

ATTACHMENT A

**Proposed Amendments to the Code of DeKalb County, As Revised, 1988,
to Provide a Framework for Public Private Partnerships
Based on the State of Georgia Model Code**

(Optional items appear in italics)

PART I. ENACTMENT

A. Time Period for Receiving Unsolicited Proposals and Format for Submissions.

(1) Time Period. Unsolicited proposals for qualifying projects may be received by the Local Government [INSERT TIME PERIOD FOR EACH CALENDAR YEAR AS DETERMINED BY LOCAL GOVERNMENT]. Such unsolicited proposals shall be in writing and shall be delivered to [DESIGNATED STAFF MEMBER] at [ADDRESS]. Should a proposer have any questions, please contact [NAME], at [PHONE NUMBER], or by e-mail at [E-MAIL ADDRESS.]

(2) Format for Submissions. Unsolicited proposals shall contain, at a minimum, the following information:

- (a) a project description,
- (b) a project feasibility statement,
- (c) a proposed project schedule,
- (d) a project financing plan,
- (e) a business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data,
- (f) a description of any anticipated public support or opposition,
- (g) qualifications and experience
- (h) names and addresses of persons who may be contact and
- (g) any additional information as the local government may reasonably request to comply with the requirements of the PPFIA. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the local government. Such proposals may also include any additional pertinent information as determined by the proposer.

(3) Only proposals complying with the requirements of these guidelines and the PPFIA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format should be considered by the Local Government for further review. If any information necessary to make a meaningful evaluation is missing, the local government may request such information from the proposer. Unsolicited proposals are subject to the Open Records Act.

The format and information to be included in any unsolicited proposal are as follows:

(a) Project Description

- (i) Provide a description of the project, including the location of the project, the conceptual design of such facility, or facilities, and a conceptual plan for the provision of services or technological infrastructure.
- (ii) *Identify and fully describe the scope of work to be performed by the proposer with enough detail to allow an analysis by the local government.*
- (iii) *Identify and fully describe any work to be performed by the local government.*
- (iv) *Identify any anticipated adverse social, economic, and environmental impacts of the project.*
- (v) *Identify the projected positive social, economic, and environmental impacts of the project.*
- (vi) *State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on the local government's use of the project.*

(b) Project Feasibility Statement

- (i) A feasibility statement that includes:
 - (A) The method by which the private entity proposes to secure any necessary property interests required for the project;
 - (B) A list of all permits and approvals required for the project from local, state, or federal agencies; and
 - (C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;
- (ii) *Provide a list of any contingencies that must occur for the project to be successful.*
- (iii) *Provide a list of any other assumptions relied on for the project to be successful.*
- (iv) *Provide information relative to ongoing maintenance and operational costs after the project is completed.*

(c) Project Schedule

- (i) A schedule for initiation, construction, and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both the local government and private entity.
- (ii) A schedule for obtaining all federal, state, and local permits and approvals required for the project.
- (iii) *Identify the proposed schedule for strategies or actions to mitigate known impacts of the project.*
- (iv) *Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.*

(d) Project Financing Plan

- (i) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; and description of user fees, lease payments and other service payments over the term of the proposed comprehensive agreement (as defined in the PPFIA); and a methodology and circumstances for changes to such user fees, lease payments and other service payments over time.
- (ii) *Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.*
- (iii) *Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required containing enough detail to allow an analysis by the local government of the financial feasibility of the proposed project. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports. Identify the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.*
- (iv) *Provide a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees*

associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

- (v) *Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the local government's credit or revenue.*
- (vi) *Identify the amounts and the terms and conditions for any revenue sources.*
- (vii) *Describe a proposed allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.*
- (viii) *Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.*

(4) The unsolicited proposal may include financing options, including the imposition of user fees, lease payments or other service payments. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. Depending on the local government's authority and the circumstances of each transaction, financing options might also include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, development agreements, conduit financing and other methods allowed by law. Notwithstanding the foregoing, the local government shall not loan money to a private entity in order to finance all or a portion of the qualifying project.

(a) Business Case Statement

- (i) A business case statement that shall include a basic description of any direct or indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data.
- (ii) *Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project.*

- (iii) *Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.*
- (iv) *Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.*
- (v) *Specify the strategies or actions to mitigate known impacts of the project.*
- (vi) *Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the local government and whether the project is critical to attracting or maintaining competitive industries and businesses to the local government or the surrounding region.*
- (vii) *Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.*
- (viii) *Provide relevant proposer cost, quality, methodology, and process for identifying the project and time frame data.*

(b) Contacts

- (i) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal.
- (ii) *Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.*
- (iii) *Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.*
- (iv) *Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.*

- (v) *Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater for project proposals over \$20 MM.*
- (vi) *Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to any state of Georgia conflict of interest laws.*

B. Procedures for the Financial Review and Analysis of an Unsolicited Proposal.

(1) Upon receipt of an unsolicited proposal, the Local Government shall:

- (a) Send the proposer an acknowledgement of receipt of the unsolicited proposal and provide that the Local Government will conduct a review of that proposal and either
 - (i) reject the unsolicited proposal; or
 - (ii) accept the unsolicited proposal and seek competing bids for the proposed project as required pursuant to the Guidelines and the PPFIA.
- (b) Establish a new committee or select an existing committee (the “Evaluation Committee”) to review the unsolicited proposal. If a new committee is established, it should be composed of no less than three individuals with diverse skill sets to adequately review the proposal;
- (c) Decide whether it will engage independent advisors, as provided in Section C below, to assist (and not be a member of) the Evaluation Committee in its review of the unsolicited proposal, which may include an attorney, financial advisor, architectural and/or engineering consultant or other advisers or consultants; and
- (d) Provide the proposer with the proposed Local Government fee to cover the costs of processing, reviewing and evaluating the unsolicited proposal, as calculated in paragraph D below.

(2) The Evaluation Committee, together with any independent advisors, shall perform the following financial review and analysis of the unsolicited proposal:

- (a) A cost-benefit analysis;
- (b) Evaluation of the public need for or benefit derived from the qualifying project;
- (c) Evaluation of the estimated cost of the qualifying project for reasonableness in relation to similar facilities;
- (d) Evaluation of the source of funding for the project;
- (e) Consideration of plans to ensure timely development or operation;
- (f) Evaluation of risk sharing, including cost or completion guarantees, added value, or debt or equity investments by the private entity; and

- (g) Consideration of any increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available.

(3) After reviewing the proposal, the Evaluation Committee shall make a recommendation to the governing body of the Local Government to reject or accept the unsolicited proposal.

(4) Discussions between local governments and the proposer about the need for infrastructure improvements shall not limit the ability of a local government to later determine to use standard procurement procedures to meet its infrastructure needs. The local government retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

C. Criteria for Identifying and Appointing Independent Advisors.

Unsolicited proposals which have technical, complex or specialized information may require additional support from one or more third-party independent advisors to assist in their evaluation and review. Independent advisors may include attorneys, financial advisors, engineering consultants or other advisers or consultants as determined by the Local Government, in its sole discretion, to be reasonably required to review any unsolicited proposal. Independent advisors shall have no affiliation with the private entity submitting an unsolicited proposal.

D. Criteria for Determining Fees.

(1) A private entity assumes all risk in submission of an unsolicited proposal, and a Local Government shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project.

(2) The Local Government shall charge and retain an initial proposal processing fee equal to \$100 to be paid by the proposer prior to the review of an unsolicited proposal.

(3) In addition, the Local Government may charge and retain a reasonable fee to cover the costs of reviewing and evaluating an unsolicited proposal. If it is determined by the Local Government that one or more independent advisors shall be engaged to assist the Evaluation Committee in its review of the unsolicited proposal, as provided in paragraph C above, the fees of all such independent advisors shall be paid by the proposer. The estimated fees of the Local Government and such independent advisors shall be provided to the proposer for approval prior to the engagement of such advisors to review the proposal or the review and evaluation of an unsolicited proposal.

E. Procedures for Determining Release of Information in Unsolicited Proposal.

The Local Government, in its sole discretion, may use any portion of an unsolicited proposal in preparing a request for proposal as described in paragraph F below.

F. Request for Proposals.

(1) Within 60 days of receipt of a recommendation from the Evaluation Committee as provided in paragraph B above, the governing board of the Local Government shall decide whether to approve or reject such unsolicited proposal. If the local government approves the unsolicited proposal, it shall seek competing proposals for the qualifying project, at the cost of the Local Government, by issuing a request for proposal for not less than 90 days.

(2) The request for proposal shall include the criteria for selecting among competing proposals as provided in paragraph H below.

(3) During evaluation, the Local Government may seek written clarification from any proposer regarding the contents of the proposer's response. A request for written clarification may be made when a proposer's response contains conflicting information or is so ambiguous that it is possible for a reasonable person to attribute different meanings to the ambiguous portion of the proposer's response. A request for written clarification may not be used to negotiate (i.e., request the supplier to revise or improve the proposer's response). Written clarifications received from the supplier will become part of that proposer's response.

G. Procedures for Posting and Publishing Notice of the Opportunity to Offer Competing Proposals.

(1) Notices for requests for proposals for qualifying projects shall be posted by the Local Government in a consistent manner with other notices posted for public works bidding as provided by O.C.G.A. § 36-91-1 *et seq.*

(2) Notices for requests for proposals that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least ninety days prior to the deadline for receipt of competing proposals. The second advertisement shall follow no earlier than six weeks from the first advertisement.

(3) Notices for requests for proposals that are advertised solely on the Internet shall be posted continuously at least ninety days prior to the deadline for receipt of competing proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

H. Procedures for Processing, Review and Consideration of Competing Proposals.

(1) After the deadline for the receipt of competing proposals, the Local Government shall reconvene the evaluation committee to review, evaluate and score the responses.

(2) The criteria to be used in the evaluation of competing proposals for a qualifying project shall be determined by the evaluation committee of the Local Government prior to submitting a request for proposal for such qualifying project. The evaluation committee of the Local Government shall establish a scoring matrix for review of responses to a request for proposal. The scoring matrix can be weighted in any fair manner to adequately assess the critical elements of a proposal, with the most likely highest weighted categories being (a) project financing and (b) qualifications and experience.

(3) There are several factors that the Local Government may use when evaluating and selecting an unsolicited proposal, including, but not limited to, the following:

(4) Qualifications and Experience: Factors to be considered to determine whether the proposer possesses the requisite qualifications and experience include:

- (a) Experience with similar projects;
- (b) Demonstration of ability to perform work;
- (c) Leadership structure;
- (d) Project manager's experience;
- (e) Management approach;
- (f) Financial condition; and
- (g) Project ownership.

(5) Project Characteristics: Factors to be considered in determining the project characteristics include:

- (a) Project definition;
- (b) Proposed project schedule;
- (c) Operation of the project;
- (d) Technology; technical feasibility;
- (e) Conformity to laws, regulations, and standards;
- (f) Environmental impacts;
- (g) Condemnation impacts;
- (h) State and local permits; and
- (i) Maintenance of the project.

(6) Project Financing: Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

- (a) Cost and cost benefit to the local government;
- (b) Financing and the impact on the debt burden of the local government or appropriating body;
- (c) Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
- (d) Opportunity costs assessment;
- (e) Estimated cost;
- (f) Life-cycle cost analysis;
- (g) The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
- (h) Such other items as the local government deems appropriate.

(7) In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the local government, or if financing such a project may impact the

local government's debt rating or financial position, the local government may select its own finance team, source, and financing vehicle.

(8) Project Benefit and Compatibility: Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

- (a) Community benefits;
- (b) Community support or opposition, or both;
- (c) Public involvement strategy;
- (d) Compatibility with existing and planned facilities; and
- (e) Compatibility with local, regional, and state economic development efforts.

(9) Other Factors: Other factors that may be considered by the Local Government in the evaluation and selection of competing proposals include:

- (a) The proposed cost of the qualifying project;
- (b) The general reputation, industry experience, and financial capacity of the private entity;
- (c) The proposed design of the qualifying project;
- (d) The eligibility of the project for accelerated documentation, review, and selection;
- (e) Local citizen and government comments;
- (f) Benefits to the public, including financial and nonfinancial;
- (g) The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- (h) The private entity's plans to employ local contractors and residents;
- (i) The recommendation of a committee of representatives of members of the local government and the appropriating body which may be established to provide advisory oversight for the project; and
- (j) Other criteria that the local government deems appropriate.

III. Terms and Definitions

“Comprehensive agreement” means the written agreement between the private entity and the local government required pursuant to the PPFIA.

“Develop” or **“development”** means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain or expand.

“Interim agreement” means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

“Local Government” means any county, municipality, consolidated government, or board of education.

“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 business entity.

“Qualifying Project” means any project selected in response to a request for a local government or submitted by a private entity as an unsolicited proposal in accordance with the PPFIA and subsequently reviewed and approved by a local government, within its sole discretion, as meeting a public purpose or public need. A “qualifying project” shall not include and shall have no application to any project involving:

- (1) The generation of electric energy for sale pursuant to Chapter 3 of Title 46 of the Official Code of Georgia Annotated;
- (2) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated;
- (3) Cable and video services pursuant to Chapter 76 of title 36 of the Official Code of Georgia Annotated; or
- (4) Water reservoir projects as defined in paragraph (10) of O.C.G.A. §12-5-471, which shall be governed by Article 4 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated.

“Revenue” means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

“Unsolicited Proposal” means a written proposal for a qualifying project that is received by a local government and is not in response to any request for proposal for a qualifying project issued by a local government.

“State” means the State of Georgia.
