city manager shall notify the commission of the receipt of the unsolicited proposal by placement of an item on the next available commission agenda to obtain the commission's approval to proceed with the evaluation and negotiation of a project based on the unsolicited proposal.

(7) *Commission decision to proceed with evaluation.* If the city commission votes to proceed with the evaluation of an unsolicited proposal involving architecture, engineering or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality

standards, interior space utilization, budget estimates, design and construction schedules and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect or an engineer licensed by the State of Florida qualified to perform the review and such professional shall advise the city through completion of the design and construction of the project.

(8) *Prior to review.* If the initial application fee does not cover the city's costs to evaluate the unsolicited proposal, the city shall request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The city may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.

(9) *Public notice.* If the city determines that it is interested in further considering any unsolicited proposal, it shall publish a notice of receipt of same and invite competing bids during a competitive bidding period. The publication shall be accomplished in a manner that encourages competition to provide private entities interested in submitting alternative and perhaps competing proposals to provide a reasonable opportunity to submit a bid. The entity submitting the original unsolicited proposal may submit a more detailed proposal in response to the city's notice. A copy of the notice must be mailed to each local government in the affected area of the qualifying project which shall mean Broward County and/or any special district in which all or a portion of the qualifying project is located.

(10) *Receipt of proposals.* Sealed proposals in response to the public notice must be received in the purchasing and contract administration division no later than the time and date specified for submission in the publication. Sealed proposals shall be accompanied by the initial application fee.

(11) *Evaluation.* The selection of a proposer with whom to negotiate shall be in accordance with the evaluation committee procedures set forth within Section 2-256 of the City's Code of Ordinances.

(12) *Evaluation criteria.* When performing an evaluation of any proposal under this section, the following factors, along with all of the information required to be provided in the proposal, shall be considered, in addition to any others appropriate for the particular proposal:

- (a) The proposal business terms, including the finance plans;
- (b) Unique, innovative and meritorious methods, approaches, concepts, design techniques or cost reductions demonstrated by the proposal;
- (c) Overall scientific, technical or socioeconomic merits of the proposal;
- (d) The proposer's capabilities, related experience, facilities, techniques or unique combinations of these;

(e) The professional qualifications, capabilities and experience of the proposer's team or key personnel critical to achieving the proposal objectives;

(f) The general reputation and financial condition of the proposer and its team members; the proposed finance plan; the financial viability and feasibility of the proposed project or facility; and the cost, if any, to the city to proceed with implementation of the proposal, including on-going operational or maintenance costs. The city may require the proposer to provide a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies;

(g) Any other information the city deems appropriate for evaluation of the proposed project or facility.

(13) *Rejection of proposals.* If an unsolicited proposal, or competing proposal received after public notice, is not deemed by the purchasing agent to be complete or in sufficient detail, it may be rejected by the city commission. The city shall have no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal. The city shall refund any portion of the application fee paid which, in the determination of the purchasing agent, exceeds the direct costs associated with evaluating the proposal up to the time of rejection. 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 proposer.

(14) *Comprehensive agreement.* The comprehensive agreement with the private entity shall contain at a minimum the terms and conditions set forth within Section 255.065(7), F.S. The comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility in accordance with the provisions set forth within Section 255.065(8), F.S.

(15) *Public records.* Pursuant to Section 255.065(15), F.S.:

(a) An unsolicited proposal received by a responsible public entity is exempt from Section 119.07(1), F.S. and Section 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

(b) If the city rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and the city concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the city provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the city withdraws the reissued competitive solicitation for such project.

(c) An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the city rejecting all proposals.

(d) If the city does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by the city.

(e) Any portion of a meeting of the city during which an unsolicited proposal that is exempt is discussed is exempt from Section 286.011, F.S. and Section 24(b), Art. I of the State Constitution.

1. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records generated during, the exempt meeting are exempt from Section 119.07(1), F.S. and Section 24(a), Art. I of the State Constitution until such time as the city provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the city if the city does not issue a competitive solicitation for the project.

3. If the city rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from Section 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

4. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the city rejecting all proposals.

Section 3. It is the intention of the City Commission of the City of Cooper City that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Cooper City, Florida, and that the Sections of this ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

Section 4. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

Section 6. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED on First Reading this _____ day of _____, 2021.

PASSED AND FINAL ADOPTION on Second Reading this __ day of _____, 2021.

GREG ROSS
Mayor

ATTEST:

KATHRYN SIMS
City Clerk

ROLL CALL

Mayor Ross	_____
Commissioner Green	_____
Commissioner Meltzer	_____
Commissioner Pulcini	_____
Commissioner Shrouder	_____

APPROVED AS TO LEGAL FORM:

JACOB G. HOROWITZ
City Attorney

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