SEVEN COUNTY INFRASTRUCTURE COALITION
RESOLUTION APPROVING PUBLIC PRIVATE PARTNERSHIP POLICY
April 7, 2017

Resolution No. 2017-04-07C

RESOLUTION APPROVING A PUBLIC PRIVATE PARTNERSHIP POLICY AND RELATED MATTERS.

WHEREAS, in 2017 Senate Bill 204 the Utah Legislature approved public private partnership agreements as part of the Utah Procurement Code; and

WHEREAS, the Utah Procurement Code does not apply to the Coalition; and

WHEREAS, the Coalition desires to adopt a policy for entering into public private partnerships that is consistent with the Utah Procurement Code and that implements best practices for such partnerships;

NOW, THEREFORE, be it resolved by the Governing Board of the Seven County Infrastructure Coalition, Utah as follows:

1. The Governing Board hereby approves the public private partnership policy that was presented herewith and directs the Executive Director to have such policy added to the Coalition’s policy manual.

2. All parts of this Resolution are severable, and if any section, clause or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, clause or provision shall not affect the remaining sections, clauses or provisions of this Resolution.

3. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall be in full force and effect immediately upon its approval and adoption

APPROVED AND ADOPTED this April 7, 2017

Motion by Lytle and Seconded by Burt.
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Chair: [Signature]

ATTEST: [Signature]

Eric Johnson, Legal Counsel
PURPOSES OF PUBLIC-PRIVATE PARTNERSHIP POLICY

Amendment to Procurement Code

Senate Bill 204, sponsored by Senator Ralph Okerlund, passed the Legislature and was signed by Governor Herbert on March 24, 2017. S.B 204 is a great step in the right direction because it expressly authorizes public-private partnerships in Utah. However its scope is limited. It simply authorizes P3s under the same assumptions and procedures for a contract for cleaning a public building or constructing it. It does not address how a public body can receive unsolicited private proposals and benefit from innovation in the private sector. Also S.B. 204 provides no guidance for analyzing the benefits of a P3 arrangement. Most importantly, the procurement code, by its terms, does not apply to any interlocal entities, like the Coalition. We have interacted with the SL Chamber of Commerce and they agree that a fuller P3 authorization should be pursued. Accordingly, we propose that the Coalition adopt its own policy to address matters untouched in S.B. 204.

Key Components and Advantages of the Comprehensive Policy

- Clear authorization and procedures for accepting unsolicited proposals, to protect propriety information and minimize criticisms that the public body did not implement adequate procedural protections.

- P3-specific RFQ/RFP process, which includes more exacting requirements for information from private entities and higher standards of public notice to affected entities.

- Rigorous evaluation of proposals to ensure that the P3 project is in the public interest and the public is receiving the best value over the lifetime of the P3 project.

- Guidelines and restrictions on the terms that may be included in P3 contracts, which help protect against unanticipated risks or being taken advantage of by private entities.

- Clarification of the rights of private entities in P3 projects, including tax liabilities or the allocation of revenues and risks.

Recommended Next Steps

- Enact a Coalition-specific policy that guides the Coalition on how to engage in P3s along the lines of the previously proposed comprehensive legislation. This policy will:
  - ensure that the Coalition acts in the public interest;
  - provide an open and competitive proposal process for accepting bids; and
  - provide clear guidance to future potential private partners.

- Prepare to advance a more comprehensive bill for the 2018 legislative session by:
  - gathering support for a comprehensive bill from like-minded groups;
  - meeting with the Office of Legislative Research and General Counsel to resolve concerns prior to the legislative session; and
  - continuing to get feedback to refine the legislation so that it better meets Utah’s needs.
linking sustainable infrastructure and resources

SEVEN COUNTY INFRASTRUCTURE COALITION

POLICIES AND PROCEDURES FOR PUBLIC-PRIVATE PARTNERSHIPS
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PART 1 — GENERAL MATTERS

1.01 PURPOSE

(1) The purposes of these Policies and Procedures are to:

(a) benefit the members of the Coalition by clarifying and establishing the procedures for participating in public-private partnerships; and

(b) facilitate collaboration between the Coalition, its members, other public entities, and private partners using procedures that are flexible, efficient, open, and transparent consistent with the Utah Procurement Code Sections 63G-6a-702, 703 and 707.

1.02 DEFINITIONS

(1) “Affected jurisdiction” means a public entity in which all or a portion of a qualifying project is located.

(2) “Coalition” means the Seven County Infrastructure Coalition.

(3) “Comprehensive agreement” means an agreement between one or more private partners, the Coalition, and other public entities contractually providing for the responsibilities of all parties in developing or operating a qualifying project.

(4) “Concession” means any lease, license, franchise, easement, or other binding agreement transferring rights for the use, control or operation, in whole or in part, of a qualifying project by the Coalition for a definite term during which the private partner will provide services in return for the right to receive all or a portion of the revenues of the qualifying project.

(5) “Develop” means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

(6) “Interim agreement” means an agreement described in section 3.01 and includes working agreements, coordination agreements, and similar implementation agreements.

(7) “Material default” means any default by a private partner in the performance of its duties as outlined in a comprehensive agreement that jeopardizes adequate service to the public from a qualifying project and is not remedied following notice and a reasonable cure period.

(8) “Member” means one of the counties that comprises the Coalition.

(9) “Operate” means to finance, maintain, improve, equip, modify, repair, or operate.
(10) “Plan for development” means any plan for the management of development of land or infrastructure within a region and includes general plans, master plans, transportation plans, zoning plans, and all other similar plans.

(11) “Private partner” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, other private business entity or combination thereof that seeks to be part of an interim or comprehensive agreement.

(12) “Proposal” means a plan for the development or operation of a qualifying project submitted by a private partner with detail beyond a conceptual level.

(13) “Public entity” means the State and any political subdivision of the State or public corporation, including a county, municipality, school district, community development and renewal agency, local district, special service district, local building authority, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or any agency or instrumentality of any of the above.

(14) “Public facility” means any improvement, structure, building, property, or other physical space, equipment, resource, or establishment in whole or in part that a public entity is authorized by law to acquire, construct, improve, extend, or control, including those described in Utah Code section 11-14-103(1).

(15) “Public-private partnership” means a relationship between the Coalition, other public entities, and one or more private partners established by a comprehensive agreement to provide for public needs through the development or operation of a qualifying project wherein the private partner(s) agree to assume greater responsibilities or risks related to the development or operation of the qualifying project than under traditional procurement methods.

(16) “Public Purpose” means the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all or a portion of the inhabitants within a public entity, including any public need or public use.

(17) “Qualifying project” means a public facility, including facilities that are owned or controlled only in part by a public entity, or services provided by way of a public facility that benefit a portion of the public that is to be developed or operated as a public-private partnership under these Policies and Procedures.

(18) “Request for information” means a process wherein the Coalition requests information or input from potentially affected jurisdictions, other public entities, or potential private partners on any matter related to a potential qualifying project, as set forth in Section 2.04.

(19) “Request for proposals” means the overall process set forth in Part 2 of these Policies and Procedures by which the Coalition obtains responsive proposals for
the development or operation of a qualifying project, which process may consist of one or more stages.

(20) "Request for responsive proposals" means either the only stage of a single-stage request for proposals process or the final stage of a multiple-stage request for proposals process wherein the Coalition requests private partners submit responsive proposals for the development or operation of a qualifying project, as set forth in Section 2.07.

(21) "Request for statement of qualification" means the initial stage of a multiple-stage request for proposals process wherein the Coalition requests that private partners submit information related to the private partners’ capacity, reputation, and ability to develop or operate a qualifying project, as set forth in Section 2.06.

(22) "Response" means any submission to the Coalition by a private partner in connection with a request for information or any stage of a request for proposals.

(23) "Responsive proposal" means a proposal submitted to the Coalition in response to that the Coalition’s request for responsive proposals under Section 2.06, regardless of whether the proposal is incomplete, defective, or inaccurate.

(24) "Revenue" means all revenues, income, earnings, user fees, lease payments, bond proceeds, equity investments, service payments, or other sources of money arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

(25) "Service payments" means payments to a private partner pursuant to an agreement related to the development or operation of a qualifying project that is not an interim or comprehensive agreement.

(26) "Unsolicited proposal" means a proposal submitted to a public entity that is not in response to a request for proposal.

(27) "User fees" means rates, tolls, fees, or other charges imposed by the private partner or the Coalition for use of all or a portion of a qualifying project.

1.03 TYPES OF PUBLIC-PRIVATE PARTNERSHIPS PERMITTED

(1) The Coalition may use any project delivery method or combination of methods to develop or operate a qualifying project including, without limitation, a design-build agreement; a design-build-maintain agreement; a design-build-finance agreement; a design-build-finance-operate agreement; a design-build-operate-maintain agreement; a design-build-finance-operate-maintain agreement; a pre-development agreement; and a concession providing for the private partner to design, build, operate, maintain, manage, or lease a qualifying project.
1.04 ADVISORS

(1) The Coalition may engage consultants, experts, and other advisors at any point to assist in the planning, evaluation, negotiation, development, or operation of requests for proposals, proposals, comprehensive agreements, interim agreements, and qualifying projects.

1.05 APPROVALS

(1) Except as provided in Subsection (2), any approval, decision, action, or other right or duty required or permitted to be made, issued, exercised, or performed by the Coalition under these Policies and Procedures may be made, issued, exercised, or performed by an authorized committee or representative of the Coalition.

(2) The following decisions shall be made by a majority vote of the Coalition board in an open and public meeting:
   (a) issuing a request for information or request for proposals under Part 2 of these Policies and Procedures;
   (b) selecting a responsive proposal under Section 2.18;
   (c) cancelling a request for proposals under Section 2.16; and
   (d) approving any contract entered into by the Coalition under these Policies and Procedures.

1.06 RECORDS

(1) The Coalition shall maintain a record of all agreements and other written statements, documents, or reports created pursuant to a requirement of these Policies and Procedures in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Records of an agreement executed pursuant to these Policies and Procedures, as well as all other written statements, documents, or reports related to that agreement, shall be maintained for as long as the agreement remains in effect or six years, whichever is longer.

(3) Records of all other written statements and documents shall be maintained for six years.
1.07 Applicability of Policies and Procedures to Current Projects

(1) Any project that would be considered a qualifying project under these Policies and Procedures is deemed to have satisfied the requirements of these Policies and Procedures if at the time of the effective date of these Policies and Procedures:

(a) the Coalition is in the process of evaluating and selecting a private partner for the project or has already selected a private partner for the project; and

(b) the Coalition used a public process to obtain bids, proposals, or offers from private partners in order to select a private partner for the project.

(2) Any project that satisfies the requirements of Subsection (1) shall comply with all portions of these Policies and Procedures dealing with the rights and duties of private partners and the Coalition inasmuch as possible given the stage of the project or of negotiations for an interim or comprehensive agreement.

(3) No portion of these Policies and Procedures shall be interpreted to require the Coalition to renegotiate any portion of an interim or comprehensive agreement that has already been negotiated or executed as of the effective date of these Policies and Procedures.
PART 2 — OBTAINING PROPOSALS FOR QUALIFYING PROJECTS

2.01 Unsolicited Proposals Permitted

(1) The Coalition is not obligated to consider or review any unsolicited proposal and is not obligated to issue a request for proposals in response to an unsolicited proposal.

(2) The Coalition may accept an unsolicited proposal to develop or operate a qualifying project if the Coalition follows the procedures set forth in Section 2.02 in reviewing the unsolicited proposal, decides to issue a request for proposals for the qualifying project as required by Section 2.03, and otherwise complies with the requirements of these Policies and Procedures.

(3) Upon submitting an unsolicited proposal, the private partner shall identify those portions of the unsolicited proposal that the private partner believes should be classified as a protected record under Utah Code section 63G-2-305 and shall comply with Utah Code section 63G-2-309 in asserting a claim of confidentiality. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until the unsolicited proposal is rejected, the request for proposals is cancelled without being renewed, or the Coalition and the private partner enter into a comprehensive agreement.

2.02 Procedures for Reviewing Unsolicited Proposals

(1) The private partner shall submit the unsolicited proposal to the person or office designated by the Coalition to receive proposals. If no such person has been designated, then the unsolicited proposal may be submitted to the executive director of the Coalition. If there is no executive director, then the unsolicited proposal may be submitted to the chair or a co-chair of the Coalition.

(2) The private partner shall submit with its unsolicited proposal an initial fee of $1,000, which fee is nonrefundable regardless of whether the Coalition chooses to consider and evaluate the unsolicited proposal. If the Coalition decides to proceed to consider and evaluate an unsolicited proposal, it may impose additional fees to cover the cost of processing, reviewing, and evaluating the unsolicited proposal that are reasonable in relation to the actual cost of the same.

(3) The Coalition, in its sole discretion, shall determine whether to consider or reject the unsolicited proposal within thirty days of the submission of the unsolicited proposal. The Coalition may rely on any fact or consideration that it considers relevant in making this determination. The Coalition shall notify the private partner of its decision.
(4) If the Coalition determines to consider the unsolicited proposal, the Coalition shall have sixty days to consider the proposal and decide whether to issue a request for proposals, which sixty-day period shall begin on the day after the Coalition decides to consider the unsolicited proposal and notifies the private partner. The Coalition may rely on any fact or consideration that it considers relevant in making this determination.

(5) During or at the end of the sixty-day period described in Subsection (4), the Coalition shall make a determination of whether to reject the unsolicited proposal or hold meeting and vote pursuant to Section 1.05 on whether to issue a request for information or request for proposals. If the Coalition decides to reject the unsolicited proposal, it shall notify the private partner of its decision and provide a general description of its reasons for doing so. The meeting and vote required by Section 1.05 shall be held within a reasonable time after the sixty-day period.

2.03 REQUEST FOR PROPOSALS REQUIRED – DETERMINATION OF PUBLIC NEED

(1) The Coalition may issue a request for proposals to develop or operate a proposed qualifying project, and the Coalition shall issue a request for proposals that satisfies this Part to develop or operate a proposed qualifying project prior to entering into a comprehensive agreement.

(2) Prior to issuing a request for proposals, the Coalition may issue a request for information as set forth in Section 2.04.

(3) The Coalition may conduct a request for proposals in multiple stages, where an earlier stage is used to qualify private partners for subsequent stages or to narrow the number of private partners that will move on to subsequent stages, if the Coalition determines that it is appropriate to do so. The first stage of any multiple-stage process shall consist of a request for statement of qualifications under Section 2.06, and the final stage shall consist of a request for responsive proposals under Section 2.07.

(4) The Coalition can issue a request for proposals for a qualifying project only if:

(a) there is a public need or purpose for the qualifying project or a public benefit derived from the qualifying project, whether immediate or future;

(b) the Coalition complies with Section 2.05; and

(c) the qualifying project is compatible with current plans for development as found by the Coalition; or

(d) the qualifying project is not compatible with current plans for development and the Coalition determines:
(i) the qualifying project is in the public interest or serves a public purpose; and

(ii) it will seek to revise or modify any necessary plan for development to permit the development or operation of a qualifying project.

(5) The Coalition may engage in lawful activities to revise or modify a plan for development in order to permit the development or operation of a qualifying project.

(6) In determining the public need or purpose under Subsection (4)(a), the Coalition may rely on responses to requests for information, reports, studies, recommendations, or suggestions from its staff, retained consultants and experts, other public entities, and private entities and individuals, including those that may participate in or benefit from the proposed qualifying project.

(7) The Coalition may enter into interim agreements without issuing a request for proposals.

2.04 REQUEST FOR INFORMATION

(1) Prior to issuing any request for proposals, the Coalition may issue a request for information in order to determine the public need for a potential qualifying project or to obtain input or information from potentially affected jurisdictions, other public entities, or potential private partners on any matter related to a potential qualifying project, including the potential public benefit, feasibility, or public or private interest and capacity.

(2) The Coalition shall, in a request for information under this Part:

(a) state the period of time during which a response will be accepted;

(b) describe the manner in which a response shall be submitted;

(c) state the place where a response shall be submitted;

(d) provide a description of the potential qualifying project and its purpose with as much detail as is feasible and practical;

(e) describe the input or information sought to be obtained by the request for information; and

(f) provide notice of the request for information.

(3) The notice required by Subsection (2) may be published by any means that the Coalition determines will result in sufficient number of useful responses.
(4) The Coalition shall not enter into or negotiate any terms of an interim or comprehensive agreement based on responses received as a result of a request for information.

2.05 FORM AND PROCEDURE FOR REQUESTS FOR PROPOSALS

(1) The Coalition shall, in a request for proposals under this Part:

(a) state the period of time during which a responsive proposal will be accepted or, if the response for proposals is conducted as a multiple-stage process, the periods of time in which responses will be accepted for each stage;

(b) describe the manner in which a response shall be submitted;

(c) state the place where a response shall be submitted;

(d) provide a description of the qualifying project and its purpose;

(e) describe the project delivery method by which the qualifying project will be developed or operated;

(f) if the request for proposals will be conducted in a single stage, include or incorporate by reference the requirements for a request for responsive proposals under Section 2.07, including:

(i) a description of the minimum requirements necessary for a responsive proposal;

(ii) a description of the subjective and objective evaluation criteria that will be used to evaluate the responsive proposal and the private partner; and

(iii) the contractual terms and conditions required by the Coalition;

(g) if the request for proposals will be conducted in multiple stages, where an earlier stage is used to qualify private partners for subsequent stages, include or incorporate by reference:

(i) a description of the stages and their purpose, including the minimum requirements for a response at each stage of the process, as set forth in Section 2.06 and Section 2.07;

(ii) a description of the subjective and objective evaluation criteria that will be used to evaluate the responses and the private partner at each stage of the process, as set forth in Section 2.06 and Section 2.07;
(iii) a statement that the first stage is for prequalification only and that a private partner may not submit any pricing, contractual, or design information in a response during the first stage;

(iv) a statement that responses in subsequent stages will only be accepted from a private partner who prequalifies in previous stages;

(h) the contractual terms and conditions required by the Coalition;

(i) state that the Coalition will consider comments from affected jurisdictions as set forth in Section 2.10 prior to the execution of a comprehensive agreement.

(i) state whether the Coalition will permit discussion, interviews, and presentations as set forth in Section 2.12; and

(k) state that best and final offers may be allowed from responsible private partners who submit responsive proposals that meet the minimum qualifications identified in the request for proposals, as provided in Section 2.15;

(2) The Coalition may include additional information related to the proposed qualifying project in a request for proposals under this Part, including:

(a) property rights already owned by the Coalition;

(b) planned projects that may impact the proposed qualifying project, as described in Section 3.07; and

(c) any other information that the Coalition determines is relevant.

(3) The Coalition shall provide notice of a request for proposals as set forth in Section 2.09 and Section 2.10.

(4) The Coalition shall provide a reasonable time for the submission of responses in relation to the size or complexity of the proposed qualifying project and the number of stages of the request for proposals.

(5) The Coalition may impose an application fee for any responses submitted for a request for proposals if:

(a) the fee is reasonable in relation to the actual cost of processing, reviewing, and evaluating the proposal; and

(b) the application fee is set forth in the request for proposals.
(6) The Coalition may provide a stipend or other form of compensation to private partners that submit responses if:

(a) the response is not rejected under Section 2.16; and

(b) the Coalition determines in writing that such compensation is in the public interest.

(7) The Coalition may participate in discussions, interviews, or presentations as set forth in Section 2.12 at any stage in the request for proposals so long as it provides each private partner an equal opportunity to participate in or conduct discussions, interviews, or presentations.

(8) The Coalition shall review and evaluate all responses to a request for proposals as set forth in Section 2.06 and Section 2.07 as is appropriate.

2.06 REQUEST FOR STATEMENT OF QUALIFICATIONS

(1) If the Coalition conducts a request for proposals in multiple stages, the first stage of the request for proposals shall consist of a request for statement of qualifications as set forth in this Section.

(2) The purpose of a request for statement of qualifications is to narrow the number of private partners to those who are responsible, qualified, and have the capacity to develop or operate the qualifying project.

(3) The Coalition may not:

(a) select a private partner to develop or operate a qualifying project based solely on the process described in this section;

(b) request pricing, contractual, or design information or negotiate contractual terms through the process described in this section.

(4) The request for statement of qualifications shall set forth the minimum requirements for a response and describe the evaluation criteria that will be used to evaluate responses. The Coalition may use any of the minimum requirements and evaluation criteria described in Section 2.08(1)(a) that will assist the Coalition in determining whether a private partner is qualified. No minimum requirements or evaluation criteria other than those described in Section 2.08(1)(a) may be included.

(5) The Coalition shall, after receiving and reviewing the statements of qualifications and participating in any discussions, interviews, or presentations under Section 2.12, shall identify no more than three private partners meeting the minimum mandatory requirements and evaluation criteria as qualified private partners who
are allowed to participate in the remaining stages of the multiple-stage request for proposals process. In evaluating responses, the Coalition:

(a) shall evaluate statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements and evaluation criteria set forth in the request for statement of qualifications.

(b) may not evaluate a statement of qualifications using criteria not included in the request for statement of qualifications.

(6) After identifying the qualified private partners who are allowed to participate in the remaining stages of the multiple-stage request for proposals process, the Coalition shall notify each private partner in writing whether the private partner was accepted or rejected. This notice shall include:

(a) if a private partner is accepted:

(i) a description of the next stage of the multiple-stage request for proposals;

(ii) the period of time during which a response will be accepted for the next stage;

(iii) the manner in which a responsive proposal shall be submitted for the next stage; and

(iv) the place where a responsive proposal shall be submitted for the next stage; and

(b) if a private partner is rejected, a general description of the Coalition’s reasoning for the rejection.

2.07 REQUEST FOR RESPONSIVE PROPOSALS

(1) If the Coalition conducts a request for proposals in multiple stages, or if it conducts the request for proposals in a single stage, the final or only stage shall consist of a request for responsive proposals as set forth in this section.

(2) The purpose of a request for responsive proposals under this section is to select a responsive proposal for the development or operation of the qualifying project in order to enter into negotiations for a comprehensive agreement and any necessary interim agreements by having qualified private partners submit a final response describing both the private partner and the private partner’s plan for the development or operation of the qualifying project.
(3) The request for responsive proposals shall set forth all the minimum requirements for a responsive proposal and the evaluation criteria that will be used to evaluate responsive proposals. The Coalition shall include the requirements set forth in Section 2.08(1)(c) and all other minimum requirements and evaluation criteria described in Section 2.08(1) that the Coalition determines is necessary or helpful to selecting a responsive proposal.

(4) The Coalition shall review and evaluate responsive proposals as set forth in Section 2.18.

2.08 Minimum Requirements and Evaluation Criteria

(1) The minimum requirements and evaluation criteria that the Coalition may require a private partner to acknowledge, satisfy, or address if included in the request for proposals include:

(a) the suitability of the private partner for the qualifying project, including the private partner's:
   (i) experience;
   (ii) performance ratings;
   (iii) workmanship;
   (iv) references;
   (v) reputation;
   (vi) location;
   (vii) management and staff requirements or standards;
   (viii) financial solvency and capacity;
   (ix) relationship with the Coalition and other public entities; and
   (x) relationship with the citizens in the area served by the qualifying project;

(b) the private partner's plan for the development or operation of the qualifying project including:
   (i) a topographic map (1:2,000 or other appropriate scale) indicating the location or coverage area of the qualifying project;
   (ii) conceptual design of such facility or facilities to be provided;
(iii) schedule for the initiation, completion, and operation of the qualifying project, including the proposed major responsibilities and timeline for activities to be performed by the Coalition and the private partner throughout the proposed term of contract;

(iv) information relating to the current anticipated development of facilities or provision of services that are similar to the qualifying project being proposed by the private partner, if any, of each affected jurisdiction;

(v) method and timeframe by which the private partner proposes to secure necessary property interests required for the qualifying project and any interest or right the private partner currently has in real property or other tangible or intangible property that is relevant to the qualifying project;

(vi) major permits and approvals required for developing or operating the qualifying project and the projected schedule for obtaining such permits and approvals;

(vii) private partner’s overall plans for financing the qualifying project, including the type, source, and amount of anticipated funding and a description of the division of private and public funding, if any;

(viii) estimated costs of development and operation of the qualifying project and the division of such costs between the private partner and the Coalition;

(ix) division of revenues between the private partner and the Coalition;

(x) private partner’s plan for operation of the qualifying project if applicable, including descriptions of user fees, lease payments, and service payments, and the methodology and circumstances for changes to such user fees, lease payments, and service payments over time;

(xi) public utilities or facilities that will be impacted by the qualifying project and the private partner’s plan to mitigate or manage that impact;

(xii) different types of risks involved in developing or operating the qualifying project and the proposed allocation of those risks between the private partner and the Coalition;

(xiii) anticipated agreements with persons other than the Coalition;

(xiv) compatibility of the qualifying project with the public need identified in Section 2.03(4)(a); and
(xv) compatibility of the qualifying project with all plans for
development;

(c) the comparative advantage of the qualifying project, including:

(i) quality of the qualifying project in relation to similar facilities or
services;

(ii) cost of the qualifying project in relation to similar facilities or
services;

(iii) cost of the qualifying project in relation to the benefit provided to
the public;

(iv) advantages or disadvantages of developing or operating the
qualifying project as a public-private partnership as opposed to a
traditional procurement, including the anticipated cost over the
project life-cycle, adjusted for risk and risk transfers; and

(v) loss of future public revenue; and

(d) other subjective or objective criteria that the Coalition determines is
necessary or appropriate and includes in the request for proposals.

(2) Criteria or requirements not described in the request for proposals may not be
used to evaluate a response.

2.09 NOTICE OF REQUEST FOR PROPOSALS

(1) The Coalition shall provide public notice of a request for proposals that includes:

(a) information on how to contact the Coalition;

(b) the date of the opening and closing of the time period for accepting
responsive proposals;

(c) information on how to obtain a copy of the request for proposals
documents; and

(d) a general description of the qualifying project that will be developed or
operated through the request for proposals.

(2) The Coalition shall publish the notice described in Subsection (1):

(a) at least once in a newspaper of general circulation in the Coalition at least
five days before the beginning of the time period for accepting responses; and
(b) beginning at least five days before the beginning of the time period for accepting responses, either:

(i) on the main website for the Coalition;

(ii) on the Utah Public Notice Website; or

(iii) on a state website that is owned, managed by, or provided under contract with the Division of Purchasing and General Services for posting a public procurement notice.

(3) The notice provided under 2.09(2)(b) shall remain on the website until the request for proposals is complete or cancelled.

(4) The Coalition shall make a copy of the request for proposals documents available for public inspection at the main office of the Coalition and on the main website for the Coalition until the execution of a comprehensive agreement or until the cancellation of the request for proposals under Section 2.16.

2.10 NOTICE TO AFFECTED JURISDICTIONS

(1) Any time the Coalition decides to issue a request for proposals, the Coalition shall notify affected jurisdictions by furnishing a copy of the request for proposals to each affected jurisdiction in order to permit those affected jurisdictions to submit comments on the project’s potential impact on or compatibility with local and regional budgets, infrastructure, plans for development, and any other relevant consideration.

(2) The Coalition shall consider the comments of the affected jurisdictions before entering into a comprehensive agreement with a private partner.

2.11 SUBMISSION OF RESPONSE – RESUBMISSION OF UNSOLICITED PROPOSAL

(1) In submitting a response, a private partner shall:

(a) address each minimum requirement and evaluation criterion identified in the request for proposals as completely as possible;

(b) provide the names and addresses of the persons who may be contacted for further information concerning the response; and

(c) identify those portions of the response that the private partner believes should be classified as a protected record under Utah Code section 63G-2-305 and shall comply with Utah Code section 63G-2-309 in asserting a claim of confidentiality.
(2) A private partner who submitted an unsolicited proposal that led to the Coalition’s decision to issue a request for proposal shall resubmit its unsolicited proposal as a responsive proposal or otherwise comply with the request for proposals. The private partner may update, correct, expand, or otherwise alter its unsolicited proposal to correspond with the request for proposals.

2.12 DISCUSSIONS, INTERVIEWS, AND PRESENTATIONS

(1) The Coalition may enter into discussions or conduct interviews with or attend presentations by private partners who submit responses for the purpose of clarifying information contained in responses.

(2) In a discussion, interview, or presentation under Subsection (1), a private partner:

(a) may only explain, illustrate, or interpret the contents of the vendor's original response; and

(b) may not:

(i) address criteria or specifications not contained in the private partner’s original response;

(ii) correct a deficiency, inaccuracy, or mistake in a response that is not an immaterial error;

(iii) correct an incomplete submission of documents that was required to be submitted with the response;

(iv) correct a failure to submit a timely response;

(v) substitute or alter a required form or other document;

(vi) remedy a cause for a private partner being considered to be not responsible or a response not responsive to the Coalition’s request; or

(vii) correct a defect or inadequacy resulting in a determination that a private partner does not meet the mandatory minimum requirements or evaluation criteria.

2.13 CORRECTION OF RESPONSES

(1) The Coalition:

(a) may allow a private partner to correct an immaterial error in a response as provided in this section; and
may not allow a private partner to:

(i) correct a deficiency, inaccuracy, or mistake in a response that is not an immaterial error;

(ii) correct an incomplete submission of documents that the solicitation required to be submitted with the response;

(iii) correct a failure to submit a timely response;

(iv) substitute or alter a required form or other document specified in the request for proposals;

(v) remedy a cause for a private partner being considered to be not responsible or a response not responsive; or

(vi) correct a defect or inadequacy resulting in a determination that a private partner's response does not meet the mandatory minimum requirements.

(2) The Coalition shall establish a deadline by which a private partner is required to submit a correction under this section.

(3) The Coalition may not allow a private partner to correct an immaterial error in a response if the private partner submits the correction after the deadline established under Subsection (2).

## 2.14 CLARIFYING INFORMATION IN RESPONSES

(1) The Coalition may at any time make a written request to a private partner to clarify information contained in a response.

(2) The Coalition may allow a private partner to respond to a request under Subsection (1):

(a) in writing; or

(b) by submitting a printed document.

(3) The Coalition that requests a private partner to clarify information contained in a response under this section shall establish a deadline by which the private partner is required to submit the clarifying information.

(4) The Coalition may not allow a private partner to submit clarifying information after the deadline established under Subsection (3).

(5) A private partner's response to a request under this section:
(a) may only explain, illustrate, or interpret the contents of the private partner's original response;

(b) may not be used to:

(i) address criteria or specifications not contained in the private partner's original response;

(ii) correct a deficiency, inaccuracy, or mistake in a response that is not an immaterial error;

(iii) correct an incomplete submission of documents that the solicitation required to be submitted with the response;

(iv) correct a failure to submit a timely response;

(v) substitute or alter a required form or other document specified in the request for proposal;

(vi) remedy a cause for a private partner being considered to be not responsible or a response not responsive; or

(vii) correct a defect or inadequacy resulting in a determination that a private partner does not meet the minimum requirements identified in the request for proposals.

2.15 BEST AND FINAL OFFERS

(1) At any time during the evaluation process, the Coalition may:

(a) request best and final offers from responsible private partners who have submitted responses that meet the minimum requirements identified in the request for proposals, if:

(i) no single response addresses all the specifications stated in the request for proposals;

(ii) all or a significant number of the responses are ambiguous on a material point and the Coalition requires further clarification in order to conduct a fair evaluation of proposals;

(iii) the Coalition needs additional information from all private partners to complete the evaluation of responses;

(iv) the differences between responses in one or more material aspects are too slight to allow the Coalition to distinguish between responses;
(v) all responses propose costs or service payments that are too high or over budget; or

(vi) the Coalition determines it is in the public interest to request best and final offers; and

(b) evaluate those best and final offers as set forth in Section 2.18.

(2) In requesting and evaluating best and final offers, the Coalition shall:

(a) ensure that each private partner receives fair and equal treatment with respect to the other private partners;

(b) establish a schedule and procedures for conducting discussions, interviews, or presentations;

(c) ensure that information in each response and information gathered during discussions, interviews, or presentations is not shared with other private partners until a response is selected;

(d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other responsive proposals; and

(e) set a common date and time for the submission of best and final offers.

(3) In a best and final offer, a private partner:

(a) may address only the issues described in the request for best and final offers; and

(b) may not correct a material error or deficiency in the private partner’s responsive proposal or address any other issue not described in the request for best and final offers.

(4) If a private partner chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the private partner prior to the Coalition’s request for best and final offers shall be treated as the private partner’s best and final offer.

2.16 CANCELLATION OF REQUEST FOR PROPOSALS – REJECTION OR WITHDRAWAL OF RESPONSES

(1) The Coalition may cancel a request for proposals if:

(a) it is in the best interests of the Coalition to do so;
(b) the Coalition issues a written statement describing its reasons for the cancellation;

(c) the Coalition provides notice of the cancellation by

(i) providing a copy of the written statement to all private partners who have submitted responses to the request for proposals; and

(ii) publishing a copy of the written statement as set forth in Section 2.09.

(2) The Coalition may not accept a response after the time for submission of a response has expired.

(3) At any time during the request for proposals process, the Coalition may reject a response if the Coalition determines in writing that:

(a) the private partner submitting the response is not responsible;

(b) the response is not responsive or does not meet the mandatory minimum requirements; or

(c) the private partner submitting the response failed to pay a required application fee.

(4) The Coalition that rejects a response under Subsection (3) shall:

(a) make a written finding, stating the reasons for the rejection; and

(b) provide a copy of the written finding to the private partner that submitted the rejected response.

(5) A private partner who has submitted a response may withdraw its response at any time by providing written notice to the Coalition. A private partner who withdraws its response may not submit a new response.

2.17 CONFIDENTIALITY

(1) It is the private partner’s sole responsibility to correctly identify protected information in a response under Utah Code section 63G-6b-201(3) and Utah Code section 63G-6b-211(1)(c), and the Coalition shall not be held liable for any disclosure of unidentified protected information.

(2) The Coalition shall strive to maintain the confidentiality of all information identified as a protected record in a response or confidential information obtained through a discussion, interview, or presentation unless the Coalition determines that the information was incorrectly identified as a protected record or the
Coalition is otherwise required under law to disclose the information. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until the request for proposal is cancelled without being renewed or the Coalition and the private partner enter into a comprehensive agreement. Qualifying projects under federal jurisdiction or using federal funds must conform to federal regulations under the Freedom of Information Act.

2.18 EVALUATION AND SELECTION OF RESPONSIVE PROPOSAL

(1) The Coalition shall ensure that responsive proposals are opened, reviewed, and evaluated in a manner that:

(a) ensures that each private partner receives fair and equal treatment with respect to the other private partners; and

(b) avoids disclosing any confidential information under Section 2.17 to competing private partners.

(2) The Coalition is not required to select any responsive proposal, including the responsive proposal with the lowest projected cost or greatest projected public revenue.

(3) If the Coalition decides to not select any of the responsive proposals, the Coalition may either:

(a) issue another request for proposals as set forth in these Policies and Procedures; or

(b) cancel the request for proposals as set forth in Section 2.16.

(4) Once the deadline for the submission of responsive proposals has passed, the Coalition may select any responsive proposal that it determines is the best value and serves the public interest or purpose, regardless of whether the responsive proposal contained the lowest projected cost or greatest projected public revenue.

(5) In determining whether a responsive proposal is the best value and serves the public interest, the Coalition shall consider only those requirements, evaluation criteria, and other considerations that it included in the request for proposals, including:

(a) all minimum requirements and evaluation criteria identified in the request for proposals;

(b) comments from affected jurisdictions, as described in Section 63G-6b-310;
(c) whether the public need identified in 63G-6b-303(5)(a) is better served through a traditional procurement, including an analysis of the anticipated cost over the project life-cycle, adjusted for risk and risk transfers;

(d) the qualifying project’s compatibility with all plans for development;

(e) whether the proposal will result in the timely development or operation of the qualifying project; and

(f) whether the estimated cost of the qualifying project is reasonable in relation to similar facilities or services.

(6) In making its determination under this section, the Coalition may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

(7) The deliberations of the Coalition related to the evaluation and selection of a responsive proposal may be held in private except for the hearing provided in Section 1.05.

(8) The selection of a private partner’s responsive proposal does not obligate the Coalition to enter into a comprehensive agreement if the Coalition determines that it is not in the public interest to do so. If the Coalition does not execute a comprehensive agreement after selecting a responsive proposal, the Coalition shall compensate the private partner for any detrimental reliance or adverse change in position resulting from the selection of the private partner’s responsive proposal or the negotiation of a comprehensive agreement.

2.19 PUBLIC NOTICE OF SELECTION OF RESPONSIVE PROPOSAL

(1) Within 45 days of the selection of a responsive proposal, the Coalition shall issue a written report describing the basis for its selection subject to the confidentiality limitations described in Section 2.17. Such statement shall include, at a minimum:

(a) a description of the qualifying project;

(b) a statement of the public need for or benefits to the public from the qualifying project;

(c) a description of the private partner;

(d) an outline of anticipated, material contractual terms that will be included in the comprehensive agreement, including:

(i) project delivery method;
(ii) contract length;

(iii) the division of revenue between the Coalition and the private partner;

(iv) service payments made to the private partner for the development or operation of the qualifying project;

(v) geographical area served by the qualifying project;

(vi) estimated user fees and other service costs and the methods for determining or altering the same;

(vii) type of financing and sources of funding for the qualifying project; and

(viii) timeline of the anticipated initiation and completion of the qualifying project; and

(ix) any other consideration that the Coalition believes should be disclosed to the public.

(2) The report described in Subsection (1) may consist of the private partner’s responsive proposal, subject to the confidentiality limitations described in Section 3.17, and a description of the Coalition’s reasoning for its selection of the responsive proposal.

(3) The Coalition shall make a copy of the report described in Subsection (1) available for public inspection at the main office of the Coalition and on the main website for the Coalition until the execution of a comprehensive agreement or the Coalition’s decision to no longer pursue a comprehensive agreement with the selected private partner.

2.20 PROTESTS

(1) A private partner who is aggrieved in connection with the Coalition’s request for proposals or selection of a responsive proposal may file a protest as set forth in Title 63G, Chapter 6a, Part 16.

(2) In applying Title 63G, Chapter 6a, Part 16 to a protest under these Policies and Procedures, the following equivalents apply:

(a) evaluation committee, conducting procurement unit, issuing unit, and similar terms refer to the Coalition or to a committee or representative authorized by the Coalition to act on its behalf;
(b) protest officer refers to the Coalition or to a committee or representative authorized by the Coalition to receive, process, and review protests;

(c) procurement, solicitation, bid process, and similar terms refer to the request for proposals process set forth in Part 2 of these Policies and Procedures;

(d) solicitation response, bids, and similar terms refers to responses and responsive proposals; and

(e) award of a contract, procurement decision, and similar terms refers to the selection of qualified private partners or the selection of a responsive proposal.
PART 3 — INTERIM AND COMPREHENSIVE AGREEMENTS

3.01 INTERIM AGREEMENTS

(1) Prior to or in connection with the negotiation of a comprehensive agreement, the Coalition may enter into one or more interim agreements. An interim agreement under these Policies and Procedures shall be limited to:

(a) authorizing the private partner to commence activities for which it may be compensated related to a proposed qualifying project, including:

(i) project planning and development;
(ii) design and engineering;
(iii) environmental analysis and mitigation;
(iv) surveys;
(v) advance right-of-way acquisition; and
(vi) ascertaining the availability of financing or funds;

(b) establishing the process and timing of the negotiation of the comprehensive agreement; and

(c) assisting the Coalition with other aspects of the development or operation of a qualifying project that are more effectively and efficiently handled prior to the execution of a comprehensive agreement.

(2) The selection of a private partner’s responsive proposal does not obligate the Coalition to enter into an interim agreement with that private partner.

(3) The execution of an interim agreement does not obligate the Coalition to enter into a comprehensive agreement.

(4) The Coalition shall make a copy of any interim agreement entered into under these Policies and Procedures and any amendments thereto available for public inspection at the main office of the Coalition and on the main website for the Coalition until the completion or termination of the interim agreement.

3.02 COMPREHENSIVE AGREEMENTS

(1) Prior to developing or operating the qualifying project, the Coalition and the private partner shall negotiate and enter into a comprehensive agreement based on the terms of the private partner’s responsive proposal. The comprehensive agreement shall provide for each of the following, if applicable:
(a) division of responsibility between the Coalition and the private partner for specific project elements;
(b) management and allocation of project risks, including delays;
(c) division of costs of development or operation of the qualifying project, including any taxes;
(d) allocation of financial responsibility for cost overruns;
(e) performance standards and any damages for failure to meet such standards;
(f) method of financing the development or operation of the qualifying project and the source of funding, as set forth in Section 3.03;
(g) division of revenues from the development or operation of the qualifying project, as set forth in Section 3.04;
(h) environmental protection and performance standards;
(i) delivery of construction, durability, maintenance, performance, or payment bonds or other forms of security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the Coalition and in compliance with applicable law, as set forth in Section 3.05;
(j) review of plans and specifications for the qualifying project by the Coalition and approval by the Coalition if the plans and specifications conform to standards acceptable to the Coalition;
(k) inspection of the qualifying project by the Coalition to ensure that the private partner's activities are acceptable to the Coalition and in accordance with the provisions of the comprehensive agreement and these Policies and Procedures;
(l) maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the Coalition accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the Coalition and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;
(m) monitoring of the practices of the private partner by the Coalition to ensure that the qualifying project is properly maintained;
(n) reimbursement to be paid to the Coalition for services provided by the Coalition;
(o) accounting and auditing standards to be used to evaluate work on the project, including the filing of appropriate financial statements on a periodic basis;

(p) user fees or service payments as may be established from time to time by agreement of the parties. A copy of any agreements executed by the private partner related to a comprehensive agreement shall be filed with the Coalition;

(q) performance incentives;

(r) timeframes for the performance of all obligations under the contract, including provisions providing for the phasing of the qualifying project and the alteration or extension of such timeframes as necessary;

(s) procedures for the completion and termination of the comprehensive agreement, including responsibility for reconstruction or renovations required for a qualifying project to meet all applicable government standards upon the completion or termination of the comprehensive agreement;

(t) ownership of the project during and at the completion of the comprehensive agreement;

(u) the rights and duties of private partners, including those provisions set forth in Section 3.06;

(v) non-compete clauses, as set forth in Section 3.07;

(w) policies and procedures governing the rights and responsibilities of the Coalition and the private partner in the event the comprehensive agreement is terminated or there is a material default by the private partner, including those provisions set forth in Section 3.08, including:

(i) provision for notice of default and cure rights for the benefit of the private partner;

(ii) the rights of the Coalition to recover damages or pursue other remedies;

(iii) assumption of the rights, duties, and responsibilities of the private partner by the Coalition or another private partner; and

(iv) the transfer, purchase, foreclosure, or condemnation of property or other interests of the private partner by the Coalition or another private partner;
provisions governing dispute resolution, including those provisions set forth in Section 3.09; and

such other terms and conditions agreed to mutually by the Coalition and the private partner.

(2) In negotiating user fees and service payments, the parties shall establish user fees and service payments that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

(3) In the comprehensive agreement, the Coalition and private partner shall agree to ensure that public funds shall be used solely for the public portion of the qualifying project, and that the public portion of the qualifying project shall be open to the public to the extent necessary to achieve the qualifying project’s public purpose.

(4) The term of any comprehensive agreement shall not exceed a period of thirty-five years unless the Coalition determines in writing that a longer period is necessary and in the public interest.

(5) Any changes or additions in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(6) The Coalition shall make a copy of any comprehensive agreement entered into under these Policies and Procedures and any amendments thereto available for public inspection at the main office of the Coalition and on the main website for the Coalition until the completion or termination of the comprehensive agreement.

3.03 ELIGIBLE FUNDING AND FINANCING

(1) Any financing of a qualifying project may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. The private partner and the Coalition may utilize any and all revenues that may be available to them for the purposes of these Policies and Procedures and may, to the fullest extent permitted by applicable law:

(a) issue debt, equity, or other securities or obligations, provided that debt issued by the Coalition can only secure the Coalition’s interest in a qualifying project and cannot secure any private partner’s interest;

(b) enter into leases, concessions, and grant and loan agreements;

(c) access any designated state or federal funds.
(d) borrow or accept grants from any state or federal infrastructure bank or other institution;

(e) impose and collect user fees; and

(f) secure any other financing with a pledge of, security interest in, or lien on any or all property, including all property interests in the qualifying project.

(2) The Coalition may take any action to obtain federal, state, and local assistance for a qualifying project and may enter into any contract required to receive such assistance. Federal, state, and local monies may be combined with any private sector monies for any project purposes to the fullest extent allowed by law.

(3) The full faith and credit of the Coalition or its members shall not be pledged to secure any financing of the private partner at any time.

3.04 Revenues

(1) Any revenues that result from a qualifying project shall first be used to cover the costs of developing or operating the qualifying project and then allocated between the private partner and the Coalition as established by the comprehensive agreement.

(2) Any revenues obtained by the Coalition shall be allocated between the Coalition and its members as set forth in the interim or comprehensive agreement. If the interim or comprehensive agreement does not provide for an allocation, such funds shall be allocated as set forth in the Coalition's governing interlocal agreement or as otherwise agreed upon by the members.

3.05 Bonds

(1) The Coalition may require construction, durability, maintenance, performance, or payment bonds in any amount or form agreed upon by the parties to the comprehensive agreement.

(2) If the any bond is required by the comprehensive agreement, the private partner shall deliver such bond to the Coalition prior to beginning to develop or operate the qualifying project.

(3) If the comprehensive agreement provides for a payment bond, the terms of such payment bond shall provide that a person shall have a right of action on such payment bond for any unpaid amount due to the person if:
the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section;

(b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made; and

(c) the person brings the action in a court of competent jurisdiction in a county where the qualifying project is to be developed or operated within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based.

3.06 RIGHTS AND DUTIES OF A PRIVATE PARTNER

(1) A private partner that enters into an interim or comprehensive agreement shall comply with all requirements to do business and develop or operate the qualifying project in any state in which any part of the qualifying project is located, including any licensing, registration, reporting, or other requirements imposed by law, rule, or ordinance.

(2) A private partner that enters into an interim or comprehensive agreement shall designate and maintain an agent within Utah to accept service of process.

(3) A private partner that enters into a comprehensive agreement may own, lease or acquire any other right to use or operate the qualifying project.

(4) In operating a qualifying project, the private partner may:

(a) make classifications according to reasonable and lawful categories for assessment of user fees;

(b) to the same extent that the Coalition may make and enforce rules with respect to similar facilities, recommend reasonable rules and, if such are adopted by the Coalition, enforce those rules as authorized by the Coalition; and

(c) with the consent of the Coalition, execute any material agreements related to the development or operation of the qualifying project.

(5) A private partner that enters into a comprehensive agreement shall:

(a) keep the qualifying project or the portion of the qualifying project funded through public funds open for use by the public at all times, or as appropriate based upon the use and type of the facility and its public purpose, after its initial opening and upon payment of applicable user fees or service payments; provided that the qualifying project may be
temporarily closed because of emergencies or, with the consent of the Coalition, to protect the safety of the public or for reasonable construction or maintenance activities;

(b) cooperate with the Coalition in making best efforts to establish any interconnection with the qualifying project requested by the Coalition; and

(c) adhere to the same standards and laws related to discrimination in employment as the Coalition in connection with the private partner’s development or operation of the qualifying project.

(6) Nothing shall prohibit a private partner of a qualifying project from providing additional services through the qualifying project to public or private entities other than the Coalition so long as the provision of additional service does not impair the private partner’s ability to meet its commitments to the Coalition pursuant to the interim or comprehensive agreement.

3.07 NON-COMPETE CLAUSES

(1) As used in this section, a “non-compete clause” means a provision within a contract that limits the ability of a party to that contract to compete with or otherwise take actions that may impact the revenue of the other party or parties to the contract.

(2) The parties to a comprehensive agreement may provide for a non-compete clause only as provided in this section. Any other form of a non-compete clause not provided herein is unenforceable and may not serve as the basis for a claim in law or equity against the Coalition.

(3) The parties to a comprehensive agreement may agree to enter into a non-compete clause limiting the ability of the private partner to compete with or otherwise take actions that may impact the revenue of the Coalition or its members from any source.

(4) The comprehensive agreement shall contain a provision by which a private partner expressly agrees that it is prohibited from seeking injunctive or other equitable relief to delay, prevent, or otherwise hinder the Coalition or any public entity from developing or operating any project, planned or unplanned, that may impact the revenue that the private partner may derive from the qualifying project under a comprehensive agreement.

(5) The comprehensive agreement shall contain a provision by which a private partner expressly agrees that it is prohibited from seeking damages or compensation for any adverse effect on revenues resulting from a planned project.

(6) The parties to a comprehensive agreement may agree in the comprehensive agreement that the Coalition may provide for reasonable compensation to the
private partner for the adverse effect on revenues resulting from an unplanned revenue impacting project developed or operated by the Coalition.

(7) A project is considered to have been planned under this section if

(a) it is the subject of an ongoing procurement action, solicitation, or request for proposals;

(b) it is under contract for operation or development;

(c) it has been provided for in a public plan for development; or

(d) if the private partner was provided with actual notice of the project prior to the execution of a comprehensive agreement.

(8) A private partner is deemed to have actual notice under this section if the Coalition included a description of the project in the request for proposal.

(9) A comprehensive agreement that does not contain the provisions described in Subsection (4) and Subsection (5) shall be enforced as if the comprehensive agreement contained such provisions.

3.08 MATERIAL DEFAULT

(1) Once executed, an interim or comprehensive agreement may not be revoked or terminated by the Coalition without the prior written agreement of the private partner(s) or as otherwise provided in such interim or comprehensive agreement.

(2) In the event of a material default by the private partner, the Coalition may take any or all of the following actions as it determines is appropriate:

(a) terminate the interim or comprehensive agreement and exercise any rights and remedies that may be available to it at law or in equity for such default, including those set forth in the interim or comprehensive agreement;

(b) make or cause to be made any appropriate claims under any bond or other security required by the interim or comprehensive agreement;

(c) assume all responsibilities and duties and succeed to all rights, title, and interests of the private partner related to the qualifying project, provided that the Coalition shall not be bound by any material agreement executed by the private partner without the Coalition's consent under Section 3.06;

(d) enter into an agreement with another private partner in which the new private partner assumes all responsibilities and duties and succeeds to all rights, title, and interests of the original private partner related to the
qualifying project, provided that the new private partner shall not be bound by any material agreement executed by the private partner without the Coalition's consent under Section 3.06; or

(e) exercise any power of foreclosure or condemnation possessed by them to acquire the qualifying project. Any person who has provided financing for the qualifying project, and the private partner, to the extent of its capital investment, may participate in the foreclosure or condemnation proceedings with the standing of a property owner.

(3) In the event the Coalition assumes the responsibilities and duties of a private partner pursuant to Subsection (2), the Coalition may, as though it were the private partner:

(a) develop or operate the qualifying project as set forth in the interim or comprehensive agreement; and

(b) collect revenues, including by imposing and collecting user fees or service payments pursuant to the interim or comprehensive agreement and any other agreements executed by the private party.

(4) Any revenues that are collected by the Coalition pursuant to Subsection (3), shall be allocated as follows:

(a) first: development and operation costs of the qualifying project, including compensation to the Coalition for its services in developing or operating;

(b) second: payments to any person who has a security interest in the qualifying project to the extent necessary to satisfy the private partner's obligations to the secured parties, including the maintenance of reserves, until such obligations shall be paid off and the security interest released;

(c) third: payment to the Coalition and its members as provided in Section 3.04.

(5) Assumption of operation of the qualifying project shall not obligate the Coalition to pay any obligation of the private partner from sources other than the revenues of the qualifying project and does not pledge the full faith and credit of the Coalition or its members.

(6) If the Coalition decides to enter into an agreement with a new private partner under Subsection (2)(d), the Coalition shall select the new partner using the single-stage request for proposals process set forth in Part 2. The Coalition may enter into interim agreements for the continued development or operation of the qualifying project during the request for proposals process.
3.09 DISPUTE RESOLUTION

(1) Any dispute related to an interim or comprehensive agreement shall be deemed to have arisen in Utah, shall be governed by the laws, rules of procedure, and rules of evidence of Utah, and shall be maintained in a competent court of Utah.

(2) A private partner that enters into an interim or comprehensive agreement shall consent to the exercise of jurisdiction by any competent court of Utah.

(3) Any claim asserted against a public entity arising out of an interim or comprehensive agreement shall comply with the requirements of Title 63G, Chapter 7, Utah Governmental Immunity Act, and nothing in these Policies and Procedures shall be construed as or deemed a waiver of the sovereign immunity of the Coalition, its members, any affected jurisdiction, or any officer or employee of any of the above with respect to the participation in or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project.

(4) Nothing in these Policies and Procedures shall subject the Coalition or any other public entity to liability resulting from the actions of any private partner, except as the private partner was acting under the express and written authorization of the Coalition or other public entity.

3.10 ACQUISITION AND USE OF PROPERTY

(1) The private partner and the Coalition may acquire and use any property interest that is necessary or beneficial for the qualifying project by any means allowable under applicable federal and state constitutional, legal, and regulatory requirements. Such property may include real property, easements, rights-of-way, improvements, tangible personal property, contracts, franchises, and licenses.

(2) The Coalition, a member, or other public or private entity may exercise any power of eminent domain it has under law for the purpose of acquiring any necessary rights or interests to property, if it:

(a) exercises the power of eminent pursuant to an interim or comprehensive agreement;

(b) determines that the exercise of such power serves a public purpose; and

(c) complies with all laws governing the exercise the power of eminent domain.

(3) In connection with a comprehensive agreement, the Coalition or a member may convey any property interest that it has to a private partner, subject to the conditions imposed by general law governing such conveyances.