



**DENVER**  
THE MILE HIGH CITY

# **Performance-Based Infrastructure Update**

Finance and Governance Committee  
December 4, 2018

# PBI Program Transparency

- The City of Denver is committed to **maximizing transparency** in a manner consistent with achieving the **best value** for **Denver's taxpayers**.
- A PBI Office<sup>1</sup> and program systemically **builds efficiency** and **transparency measures** to project development.
- Transparency measures built into the program including a **significant stakeholder engagement** process during project development to ensure projects are delivering public benefits desired by the community.

<sup>1</sup>See appendix

- **PBI Office Executive Order Transparency Memorandum**
  - Supplemental Memorandum to Executive Order establishing PBI Office
  - Sets forth **specific transparency requirements** for projects under consideration by the PBI Office including requirements for public notice, public engagement, public meetings and City Council Involvement.
- **Stakeholder Engagement and Communications Guidelines**
  - Best practices and mechanisms for Sponsoring Agencies, the PBI Office and private partners when planning for and conducting PBI project-specific stakeholder outreach and soliciting input, regarding a project's possible outcomes and impacts from affected and interested project stakeholders.
    - How progress will be reported and at what intervals throughout project development and lifecycle.
    - Important to measure and report against state engagement goals to track progress and inform what adjustments may be required to adequately capture public input
    - Incorporated comments from City Council<sup>1</sup>

<sup>1</sup>See appendix

# **PBI Transparency Memo**

## **Public Information and Outreach**

- **To assist in evaluation of the effectiveness of PBI education and outreach efforts, the PBI Office shall maintain records of public and stakeholder engagement activities, including:**
  - Meeting dates, the names of meeting attendees if provided, records of meeting notifications including groups, entities and individuals notified, copies of handouts or presentations consistent with the PBI program.
- **Stakeholder feedback should be recorded, cataloged and preserved.**
  - Not only is this useful in identifying and prioritizing issues, but can be used to demonstrate that the appropriate amount of stakeholder outreach was conducted and feedback solicited.

# **PBI Transparency Memo**

## **Public Information and Outreach**

- The PBI Office will submit an Annual Report to City Council.
- The PBI Office will post the following materials to the PBI Office website including:
  - Public Notices, as defined below;
  - Public Meetings;
  - Requests for Information;
  - Requests for Qualifications;
  - Requests for Proposals;
  - Executed Project Agreement subject to reasonable safeguards to protect confidential information pursuant to the Colorado Open Records Act.

# **PBI Transparency Memorandum**

## **Public Input**

- At a minimum, stakeholder feedback should be integrated into the project planning process at each appropriate Program stage.
- Public input will be solicited, recorded and considered during project development.
- Stakeholders may provide input through public meetings or on the PBI Office website.

# PBI Transparency Memorandum

## Public Meetings

- To provide the public with a meaningful opportunity for input on a proposed PBI project: the PBI office in coordination with the Sponsoring Agency and City Council shall hold a minimum of three public meetings on any Public Private Partnership under consideration.
- At least one town hall meeting must be held during each of the following periods of the PBI project development process:
  - During Screening Stage (Visioning, including Project Identification and Screening)
  - Following Structuring Stage (Project Development), after completion of a Business Case, information includes prior to issuance of the Request for Qualifications
  - During Procurement Stage, following selection of short-listed proposers, prior to issuance of a Request for Proposals

# **PBI Transparency Memorandum**

## **Public Meetings**

- The meetings shall:
  - Provide the public and stakeholders with sufficient detail to understand the proposed PBI project as then proposed and the proposed long-term obligations of the financing arrangement under consideration
  - Be held at appropriate locations close to the communities that will benefit from and be affected by the project and/or other appropriate locations that provide access to affected Denver resident
  - Allow for meaningful comment, input, and questions from the public and responses from the PBI Office and Sponsoring Agency;



# **PBI Transparency Memorandum**

## **Public Meetings**

- **Provide information regarding:**
  - Project objectives and needs the City seeks to address
  - Perceived advantages and disadvantages of the proposed PBI structure
  - Potential alternative funding options (including options that rely exclusively on public funding)
  - Essential deal structure terms being considered.
- **Public Meetings will be posted on the PBI Office website at least one (1) week in advance**
  - Interested parties will be provided with an opportunity to provide feedback regarding the proposed PBI project.



# PBI Transparency Memorandum

## Public Notice

- The PBI Office will provide notice to the public and to City Council members of significant steps in the consideration of PBI projects.
- The PBI Office shall, at a minimum:
  - Post notices on The PBI Office website, notify City Council members, provide notices by mail and email to Registered Neighborhood Organizations within a mile radius where the project will be located
- The PBI Office shall provide public notice and post on the PBI Office website of:
  - Public Meetings;
  - Requests for Information;
  - Requests for Qualifications;
  - Requests for Proposals;
  - Executed Project Agreement subject to reasonable safeguards to protect confidential information pursuant to the Colorado Open Records Act.

# **PBI Transparency Memorandum**

## **City Council Involvement**

- The PBI Office will submit an annual report to City Council.
- Councilmembers will be offered individual and Council committee briefings throughout the PBI project development process.
- Council will be briefed on results of project screening, structuring, procurement and implementation.
- In addition to briefings, District Councilmember offered an active role in stakeholder engagement activities, at-large members will be offered an active role in stakeholder outreach as well.

# **PBI Transparency Memorandum**

## **City Council Involvement**

- Before entering into a PBI agreement, the Office shall submit to the Council and provide to the public through a public notice, a report summarizing key terms of the selected proposal, including:
  - Participating private entities
  - Terms of the PBI agreement
  - Total cost;
  - Cost to the City
  - Value-for-money analysis and public-sector comparator analysis
  - Proposed term
  - Delivery method
  - Participating public entities
  - The selection process including selection criteria and methodology for evaluating proposals.



# **PBI Transparency Memorandum**

## **CORA and Auditor Access**

### Confidential Business Information

- The City and the PBI Office are subject to and comply with the Colorado Open Records Act C.R.S. §§ 24-72-201, et. seq. (“CORA”). As such, public documents such as project RFQs and RFPS will be available to the public. To ensure a fair and competitive process an executive summary and other non-confidential information will be the only items released by the PBI Office before execution of a PBI agreement and the conclusion of any challenge to the award, absent an administrative or judicial order requiring release or disclosure.

### Auditor’s Access to Records

- The Auditor shall have access to records maintained by the PBI Office as necessary to conduct financial or performance audits in accordance with generally accepted governmental auditing standards promulgated by the United States Comptroller General and City confidentiality requirements.

## Support for Performance Based Infrastructure Projects

- Total= \$4.9 million
  - PBI Office (PBI)--\$1.6M
    - 2 FTEs
    - Professional Services
  - Legal Contract Services (CAO)--\$1.5M
  - Project Content Services (NWCO)--\$1.2M
  - Financial Advisory Services (DOF)--\$400,000

## PBI Office funds:

- Will support implementing the **neutral, standardized and transparent process for evaluating and potentially executing** partnerships with the private sector to deliver capital projects for Denver residents, as outlined in the PBI program.
- Two FTEs
- Professional Services

# Professional Services

## Scope of Work

PBI Office will initiate a competitive procurement process for PBI advisory services.

As outlined in the PBI program, the PBI Advisors will be responsible for providing assistance (but not limited to) the following:

- Facilitate proactive and interactive public engagement activities related to the development and implementation of the PBI program and specific projects.

### Project Screening

- Transparent, neutral and systematic process for evaluating projects ensures the city moves forward projects and expends resources on only the most viable projects that provide significant return on the city's upfront investment and greater value and benefits to taxpayers and residents over the life of the project.



# Professional Services

## Scope of Work

### Project Structuring, Business Case Development

- Evaluation of Traditional and PBI procurement options
- Quantitative Procurement Assessment
  - Value for Money Analysis, Public Sector Comparator, PBI model
- Qualitative Procurement Assessment
  - Risk Register and Allocation Matrix, Market Sounding

### Project Procurement

- Procurement strategy
- Drafting and issuing procurement documents
- Evaluation, shortlist and final partner selection
- Contract award and closing
- Financial close

### Project Implementation

- Provide long-term project monitoring services, as needed, to assist in the enforcement of the PBI agreement.



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# Appendix

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# Appendix, City Council Comments Incorporated into Stakeholder Guidelines

- Global modification: Framework should call for a greater role for Council members in stakeholder engagement for projects in their respective districts, and all projects should allow for participation by at-large Council members.
  - Note: Beyond any Community Engagement Committee, city council members may choose or should be invited to play an active role in stakeholder engagement activities for projects within their respective districts. In addition, the stakeholder engagement plan will include and allow for participation by at-large council members.
- Kniech: Consider whether Stage 2 (Screening) is too early to create a stakeholder communications plan, given that some projects will not emerge from evaluation and this stage and will not become P3s, instead being referred back to the sponsoring agency. We may not need to spend the time or money on communications planning at this stage.
  - Note: Since the comment above referred to the plan itself, we didn't put the same qualifier on p. 2 when it's recommended that an inventory be taken of a project's audiences, channels, issues, etc. It seems that may need to happen to understand the overall situation. The plan itself may be undertaken when the project is deemed to be approved to move forward in the PBI pipeline.
- Kniech: Framework should articulate more clearly the purposes of stakeholder communications – to inform, to educate, to socialize a project need or vision, etc.
  - Note: Intentionally didn't include the purpose example related to "socialize a project," as that falls in Stage 1 and under the regular course of stakeholder communications for Sponsoring Agencies vs. in the plan that focuses on PBI Stage 2+.
  - Note: NEW LANGUAGE: In addition, the purposes of various stakeholder communications tactics and outreach activities should be clearly articulated (e.g., to inform, to educate, to gain specific input), as this will help define messages and set expectations when engaging with various audiences.
  - Note: Also reinforced this comment on p. 8.

# Appendix, City Council Comments Incorporated into Stakeholder Guidelines

- **Kniech:** With respect to seeking stakeholder input on projects, the framework needs to address input to what end, at what specific decision points, during what stages – more clarity on why we’re seeking input and how it will be used, at various stages (project vision, conceptual design, etc.); the feedback process needs to be tied more closely to the City’s project evaluation and development process.
  - Note: NEW LANGUAGE: “The type of stakeholder feedback being sought may also vary by stage based on the necessary project evaluation, decision-making and development processes. For example, stakeholder input on high-level project components or early conceptual designs may be gained in Stage 2, while feedback on project schematic designs may be sought in Stages 3 and 4, prior to a private sector partner being selected.”
- **Kniech:** Address when the public gets to see project designs for input, at what stages – preferably prior to having a private sector partner selected.
  - Note: NEW LANGUAGE: “The type of stakeholder feedback being sought may also vary by stage based on the necessary project evaluation, decision-making and development processes. For example, stakeholder input on high-level project components or early conceptual designs may be gained in Stage 2, while feedback on project schematic designs may be sought in Stages 3 and 4, prior to a private sector partner being selected.”
- **Espinoza:** Include consideration of using a mediator to facilitate community dialogue in some situations
  - Note: NEW LANGUAGE: Depending on the situation, a third-party mediator or facilitator may be considered to guide and gain community dialogue during an in-person meeting.

# Appendix, City Council Comments Incorporated into Stakeholder Guidelines

- Kniech: Framework should articulate more clearly the purposes of stakeholder communications – to inform, to educate, to socialize a project need or vision, etc.
  - Note: Also reinforced this comment on p. 5.
- Espinoza: should provide assurance that we will not intentionally dilute project feedback from communities
  - Note: and help ensure that project feedback from communities and other stakeholders is both valued and used
- Kniech: Contracts with private partners should specify expectations concerning the partner's role in communications and continuing stakeholder engagement, e.g., during implementation.
  - Note: NEW LANGUAGE: Contracts with private partners should specify expectations concerning the partner's role in communications and continued stakeholder engagement during project implementation
- Kniech: Address when the public gets to see project designs for input, at what stages – preferably prior to having a private sector partner selected
  - Note: Also added same comment in Stage 4. Also addressed on p. 8.

# Appendix, PBI Office Summary

- Serves as the city's center of excellence for alternative project delivery and leads the coordination of multiple agencies pursuing PBI projects.
- Provides the city with the capacity to systematically and transparently evaluate and execute partnerships with private entities to delivery PBI projects.
- Builds collaborations between the city and the private sector to complete major infrastructure projects and other programs through long-term performance based procurements.
- Responsible for creating and executing robust public outreach on PBI projects and incorporating stakeholder feedback throughout project development.
- Responsible for project delivery information and experience throughout the project lifecycle, providing best practices as well as tracking and reporting performance of projects under construction and in operations.

# Appendix, PBI Office Summary

- PBI is not appropriate for all public infrastructure projects and should be used judiciously which is why Denver is creating a PBI Office to:
  - Determine if a project is appropriate for PBI delivery to ensure future PBI projects stay true to Denver's core values of inclusion, equity, and economic opportunities for all.
- A PBI office and program systemically builds efficiency and transparency measures into project development.
- The cost of PBI project development and delivery is quantified holistically through centralization in a PBI Office. The comprehensive approach to PBI project delivery takes into account the capacity necessary for screening, structuring and procurement a PBI project.
- Front loaded investment of resources for project development—to build a robust financial and legal framework—ensuring the private partner implements a high performing project over the life of the asset and the asset is returned to the city with plenty of useful life remaining at the end of the contract term.
  - Opposite of traditional procurement methods, some upfront expenditures for project development costs but most expenditures during project implementation.
- Standardizing project assessment and development lowers the cost of project development and evaluation by bringing efficiencies to the process and helps inspire confidence in the market



# Appendix,

## City Council Communications

## Timeline and Milestones

- **October, 2016**
  - Notification to City Council that the city had completed a competitive procurement and retained a Strategic Advisor for P3 program development and a Specialty Municipal Finance Advisor to advise the DOF on alternative delivery financial advising, ARUP Advisory and Ernst & Young respectively.
- **January 6, 2017**
  - Email to Shelley Smith with an update that the P3 program was still underdevelopment and the team working on the initiative would like to come to Council in Q2 2017.
- **June 21-July 6, 2017**
  - Briefings with Finance and Governance committee members on P3 program overview progress to date and contract amendment for additional capacity to complete the P3 program (Kniech, Flynn, Kashmann, Espinoza, Black). Materials included briefing presentation, copy of existing contract with ARUP, draft copy of contract amendment.
- **July 11, 2017**
  - Presentation to Finance and Governance committee which included P3 program overview and progress to date and contract amendment. The action item for Council's consideration was a contract amendment with ARUP to finish developing the citywide P3 program.
- **August, 2017**
  - Delivered hard copies to Councilmembers mailboxes of Governing's Guide to Financial Literacy Volume 3, Understanding the Risks and Rewards of P3s, and Volume 4, P3 Governance: Ensuring Public-Private Partnerships are Built to Last.
- **October 18, 2017**
  - Meeting with Councilwoman Kniech to coordinate and discuss her preference for format and speakers at upcoming P3 fundamentals workshop

# Appendix, City Council Communications Timeline and Milestones

- **October 27, 2017**
  - **Hosted a P3 Fundamentals workshop** which was taped and distributed for those who could not attend in-person. This was an opportunity to hear from a broad range of perspectives on P3s. Agenda included a keynote by Phil Washington, Mayor stopped by for brief comments, P3 101, panel of public sector participants (project owners), panel of private sector participants (focused on projects), representative from In the Public Interest. Materials included a presentation, biographies of the speakers and the city's Strategic Advisor and Specialty Municipal Finance Advisor.
- **October 28, 2017**
  - Email with follow up items from P3 Fundamentals Workshop. The email also offered an opportunity to be briefed on the contract amendment coming to Finance and Governance committee for consideration on November 14. Materials included workshop presentation materials, compiled list of questions and answers from members of Council related to P3s, ARUP contract and draft scope of services corresponding to contract amendment.
- **November 7, 2017**
  - Email to Finance and Governance committee offering them a briefing opportunity on contract amendment. Materials included briefing presentation.
- **November 14, 2017**
  - **Presentation to Finance and Governance Committee**, the action item for Council's consideration was a contract amendment with Arup to finish developing the citywide P3 framework and additional stakeholder engagement. Materials included Arup contract and draft scope of services corresponding to contract amendment.
- **December 6, 2017**
  - Briefing with Councilman New on P3s generally, specifically the methodology of financial analyses of P3s, and Denver's P3 program. Materials included briefing presentation and compiled list of questions and answer from members of Council related to P3s with an adjusted answer on the Great Hall.

# Appendix,

## City Council Communications

## Timeline and Milestones

- **April 2, 2018**
  - Briefing with Councilman Brooks on PBI program content and progress, discussed idea for a workshop with Council to roll out program development progress.
- **June 25, 2018**
  - Email to Council reminding them of the upcoming PBI Workshop on June 28. Provided an overview of the workshop agenda including an opportunity for Q&A and feedback both throughout the workshop and after. Materials provided PBI Program Overview, Stakeholder Communications Guidelines (per request from Council to be developed as part of PBI program), Definitions Cheat Sheet, PBI fact sheet.
- **June 28, 2018**
  - **Hosted the second PBI Workshop with Council.** The agenda included a presentation outlining the PBI program content including discussing every stage of the program and all of the different touchpoints and decision-making flow with various stakeholders (including Council and the public). There was also a timeline of upcoming action items including a request for a supplemental budget appropriation in 2018 for PBI office and initial advisory services. Workshop included an opportunity for Q&A and feedback both throughout the workshop and after. Materials provided PBI Program Overview, Stakeholder Communications Guidelines, Definitions Cheat Sheet, PBI fact sheet.
- **July 15, 2018**
  - Email reminder to Council to send me additional comments to PBI program. Materials included PBI Program Overview, Stakeholder Communications Guidelines, Definitions Cheat Sheet, PBI fact sheet.
- **August 1, 2018**
  - Email reminder to provide additional comments to program. Materials included PBI Program Overview, Stakeholder Communications Guidelines, Definitions Cheat Sheet, PBI fact sheet.

# Appendix, City Council Communications Timeline and Milestones

- **September 13, 2018**
  - Email to Council with program documents, reminder about next steps--Executive Order and budget supplemental request coming for Council consideration. Also offered an opportunity to address any outstanding questions. Materials included a complete set of PBI Program guidelines, Council-specific comments identified in a separate punch list document and incorporated throughout the program documents. No additional comments submitted.
- **September 14, 2018**
  - Briefed Councilman Flynn on budget supplemental to determine if item should go to committee. Scheduled for committee presentation on October 2.
- **September 25, 2018**
  - Email to Council notifying them of the budget supplemental and offering an opportunity to be briefed. Included the upcoming committee presentation. No Councilmember accepted a briefing opportunity.
- **October 2, 2018**
  - Presentation to the Finance and Governance Committee requesting approval of a FY2018 budget supplemental for funding for two new positions - one in the PBI Office and one in the City Attorney's Office- as well as professional services dollars for initial advisory services for PBI projects.
- **November 19-December 4, 2018**
  - Briefings with Councilmembers Flynn, Susman and Kniech to brief and receive input on Transparency Memorandum
- **December 4, 2018 (TODAY!)**
  - **Presentation to Finance and Governance Committee** on PBI Office Executive Order Transparency Memorandum Supplemental Memorandum to Executive Order establishing PBI Office Sets forth specific transparency requirements for projects under consideration by the PBI Office including requirements for public notice, public engagement, public meetings and City Council Involvement.