



# UNIVERSITY OF LOUISVILLE

## PROCUREMENT SERVICES

Request for Proposal—Phase II  
Binding Proposal Submittals (BPS)

Instructions to Proposers

\*Referenced Schedules can be found in assigned Cardbox for Shortlisted Teams\*

**P3 Concession Agreement for Utility System**



# REQUEST FOR PROPOSAL – PHASE II

PROPOSAL NO.:	<b>RP-026-22</b>	<u>RETURN ORIGINAL COPY OF PROPOSAL TO:</u>
Issue Date:	<b>April 29, 2022</b>	<b>UNIVERSITY OF LOUISVILLE</b>
Title:	<b>P3 Concession Agreement for Utility System</b>	<b>PROCUREMENT SERVICES</b>
Contract Administrator:	<b>Amber Horn</b>	<b>2215 S. BROOK ST, STE 107</b>
Email:	<b>amber.horn@louisville.edu</b>	<b>LOUISVILLE, KY 40208</b>

**IMPORTANT: BINDING PROPOSAL SUBMITTALS MUST BE RECEIVED VIA EMAIL: August 12, 2022 3 P.M. LOUISVILLE, KY TIME.**

## NOTICE OF REQUIREMENTS

1. Contracts resulting from this RFP must be governed by and in accordance with the laws of the Commonwealth of Kentucky.
2. Pursuant to KRS 45A.325, "Any agreement or collusion among bidders or prospective bidders which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price or to refrain from offering, or otherwise, is prohibited."
3. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association who violates any of the provisions of KRS 45A.325 shall, upon conviction, shall be fined not less than ten thousand dollars nor more than twenty thousand dollars.

## AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST

I hereby swear (or affirm) under the penalty for false swearing as provided by KRS 523.040:

1. That I am an officer, employee, or authorized person of **the undersigned Proposer and/or Proposer Member of such Proposer that is** submitting the attached BPS in response to this RFP, and I have the authority to sign on behalf of such Proposer Member and/or Proposer Member of such Proposer;
2. That the attached BPS has been arrived at by the undersigned Proposer and each of its Proposer Members independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other Proposer or prospective Proposer, Responding Team, Responding Team Member, or any other contractor of materials, supplies, equipment, or services described in the RFP, designed to limit independent bidding or competition;
3. That the contents of the attached BPS have not been communicated, and shall not be communicated prior to the termination of this RFP or the signing of the Concession Agreement by the University and the Concessionaire to be formed by the Preferred Proposer hereunder (whichever is sooner), by either the undersigned Proposer or any of its Proposer Members (or by any of their respective officers, employees or authorized persons) to any person who is not an officer, employee, or authorized person of such Proposer or such Proposer Member (or any person who is not their respective legal counsel, financial advisors, technical advisors, underwriters and/or lenders engaged in connection with the submission of the attached BPS in response to this RFP);
4. That the Concessionaire to be formed by the Preferred Proposer will be legally authorized to enter into contracts with the University of Louisville, the Concessionaire to be formed by the Preferred Proposer will not be in violation of any prohibited conflict of interest, including, but not limited to, those prohibited by the provisions of KRS 45A.330 to .340, and 164.390, and neither such Proposer nor any of its Proposer Members is in violation of any prohibited conflict of interest, including, but not limited to, those prohibited by the provisions of KRS 45A.330 to .340, and 164.390;
5. That the Concessionaire to be formed by the Preferred Proposer will be duly registered with the Kentucky Department of Revenue to collect and remit the sale and use tax imposed by KRS Chapter 139 to the extent required by Kentucky law and will remain registered for the duration of any contract award; and
6. That I have fully informed myself regarding the subject of the statements made above and all such statements are true and accurate.

## SWORN STATEMENT OF COMPLIANCE WITH CAMPAIGN FINANCE LAWS

In accordance with KRS 45A.110(2), the undersigned hereby swears under penalty of perjury that neither the Proposer Member for which the undersigned is signing hereby, nor the Proposer of which it is a Proposer Member, has knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky and that the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth of Kentucky.

## PROPOSER REPORT OF PRIOR VIOLATIONS OF KRS CHAPTERS 136, 139, 141, 337, 338, 341 & 342

By signing and submitting a BPS in response to this RFP, the undersigned Proposer and each of its Proposer Members agrees as required by 45A.485 to submit final determinations of any violations of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that have occurred in the previous five (5) years prior to the award of a contract and agrees to remain in continuous compliance with the provisions of the statutes during the duration of any contract that may be established. Final determinations of violations of these statutes must be provided to the University of Louisville by the successful Proposer and each of its Proposer Members prior to the award of a contract.

## CERTIFICATION OF NON-SEGREGATED FACILITIES

By submitting the attached BPS, each of the undersigned Proposer and its Proposer Members certifies that the Proposer and its Proposer Members are in compliance with the Code of Federal Regulations Title 41 CFR § 60-1.8(b) that prohibits the maintaining of segregated facilities, and the undersigned Proposer and its Proposer Members certify that the Concessionaire to be formed by the Proposer will be in compliance with the Code of Federal Regulations Title 41 CFR § 60-1.8(b) that prohibits the maintaining of segregated facilities.

**SIGNATURE REQUIRED:** This BPS cannot be considered valid unless signed and dated by an authorized agent of each of the Proposer Member(s) constituting the Proposer and the Proposer of which they are Proposer Members. Type or print the signatory's name, title, address, phone number and fax number in the spaces provided. ***BPSs signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to the issuing office.***

**Signature of Proposer**

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b> The Proposal Expiry Date (as defined herein)	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b>	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B. DESTINATIONPREPAID AND ALLOWED</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
<b>FEDERAL EMPLOYER ID NO.:</b>	<b>SIGNATURE:</b>	<b>DATE:</b>

**Signatures of Proposer Members**

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b> The Proposal Expiry Date	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b> As provided herein	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B. DESTINATIONPREPAID AND ALLOWED</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
<b>FEDERAL EMPLOYER ID NO.:</b>	<b>SIGNATURE:</b>	<b>DATE:</b>

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b> The Proposal Expiry Date	<b>ADDRESS:</b>	<b>Phone/Fax:</b>

<b>PAYMENT TERMS:</b> As provided herein	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B.</b> <b>DESTINATIONPREPAID</b> <b>AND ALLOWED</b> <b>FEDERAL EMPLOYER ID NO.:</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
	<b>SIGNATURE:</b>	<b>DATE:</b>

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b> The Proposal Expiry Date	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b> As provided herein	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B.</b> <b>DESTINATIONPREPAID</b> <b>AND ALLOWED</b> <b>FEDERAL EMPLOYER ID NO.:</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
	<b>SIGNATURE:</b>	<b>DATE:</b>

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b> The Proposal Expiry Date	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b> As provided herein	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B.</b> <b>DESTINATIONPREPAID</b> <b>AND ALLOWED</b> <b>FEDERAL EMPLOYER ID NO.:</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
	<b>SIGNATURE:</b>	<b>DATE:</b>

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b> The Proposal Expiry Date	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b> As provided herein	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B.</b> <b>DESTINATIONPREPAID</b> <b>AND ALLOWED</b> <b>FEDERAL EMPLOYER ID NO.:</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
	<b>SIGNATURE:</b>	<b>DATE:</b>

## TABLE OF CONTENTS

1.	Introduction and Description of Project .....	1
2.	Binding Proposal Submittal (BPS) .....	2
2.1	Binding Proposal Submittal Evaluation Procedure, Criteria and Scoring .....	2
2.2	Page Limits .....	2
2.3	Required BPS Content.....	3
2.4	BPS Submission Logistics.....	11
3.	No Liability for Costs .....	16
4.	Modification, Termination, and Rejection Rights .....	16
5.	Requests for BPS Revisions .....	17
6.	Conformance with Governing Law .....	17
7.	Collusion among Proposers .....	17
8.	Changes to Responding Team Members .....	17
9.	Kentucky's Personal Security and Breach Investigation Procedures and Practices Act .....	18
10.	Confidentiality.....	18
11.	Relationship Disclosure.....	18
12.	RFP Documents .....	19

### Appendices

Appendix 1 – Defined Terms

### Schedules

Schedule 1 – Closing Consideration

Schedule 2 – Benchmark Interest Rate

Schedule 3 – Financial Officer's Certificate

Schedule 4 – Requests for Clarification

**\*\*All Dates are Subject to Change\*\***



# UNIVERSITY OF LOUISVILLE

## PROCUREMENT SERVICES

### Request for Proposal (RFP) – Phase II

#### 1. Introduction and Description of Project

The University of Louisville (the “**University**”) appreciates Proposers’ continued interest in the opportunity to operate, maintain, finance, and undertake periodic lifecycle improvements to, the University’s on-campus Utility Systems (the “**Project**”) through a 50-year concession agreement with the University (the “**Concession**” or the “**Concession Agreement**”). As detailed in RFP—Phase I, the University has determined that: (a) the Concession will, among other things, further the University’s energy efficiency and sustainability goals, provide a mechanism for capital improvements as needed, permit the more efficient operation of the Utility System, and advance the overall educational purposes of the University; and (b) pursuant to a formal determination of the President of the University dated as of January 21, 2022, due to the nature and circumstances of the desired Concession, a public-private partnership is the most advantageous method of awarding and administering the desired Concession.

As part of this RFP—Phase II, each of the Responding Teams named as a Shortlist Finalist pursuant to the notice published by the University on April 8, 2022 in accordance with RFP—Phase I (each, a “**Proposer**” and, collectively, the “**Proposers**”) will be: provided with a draft of the Concession Agreement; provided with technical data and site access; and will have the ability to submit due diligence questions and engage in management presentations with key University management and other Utility System personnel. Should the Proposer wish to continue to pursue this opportunity, the Proposer is asked to prepare a Binding Proposal Submittal (“**BPS**”) in accordance with the requirements and procedures contained herein.

The University intends to work towards the finalization of all legal and transactional documentation as quickly as possible following receipt of the BPSs. The University’s goal is to achieve commercial close in October 2022 and financial close no later than December 9, 2022.

As detailed in RFP—Phase I, the University will proceed using a public-private partnership method of awarding and administering the desired Concession and a competitive negotiation procurement contract award process. The University intends to obtain all required approvals pursuant to KRS 45A.077 and 200 KAR 5:355 prior to issuance of the final version of this RFP—Phase II.

The objective of the BPS is to gather additional information so that the University may evaluate and select a preferred counterparty (the “**Preferred Proposer**”) for the Concession. Following selection as the Preferred Proposer, and prior to the execution of the Concession Agreement, the Preferred Proposer must form a special purpose vehicle (“**SPV**”) for the sole purpose of executing the Concession Agreement and fulfilling the obligation of the Concessionaire thereunder in accordance with Section 3.6 of the Concession Agreement. If a BPS meets the University’s goals and the University elects in its sole discretion to proceed with the Concession, the SPV would

execute the Final Bid Version of the Concession Agreement and become the “**Concessionaire**” under the Concession Agreement.

Capitalized terms used but not defined in Appendix 1 (Defined Terms) hereto shall have their respective meanings set forth in the Final Bid Version of the Concession Agreement. Unless expressly stated otherwise, references to Sections, clauses, and Schedules herein are references to Sections, clauses, and Schedules of this RFP—Phase II.

## 2. **Binding Proposal Submittal (BPS)**

### 2.1 **Binding Proposal Submittal Evaluation Procedure, Criteria and Scoring**

The University will assess each BPS and designate the Preferred Proposer based on the following procedure, evaluation criteria, and scoring:

- (a) First, the University will evaluate the administrative completeness of such BPS (including, without limitation, compliance with Section 2.3(i) below) on a pass/fail basis.
- (b) Thereafter, if such BPS receives a score of “pass” pursuant to Section 2.1(a) above, the University will evaluate such BPS with respect to:
  - (i) The matters described in such BPS pursuant to Section 2.3(a), Section 2.3(b), Section 2.3(c), Section 2.3(d), Section 2.3(e), Section 2.3(g), Section 2.3(h), Section 2.3(j), and Section 2.3(k) below (allocating to such matters up to 10 points).
  - (ii) The amount of the Closing Consideration submitted on Schedule 1 (or re-submitted on Schedule 1 pursuant to Section 5 below) in such BPS pursuant to Section 2.3(f) below (allocating to such amount of Closing Consideration up to 90 points).

Closing Consideration points will be calculated follows:

$$\text{Closing Consideration Points} = 90 \times \frac{\text{Closing Consideration}}{\text{Closing Consideration}_H}$$

Where:

*Closing Consideration* = Value, in US Dollars, of the Closing Consideration submitted on Schedule 1 as part of such BPS

*Closing Consideration<sub>H</sub>* = Value, in US Dollars, of the highest Closing Consideration submitted by a Proposer on Schedule 1 of such Proposer’s BPS

The University will designate as the “Preferred Proposer” hereunder the Proposer that submits the BPS that receives (x) a score of “pass” pursuant to Section 2.1(a) above and (y) the highest numeric score pursuant Section 2.1(b) above.

## **2.2 Page Limits**

Included within each section or subsection (in parenthesis) is an allocation of the maximum number of pages for each such section or subsection of the BPS, and if any subsection in such BPS exceeds such allocations, the BPS may be subject to disqualification. The page limits exclude charts and other graphics which may be included as supporting attachments. Please limit the font size of the BPS to no less than 10 points.

## **2.3 Required BPS Content**

### **(a) *Concession Agreement Submission (1 page)***

- (i) Please provide confirmation in a signed writing that the SPV will execute the Final Bid Version of the Concession Agreement, including all schedules attached thereto, that will be provided to each Proposer on or about July 29, 2022. Proposers may not submit any comments, questions, or proposed revisions relating to the Concession Agreement and the University will disregard any such comments, questions, or proposed revisions submitted after the last date for the submittal of RFCs set forth in Section 2.4(c) below.

### **(b) *Concessionaire Overview (10 pages)***

- (i) Please provide comprehensive documentation with the following information:
  - a. Details of the proposed SPV and the proposed Operator, including type of legal entity, legal domicile, official company name, location of headquarters as well as:
    - I. The names of the ultimate owners of the proposed SPV and the proposed Operator and their respective percentage interests of direct and indirect ownership in the proposed SPV and the proposed Operator.
    - II. The identity of the controlling person(s) of the proposed SPV and the proposed Operator.
  - b. An organizational chart to highlight anticipated legal relationship among each of the Proposer Members, the proposed SPV and the proposed Operator as appropriate.
  - c. A table listing (w) the full legal name of each Proposer Member, (x) the role of the Proposer Member, and (y) the full legal name of the Guarantor of each Proposer Member (if any).
  - d. A statement that none of the Proposer Members or their respective roles has changed since the Proposer's submission of its Statement of Qualifications or written correspondence from



the University approving such a change pursuant to Section 8 below.

- e. The names of third-party advisors selected or expected to be engaged as part of the process.
  - f. The material terms of the proposed agreement to be entered into between the Concessionaire and the proposed Operator, including, at a minimum, the amount and calculation of the fee to be paid to the proposed Operator, length of the term of the engagement of the proposed Operator, any restrictions on transfer by the proposed Operator of its obligations and any restriction on the change in control of the proposed Operator.
  - g. A detailed personnel chart of key roles within the SPV and the proposed Operator.
  - h. A statement that the Proposer commits to providing all key staff named in the Proposer's Statement of Qualifications.
  - i. Any current, potential, or reasonably perceived conflicts of interest and existing business relationships that the SPV, the Proposer Members, the Proposer or the proposed Operator may have with the University and, if any, the Proposer's plan to address such conflicts.
- (ii) If any of the foregoing information with respect to the Proposer Members (including the proposed Operator) or the proposed SPV changes after the BPS has been submitted, the Proposer shall promptly notify Amber Horn ([amber.horn@louisville.edu](mailto:amber.horn@louisville.edu)) of such changes.
- (c) *Operational Strategy for the Utility System (10 pages)*
- (i) Please detail the Proposer's expected approach to the following:
    - a. Operations plan and system design, including how technical resources will be applied and engaged for the following portions of the Concession:
      - I. Utility systems operation and maintenance
      - II. Detailed design, construction, and commissioning to support capital expenditure projects
      - III. ECM evaluation and implementation projects
    - b. Utilization of existing University employees during the Concession.

- c. Approach to assisting the University in procuring Supplies in accordance with Section 7.3 of the Concession Agreement if requested by the University and the benefits that the Proposer could provide the University in such procurement.
  - d. Organizational approach for meeting human resources, information technology and accounting support needs, including quantity and roles of on-site vs. remote staff.
  - e. Management of operating and maintenance costs, including plans for preventative and predictive maintenance tracking systems.
  - f. Capital expenditure planning and execution.
  - g. Safety program.
  - h. Environmental compliance program.
  - i. Emergency response program.
  - j. Energy and fuel procurement approach.
  - k. Reliability and customer service.
  - l. Utilization of local resources and contractors.
- (ii) Please recommend strategies, opportunities, and the potential impacts of implementing O&M and capital expenditure projects to achieve reductions in Supply Costs and/or O&M Costs, and potential contractual options to align University and Concessionaire interests.
- (d) *Employee Transition (10 pages)*
- (i) Please provide details of the Proposer's plan to transition operational control of the Utility System from the University to the Concessionaire. The transition plan shall, at a minimum, identify key staff who will be used to support the transition (both remotely and on-site), describe the role key staff will serve during the transition period, and describe the experience of key staff with transitioning similar projects. Please also identify transition plan activities and the expected duration for each.
  - (ii) Please provide a written statement of commitment that the Proposer agrees to use its best efforts to, or to cause the Concessionaire or the Operator to, consider all University employees identified as University Utility System Employees who are interested a position with the Concessionaire or the Operator, as the case may be, in accordance with the Final Bid Version of the Concession Agreement.

- (iii) Please describe the Proposer's plan for a competitive employment package that will attract current employees from the University to the Concessionaire. Please include details on the following:
  - a. Employee Salary.
  - b. Health insurance benefits.
  - c. Enrollment in a 401k account with employer match.
  - d. Rollover of existing retirement accounts.
  - e. Transfer of existing vacation and sick leave to Concessionaire and setting of vacation and sick leave earning rates based on seniority.
  - f. Other benefits, including parking, athletic ticket discounts, recreation facility membership incentives, employee assistance / safety / wellness programs, etc.

(e) *Engagement with University and Local Community (3 pages)*

- (i) Please provide details of the Proposer's plan to maintain existing relationships, if any, and develop new partnerships between the Concessionaire and the University community, including faculty, staff and students, over the term of the Concession, including academic collaborations and research and development opportunities.
- (ii) Please describe the Proposer's anticipated approach to maintaining existing relationships with local, municipal, and state government agencies and authorities.
- (iii) Please identify the Proposer's planned approach to building upon the University's strong relationships with local and regional utility and service providers.
- (iv) Please provide details of the Proposer's capacity to engage students as interns, apprentices, mentees, and research assistants.

(f) *Closing Consideration; Benchmark Interest Rate (on the forms indicated)*

- (i) Please state the amount of the Proposer's proposed Closing Consideration and timing between the execution of the Concession Agreement and the Closing thereunder using the form attached hereto as Schedule 1 without any modification whatsoever except for the name of the Proposer and the Closing Consideration.
- (ii) Please provide the Proposer's proposed Benchmark Interest Rate and the proposed change in Closing Consideration per basis point change in the

Benchmark Interest Rate using the form attached hereto as Schedule 2, which in each case shall have been approved by the University pursuant to Section 2.4(f)(i) below.

(g) *Financial Capacity (on the forms indicated, no page limit for financial statements)*

Proposals shall include completed and executed Financial Officer's Certificates in the form attached as Schedule 3 provided by:

- (i) Each Equity Participant;
- (ii) Each Entity comprising the proposed Operator; and
- (iii) Each Guarantor of each of the foregoing entities.

Such certificates shall be signed by the chief financial officer of the respective entity listed above, dated not earlier than 14 calendar days prior to the Proposal Due Date. In addition, it shall also certify and provide any new or different financial capacity information that has become available since the Proposer's submission of its Statement of Qualifications, as applicable, including any annual audited or unaudited interim financial statements that have become available for such entities since the date of Proposer's Statement of Qualifications. Financial statements should be provided in English and in a searchable format.

(h) *Financing Terms*

- (i) Please confirm that the Proposer's BPS is not subject to a financing condition and detail the Proposer's plans to finance the Closing Consideration (including the amounts of any debt and equity to finance the Closing Consideration) as well as the plan to finance required Capital Improvements over the Term. Please note that a financing contingency included in the BPS for the Proposer's benefit or lack of committed financing may disqualify the Proposer's BPS, other than such committed financing being subject to market standard material adverse change clauses and the University materially changing the Concession Agreement from the Final Bid Version of the Concession Agreement.
- (ii) Please include detailed information regarding the terms and conditions of any third-party financing, including copies of all commitment papers from all debt financing sources, which shall be binding on the parties thereto and in customary form, including confirmation that all required committee approvals have been achieved, and which may be subject only to market standard material adverse change clauses and the University materially changing the Concession Agreement from the Final Bid Version of the Concession Agreement.
- (iii) Committed equity investment

In addition to the matters described in clause (g)(ii) above:

- a. Please identify the exact funding source for each Equity Participant's committed equity investment and demonstrate that all necessary funds will be readily available for the anticipated date of financial close (for example, Chief Financial Officer certification of fund availability). Depending on who will be the contributor of equity, please include:
  - I. In cases where the equity is contributed by an investment fund: (v) the date the fund was established; (w) the total amount raised in the investment fund; (x) the total amounts of undrawn and immediately available funds which are committed to be invested in the Project (including the Closing Consideration and expected Approved Capital Improvements); (y) documentation evidencing the availability of funds described in clause (x) above (e.g., confirmation from the fund administrator of undrawn and available amounts in the fund); and (z) fund managers and general characteristics of the fund investors.
  - II. In cases where the Equity Participant intends to contribute equity through use of internal resources (e.g., a corporate entity supplying its own capital): (x) where and how the equity commitment will be sourced; and (y) total amounts of funds available to be invested in the Project.
- b. Please include written documentation of the action taken by each Equity Participant's board (or any other relevant corporate or governance body from which authorization is required), authorizing such Equity Participant to submit the BPS as a Proposer Member and acknowledging the portion of the committed equity investment such Equity Participant will be required to provide if its Proposer becomes the Concessionaire. Such documentation may include board resolutions, investment committee resolutions, officer's certifications, execution copies of or detailed term sheets for any contribution agreements or shareholder/member agreements that includes the detailed terms and conditions describing how and when the committed equity investment will be provided by the Equity Participants.
- c. A description of the percentage and form of the total committed equity investment to be made by each Equity Participant.
- d. Where a letter of credit or Equity Participant debt is to be used instead of equity, letter(s) of support from the relevant institution issuing the letter of credit or the Equity Participant committing Equity Participant debt, as applicable. The letter(s) of

support shall include the most recent ratings of the institution.

- (iv) Please submit documentation confirming a minimum of one advisory or indicative investment grade credit rating for the Leasehold Mortgage Debt to be issued on or before the Closing from any of Standard & Poor's Rating Services, Moody's Investors Services, or Fitch Investors Service, Inc. (or any affiliate thereof), as required by Section 2.4(b)(iv) of the Final Bid Version of the Concession Agreement or, if such confirmation is not available, an analysis and documentation providing reasonable assurance that such investment credit rating will be achieved at the Time of Closing.
- (v) Please provide the Section 467 and Section 1060 tax allocation schedules referenced in Section 2.6 of the Final Bid Version of the Concession Agreement.
- (vi) Please submit bid security for the BPS in the amount of \$15.0 million (the "**Proposal Security**"). Proposal Security shall be provided in the form of a letter of credit that complies with the definition of "Letter of Credit" set forth in the Concession Agreement and otherwise shall not expire or be revocable before the Proposal Expiry Date. Such Letter of Credit shall provide by its terms that in the event the Proposer is requested to organize its SPV and cause such SPV to sign the Concession Agreement, and such SPV signs the Concession Agreement, then the date of expiry of such Proposal Security shall automatically extend to date of expiry required for the Closing Deposit under the Concession Agreement.
- (vii) In the event that any Proposer is requested to organize its SPV and cause such SPV to sign the Concession Agreement, and such SPV signs the Concession Agreement, then the date of expiry of such Proposal Security shall automatically extend to date of expiry required for the Closing Deposit under the Concession Agreement, and such Proposal Security shall constitute a portion of the Closing Deposit in compliance with the Concession Agreement.

(i) *Bid Financial Model*

- (i) The Proposal shall include a Bid Financial Model. The format of the Bid Financial Model is at the discretion of Proposers but must comply with the requirements set out in this section.
  - a. The Bid Financial Model, which generates the Closing Consideration, shall be an electronic file constructed in a Microsoft® Excel format and shall not require the use of external modules. Proposers are encouraged to make the Bid Financial Model as user-friendly as possible. The Bid Financial Model shall satisfy each of the following requirements:
    - I. Each worksheet of the Bid Financial Model shall identify the version and the date of issue. If the Bid Financial

Model Microsoft® Excel file is password-protected, the password shall be provided. No part of the Bid Financial Model (cell, column, row, sheet, macro or otherwise) shall be separately hidden, locked or protected with a password. The Bid Financial Model shall be formatted to facilitate printing (e.g., row and column headers must be on every page of the printout).

- II. Proposers are encouraged to avoid the use of circular references in calculations. When used, those shall be fully detailed and explained in the Assumptions and Instructions Book. For all macros, all programming code shall be made visible (i.e., not password protected), well-structured and fully documented.

(ii) Assumptions and Instructions Book

- a. Proposers shall submit an Assumptions and Instructions Book providing:

- I. the logical layout and structure of the Bid Financial Model, including the names and purpose of all worksheets and a description of the color coding and/or labeling scheme(s);
- II. financial assumptions, including the Benchmark Interest Rate, the sources which constitute the basis of such assumptions and/or arguments about the adopted options for the construction of the Bid Financial Model and the execution of any related sensitivity analysis;
- III. sufficient information and instruction regarding the operation of the Bid Financial Model, especially changing the Benchmark Interest Rate;
- IV. a detailed description of the function and intended use of all macros, and each macro must be logically structured and well documented.

- (iii) For the avoidance of doubt, the University for itself and its advisors disclaims all liability for the contents of a Proposer's Bid Financial Model; no act or omission by the University or its advisors with respect to a Proposer's Bid Financial Model shall constitute any approval, representation, or warranty by the University or any of its advisors with respect to such Bid Financial Model. *By submitting its BPS in response to this RFP—Phase II, the Proposer agrees that it is relying on its Bid Financial Model solely at its own risk.*

(j) Required Approvals and Timing (1 Page)

- (i) Please confirm that all required corporate approvals, including authorization of each Proposer Member's Board of Directors, investment committee or equivalent body and any necessary shareholder, members, or partner approvals to enter into a binding agreement, have been obtained prior to the BPS submission.
  - (ii) Confirm that any regulatory approvals required to enter into the Concession Agreement (other than the approvals by the University as described in Section 1 above) have been obtained.
  - (iii) Confirm that the Proposer can meet a sixty (60) day timeframe from execution of the Concession Agreement by the Concessionaire to the Closing pursuant to Section 2.2(a) of the Concession Agreement.
- (k) *Certain Procurement Matters*
- (i) Please describe the involvement of small businesses as subcontractors in accordance with KRS 45A.077(4)(h).
  - (ii) Please confirm whether each Proposer Member and the Proposer maintains the residency in Kentucky or a reciprocal state in accordance with KRS 45A.494.
  - (iii) Please confirm that neither the Proposer nor any of its Proposer Members is debarred, suspended, or proposed for debarment or suspension, by the United States government or any government in the United States.
- (l) *Key Contacts*
- (i) Please provide the contact information for the key person with whom the University can discuss the BPS.

## **2.4 BPS Submission Logistics**

- (a) *Meetings*
- (i) 1-on-1 Meetings
    - a. The University intends to conduct 1-on-1 meetings according to the schedule set forth in Section 2.4(c) below. Such meetings are intended to offer Proposers an opportunity to obtain a better understanding of the Project and Project-related documents or communications provided by the University and to enable Proposers to discuss issues and clarifications regarding the Project and Project-related documents or communications.
    - b. Representatives of the University and advisors to the University may attend and participate in 1-on-1 meetings.



- c. No later than the dates set forth in Section 2.4(c)(i) below, the Proposer is requested to submit a written agenda for the relevant 1-on-1 meeting and a list of the Proposer's 1-on-1 meeting attendees (including name, title, role on the Project, and firm) at such meeting.

(b) *Technical Site Visit*

One-day site visit focused on a technical review of the Utility System including access to all components of the University's Utility System as well as access to key operational staff. The University would like to complete the technical focused site visits between June 1, 2022 and June 3, 2022. Proposers are requested to provide date preferences as well as key areas of focus **no later than 3pm Louisville, Kentucky Time on May 16, 2022**. The University will arrange a call ahead of the technical site visit to further coordinate to ensure that Proposer's time on campus is maximized.

(c) *Concession Agreement Drafting Process*

- (i) To meet the University's goal of financial close by December 9, 2022, the University expects to issue the Final Bid Version of the Concession Agreement (including final forms of all schedules attached thereto, including the Performance Standards, and the Key Performance Indicators ("KPIs")) in a supplement to this RFP—Phase II on or before July 29, 2022. Key dates for Proposers to provide comments on this RFP—Phase II (including the Concession Agreement, the Performance Standards, and the KPIs) as well as other key dates are listed below:

**\*\*All Dates are Subject to Change\*\***

Action	Date
University to provide Proposers with the Concession Agreement via the Cardbox virtual data room	April 29, 2022
University to provide Proposers with certain Schedules to the Concession Agreement via the Cardbox virtual data room (including initial versions of the Performance Standards and the KPIs)	April 29, 2022
Proposers to provide the University any comments (" <b>Requests for Clarification</b> " or " <b>RFCs</b> " as defined herein) on this RFP—Phase II (including the Instructions to Proposers and Concession Agreement)	No later than 3pm Louisville, Kentucky Time on May 13, 2022
Proposers to provide the University with a proposed agenda for the first round of 1-on-1 meetings	No later than 3pm Louisville, Kentucky Time on May 13, 2022

Action	Date
First round of 1-on-1 meetings	Week of May 16, 2022
Proposers to provide date preferences as well as key areas of focus for technical site visits	May 16, 2022
University to provide changes to this RFP—Phase II (including the Instructions to Proposers and Concession Agreement)	June 3, 2022
Proposers to provide the University any final material RFCs on this RFP—Phase II (including the Instruction to Proposers and Concession Agreement). No additional RFCs will be accepted after this time.	No later than 3pm Louisville, Kentucky Time on June 10, 2022
Proposers to provide the University with a proposed agenda for the second round of 1-on-1 meetings	No later than 3pm Louisville, Kentucky Time on June 10, 2022
Second round of 1-on-1 meetings	Week of June 13, 2022
University to provide proposed final version of this RFP—Phase II (as amended and restated cumulatively for all changes thereto) to Proposers	July 1, 2022
University to provide proposed final version of this RFP—Phase II (as amended and restated cumulatively for all changes thereto) to the Capital Projects and Bond Oversight Committee for its review and approval	July 1, 2022
University to provide to the Proposers the final version of this RFP—Phase II (as amended and restated cumulatively for all changes thereto), including the Final Bid Version of the Concession Agreement and all schedules thereto (including the Performance Standards and the KPIs)	July 29, 2022

(d) *Requests for Clarification*

- (i) The University will only consider questions regarding the BPS if submitted in writing by a single point of contact designated by each Proposer to submit its list of Requests for Clarification (“RFCs”) using the form attached hereto as Schedule 4 in accordance with the dates specified in Section 2.4(c)(i) above. Each RFC shall be categorized as Category 1, 2, or 3 as indicated on Schedule 4. “Category 1” means a potential “go / no-go” issue that, if not resolved in an acceptable fashion, may preclude the

Proposer from submitting a BPS. “Category 2” means a major issue that, if not resolved in an acceptable fashion, will significantly affect the Closing Consideration or value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a BPS. “Category 3” means an issue that is minor in nature, such as a clarification, a comment concerning a conflict between documents or with a document or a typographical mistake.

- (ii) The University will focus on questions based on the level of priority indicated by the Proposer’s team. For further clarity, each Proposer will not have access to any other Proposer’s questions or requests, except to the extent such questions or requests are reflected in revisions to this RFP—Phase II (including the Concession Agreement and the schedules thereto).

(e) *BPS Timing*

- (i) Each Proposer should submit its BPS for this RFP—Phase II (excluding such Proposer’s Proposal Security) in written form by uploading such BPS to the folder in the Cardbox virtual data room designated by the University for such Proposer’s BPS **no later than 3pm Louisville, Kentucky Time on August 12, 2022 to the attention of:**

**Amber Michelle Horn  
Procurement Services  
University of Louisville**

- (ii) In addition, each Proposer should submit the original copy of its Proposal Security to the University via express mail, to be received by the University **no later than 3pm Louisville, Kentucky Time on August 12, 2022, to the attention of:**

**Amber Michelle Horn  
Procurement Services  
University of Louisville  
2215 South Brook Street  
Louisville, KY 40208  
E-mail: [amber.horn@louisville.edu](mailto:amber.horn@louisville.edu)**

(f) *BPS Submission*

- (i) **On or before 3pm Louisville, Kentucky Time on July 29, 2022**, each Proposer shall submit (via email to [amber.horn@louisville.edu](mailto:amber.horn@louisville.edu)) its (x) draft proposed Benchmark Interest Rate and (y) draft proposed change in Closing Consideration per basis point change in the Benchmark Interest Rate, which proposed Benchmark Interest Rate and draft proposed change in Closing Consideration per basis point change in the Benchmark Interest Rate shall be subject to the approval of the University (which approval shall not be unreasonably withheld, conditioned, or delayed).

- (ii) Following selection of the Preferred Proposer, which is at the sole discretion of the University and, for the avoidance of doubt, will constitute the University's approval for purposes of Section 3.3(b) of the Concession Agreement of any Operator proposed by the Preferred Proposer in its BPS:
  - a. The University will require the Preferred Proposer to (x) form the SPV (which SPV shall have been formed by the Preferred Proposer as described in its BPS) and (y) cause the SPV irrevocably to sign and deliver to the University within five (5) Business Days after such selection the Final Bid Version of the Concession Agreement; provided, however, that the SPV shall sign and deliver the Final Bid Version with the blanks for the Closing Consideration and the Benchmark Interest Rate completed as set forth on Schedule 1 and Schedule 2, respectively, together with the completion of blanks for other factual information; and
  - b. Following receipt of said Concession Agreement and all approvals and, in any event within five (5) Business Days after receipt of approval from the Board of Trustees for such transaction, the University shall execute and return said Concession Agreement to the Concessionaire, and thereafter the relationship between the Preferred Proposer, the SPV, and the University shall be governed by the Concession Agreement.
- (iii) If a Proposer is selected by the University as a Preferred Proposer, and such Proposer fails to cause its SPV to execute the Concession Agreement and deliver it to the University within five (5) Business Days after its selection, then the University shall have the right to draw on the Proposal Security and select another Proposer as the Preferred Proposer. For the avoidance of doubt, the University shall only be permitted to draw on the Proposal Security if the Preferred Proposer fails to execute the Concession Agreement as described in the previous sentence or if a Proposer withdraws its BPS before the Proposal Expiry Date but after it has submitted such BPS, unless and until the Proposal Security becomes part of the Closing Deposit, in which case the University's right to draw thereon shall be governed by the Concession Agreement.
- (iv) If a Proposer is not selected by the University as a Preferred Proposer, then such Proposer's Proposal Security shall be returned by the University on or before execution of the Concession Agreement by the SPV provided that, in no event shall it be returned later than two (2) Business Days after the Proposal Expiry Date.
- (v) If the University does not execute the Concession Agreement by the Proposal Expiry Date after having received the Concession Agreement executed by the SPV as provided in Section 2.4(f)(ii)(b) above, then the

SPV formed by the Preferred Proposer may withdraw its signature to the Concession Agreement and will not be bound thereby, in which case the University shall promptly return the Proposal Security to the Preferred Proposer.

### **3. No Liability for Costs**

The University and its advisors are not responsible for costs or damages incurred by the Proposer, any of its Proposer Members, their respective advisors or contractors, or other interested parties in connection with the solicitation process, including but not limited to, costs associated with preparing responses, qualifications, and proposals, and participating in any conferences, oral presentations, or negotiations.

### **4. Modification, Termination, and Rejection Rights**

By submitting its BPS, each Proposer acknowledges and agrees to the following conditions:

- (a) The University reserves the right to (v) modify or terminate this solicitation at any time for any reason, (w) reject any or all BPSs, (x) waive minor technical defects in any Proposer's BPS, (y) change any date herein, and (z) request from any Proposer any clarifications, corrections, or supplements to its BPS in connection with the University's review of such BPS pursuant to Section 2.1(a) above or otherwise.
- (b) The receipt of proposals or other documents in connection with the matters described herein will in no way obligate the University to enter into a contract of any kind.
- (c) The selection of a Preferred Proposer by the University shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of such Proposer or its SPV under the Concession Agreement as may be executed between the SPV and the University.
- (d) Subject to Section 5 below, only one (1) BPS from each Proposer shall be considered in selecting the Preferred Proposer.
- (e) Such Proposer's BPS shall comply with all content requirements described herein. Failure to comply with such requirements may result in a BPS being deemed non-responsive and disqualified in the University's discretion.
- (f) If such Proposer withdraws its BPS before Proposal Expiry Date and after it has submitted its BPS, the University shall have the right immediately to draw on such Proposer's Proposal Security.
- (g) If such Proposer is selected as the Preferred Proposer, it acknowledges and agrees that if it fails to cause its SPV to execute the Final Bid Version of the Concession Agreement within five (5) Business Days after such selection, then such Proposer could be disqualified as the Preferred Proposer thereafter, and the University shall have the right immediately to draw on such Proposer's Proposal Security.

## **5. Requests for BPS Revisions**

The University may, at any time after receipt of BPSs and prior to selection of the Preferred Proposer, determine that it is appropriate to request revisions to the Closing Consideration or the Benchmark Interest Rate set forth in any BPS (“**BPS Revisions**”) by re-submittal of Schedule 1 or Schedule 2, respectively.

Each Proposer may determine it its discretion whether to deliver the requested BPS Revisions. Failure of a Proposer to deliver the requested BPS Revisions shall not, in and of itself, result in the forfeiture of such Proposer’s Proposal Security; *provided* that such Proposer’s original BPS, together with the Proposal Security included therewith, shall remain valid and in effect notwithstanding its election not to deliver the requested BPS Revisions.

Notwithstanding this Section 5, the University anticipates that it will select the successful Proposer based upon evaluation of the initially submitted BPSs.

## **6. Conformance with Governing Law**

Proposers shall conform to and observe all laws, ordinances, rules and regulations of the United States of America, Commonwealth of Kentucky and all other local governments, public authorities, boards or offices relating to the property or the improvements upon same (or the use thereof) and will not permit the same to be used for any illegal or immoral purposes, business or occupation.

## **7. Collusion among Proposers**

Any agreement or collusion among Proposers or prospective Proposers, which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price or to refrain from offering, or otherwise, is prohibited.

Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association who violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars nor more than twenty thousand dollars.

## **8. Changes to Responding Team Members**

If a Proposer wishes to make changes to any of its Responding Team Members or key staff identified in its Statement of Qualifications, including, without limitation, additions, deletions, reorganizations and role changes in or of any of the foregoing, the Proposer must submit to the University a written request for its approval of the change as soon as possible. For avoidance of doubt, if a Proposer wishes to replace any legal entity comprising a Responding Team Member identified in its Statement of Qualifications with an affiliate thereof, including any investment fund, the Proposer must submit a written request to the University for such change. Any such request must be submitted via email to Amber Michelle Horn at [amber.horn@louisville.edu](mailto:amber.horn@louisville.edu).

## **9. Kentucky's Personal Security and Breach Investigation Procedures and Practices Act**

If Proposer is provided access or is provided a copy(ies) of University data, Proposer agree to secure and protect the University data (and require that of any other entity with whom it shares or gives access to University data) from unauthorized access, use, modification, disclosure, manipulation, or destruction and will use processes that meet industry standard practices for protecting a customer's information (at least as stringent as Proposer would use for protecting its own confidential information.) By submission of a BPS, Proposer agree to notify the University of a security breach / security incident as specified at <https://louisville.edu/security/incident-reporting-and-response/Contractor-external-party-incident-reporting/> relating to University data that Proposer or its agents or subcontractors has access to or is in their possession within seventy-two (72) hours or promptly of discovery of an actual or suspected breach. Proposer also agree to cooperate with the University in complying with the response, mitigation, correction, and notification efforts including undertaking a prompt and reasonable investigation of any such incident. Upon termination or cancellation of this procurement, all data, including disks, tapes and electronics files in the possession of Proposer or Proposer's agents, subcontractors, or other third-party will be destroyed. The University acknowledges that such data communicated and / or stored in electronic form may be routinely backed up such that return or destruction is not practical and / or feasible, in which case Proposer (or Proposer's subcontractors / agents / others with whom the information has been shared) will keep such back-up copies secure until the back-up media is recycled or destroyed.

## **10. Confidentiality**

The University recognizes Proposer's possible interest in preserving selected information and data included in the BPS; however, the University must treat such information and data as required by the Kentucky Open Records Act, KRS 61.870, et seq. Information areas which normally might be considered proprietary, and therefore confidential, shall be limited to individual personnel data, customer references, formulae and company financial audits which, if disclosed, would permit an unfair advantage to competitors. If a BPS contains information in these areas and Proposer declares them to be proprietary in nature and not available for public disclosure, Proposer shall declare in the BPS the inclusion of proprietary information and shall noticeably label as confidential or proprietary each sheet containing such information. To the extent the University concurs, information marked "Proprietary Information" in the BPS will not be considered public information. BPSs containing information declared by Proposer to be proprietary or confidential, either wholly or in part, outside the areas listed above may be deemed non-responsive and may be rejected. The University's General Counsel shall review Proposer's information claimed to be confidential and, in consultation with Proposer (if needed), make a final determination as to whether or not the confidential or proprietary nature of the information or data complies with the Kentucky Open Records Act. The University is the final authority as to the extent of material that is considered confidential.

## **11. Relationship Disclosure**

The University reserves the right to disqualify any Proposer that, in the University's opinion, has a conflict of interest, whether such conflict exists now, is likely to arise in the future, or may

reasonably be perceived to exist, which conflict has not already been waived. The following entities (and their respective affiliates, parents, subsidiaries and other subsidiaries of their parent companies) are providing advice or services to the University with respect to the RFP (including the Concession) and are not eligible to participate as part of a Proposer or to provide advice to a Proposer regarding the RFP (including the Concession):

- (a) Dinsmore & Shohl LLP
- (b) Ernst & Young Infrastructure Advisors, LLC
- (c) Henningson, Durham & Richardson, Inc.
- (d) Hunton Andrews Kurth LLP

***By participating in the process described herein, each Proposer and each of its Proposer Team Members hereby consents to the provision of advice and services to the University with respect to the RFP (including the Concession) by the entities listed above (and their respective affiliates, parents, subsidiaries and other subsidiaries of their parent entities).***

## **12. RFP Documents**

This document, as supplemented, will not form a part of the Concession Agreement, and if the Concession Agreement is executed, this document, as supplemented, shall be superseded in its entirety by the executed Concession Agreement. The University makes no representation or guarantee as to the accuracy, completeness or fitness of this document, as supplemented. The University is making no representation or warranty in connection with this document, as supplemented, or the Concession, except as expressly set forth in the Concession Agreement. The University takes no responsibility for this document, as supplemented, and Proposers and each of their Proposer Members are responsible for any conclusions they may draw from the information provided herein or otherwise provided to Proposers or their Proposer Members and their respective direct and indirect owners. The University is making documents available to Proposers and their Proposer Members and their respective direct and indirect owners for the sole purpose of providing information in the possession of the University, regardless of whether such information is accurate, complete, pertinent, or of any value. The Concession Agreement, if executed, is intended to serve as the final, binding contract document between the University and the Preferred Proposer. Proposers should not expect to be able to negotiate any of the terms and conditions in the Concession Agreement, and by submitting a BPS, the Proposer for itself and its Proposer Members agrees to be bound by the terms and conditions of the Concession Agreement as written other than completing the blanks for the Closing Consideration, the Benchmark Interest Rate and other factual information left blank in the version of the Concession Agreement provided in connection herewith, if selected as the Preferred Proposer.

By submitting a BPS, the Proposer acknowledges that for itself and each of its Proposer Members that it has (or they have) engaged various advisors, consultants and experts to evaluate the material provided, and that the Proposer and its Proposer Members are responsible for all financial, legal, and tax advice provided by such advisors, consultants, and experts. Each of the Proposer and its Proposer Members must satisfy itself by personal investigation and other means it deems necessary, as to the conditions affecting the Concession and the cost thereof. Each



Proposers and its Proposer Members is solely responsible for conducting their own independent research and due diligence for the preparation of their BPS.

## **Appendix 1**

### **Defined Terms**

**Unless otherwise specified or the context otherwise requires, for the purposes of this RFP—Phase II the following terms have the following meanings:**

**“Approved Capital Improvements”** has the meaning ascribed thereto in the Concession Agreement.

**“Assumptions and Instructions Book”** means assumptions and instructions book provided by the Proposer as part of its proposal in accordance with Section 2.3(i)(ii).

**“Benchmark Interest Rate”** has the meaning ascribed thereto in the Concession Agreement.

**“Bid Financial Model”** means the financial model provided by the Proposer as part of its proposal in accordance with Section 2.3(i)(i).

**“Binding Proposal Submittal”** or **“BPS”** has the meaning ascribed thereto in Section 1.

**“BPS Revisions”** has the meaning ascribed thereto in Section 5.

**“Business Day”** has the meaning ascribed thereto in the Concession Agreement.

**“Capital Improvements”** has the meaning ascribed thereto in the Concession Agreement.

**“Capital Projects and Bond Oversight Committee”** means the permanent subcommittee of the Kentucky General Assembly Legislative Research Commission charged with overseeing the expenditure of funds budgeted for capital projects.

**“Closing Consideration”** has the meaning ascribed thereto in the Concession Agreement.

**“Closing Deposit”** has the meaning ascribed thereto in the Concession Agreement.

**“Closing”** has the meaning ascribed thereto in the Concession Agreement.

**“Concession”** or **“Concession Agreement”** has the meaning ascribed thereto in Section 1.

**“Concessionaire”** has the meaning ascribed thereto in Section 1.

**“Equity Participant”** has the meaning ascribed thereto in the Concession Agreement.

**“Final Bid Version of the Concession Agreement”** means the version of the Concession Agreement designated the “Final Bid Version” and provided to the Proposers by the University pursuant to this RFP—Phase II.

**“Financial Officer’s Certificate”** means the certificate described on Schedule 3.

**“Guarantor”** means each parent company or affiliate (if any) that was designated by the Proposer in its SOQ to provide an Equity Participant or the Operator with the financial support and resources needed to successfully complete the Project.

**"KAR"** means Kentucky Administrative Regulation.

**"Key Performance Indicators"** or **"KPIs"** has the meaning ascribed thereto in Section 2.4(c)(i).

**"KRS"** means Kentucky Revised Statute.

**"Leasehold Mortgage Debt"** has the meaning ascribed thereto in the Concession Agreement.

**"Letter of Credit"** has the meaning ascribed thereto in the Concession Agreement.

**"O&M"** means operations and maintenance.

**"Operator"** has the meaning ascribed thereto in the Concession Agreement.

**"Performance Standards"** has the meaning ascribed thereto in the Concession Agreement.

**"Preferred Proposer"** has the meaning ascribed thereto in Section 1.

**"Project"** has the meaning ascribed thereto in Section 1.

**"Proposal Due Date"** means August 12, 2022.

**"Proposal Expiry Date"** means February 8, 2023.

**"Proposal Security"** has the meaning ascribed thereto in Section 2.3(h)(vi).

**"Proposer Member"** means a Responding Team Member (as defined in RFP—Phase I) of a Responding Team that has been qualified as a Proposer pursuant to RFP—Phase I.

**"Proposer"** has the meaning ascribed thereto in Section 1.

**"Responding Team"** has the meaning ascribed to it in RFP—Phase I.

**"Responding Team Member"** has the meaning ascribed to it in RFP—Phase I.

**"Requests for Clarification"** or **"RFCs"** has the meaning ascribed thereto in Section 2.4.

**"RFP"** means, collectively, RFP—Phase 1 and this RFP—Phase 2.

**"RFP—Phase 1"** means Phase I of this Request for Proposal dated as of February 1, 2022.

**"RFP—Phase 2"** means Phase II of this Request for Proposal dated as of the date hereof.

**"SPV"** has the meaning ascribed thereto in Section 1.

**"Statement of Qualifications"** means, with respect to any Proposer, such Proposers submittal in response to RFP—Phase I.

**"Supplies"** has the meaning ascribed thereto in the Concession Agreement.

**"Term"** has the meaning ascribed thereto in the Concession Agreement.

**"University"** has the meaning ascribed thereto in Section 1.

**"University Utility System Employees"** has the meaning ascribed thereto in the Concession Agreement.

**"University's Utilities Team"** means representatives of the University Physical Plant Department.

**"Utility System"** has the meaning ascribed thereto in the Concession Agreement.

**Schedule 1**

**Closing Consideration**

Name of Proposer: \_\_\_\_\_

Date: \_\_\_\_\_

The Proposer hereby acknowledges and affirms that the information below constitutes its full and complete submission for Schedule 1.

The amount of Closing Consideration that the Proposer will pay pursuant to Section 2.1 of the Concession Agreement will be:

US\$ \_\_\_\_\_ [in numbers]

\_\_\_\_\_ [in words]

The period of time between full execution of the Concession Agreement and the Closing (as defined in the Concession Agreement) shall not exceed sixty (60) days as specified in Section 2.2(a) of the Concession Agreement.

This offer will be valid until 5pm Louisville, Kentucky Time on Proposal Expiry Date (as defined in this RFP—Phase II), unless extended by mutual consent of both the University and the Proposer.

**PROPOSER**

\_\_\_\_\_

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule 2**

**Benchmark Interest Rate**

Name of Proposer: \_\_\_\_\_

Date: \_\_\_\_\_

The Proposer hereby acknowledges and affirms that the information below constitutes its full and complete submission for this Schedule 2.

The Benchmark Interest Rate for purposes of this Concession Agreement will be:

---

The amount by which the Closing Consideration will change per a one basis point change in the Benchmark Interest Rate (either positively or negatively) for purposes of Section 2.2(c) of the Concession Agreement will be:

US\$ \_\_\_\_\_ [in numbers]

\_\_\_\_\_ [in words]

This offer will be valid until 5pm Louisville, Kentucky Time on Proposal Expiry Date (as defined in this RFP—Phase II), unless extended by mutual consent of both the University and the Proposer.

**PROPOSER**

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

### Schedule 3

#### Financial Officer's Certificate

##### INSTRUCTIONS:

- (a) Complete a separate Schedule 3 for each Equity Participant, the Operator, and the Guarantor (if any).<sup>1</sup>
- (b) Each Financial Officer's Certificate should be signed by the chief financial (or equivalent) officer of each entity listed above, dated not earlier than 14 calendar days prior to the Proposal Due Date.

I, [Name], the [Title] of [Name of Equity Participant or Operator or Guarantor] (the "Company"), do hereby certify as of [Date]<sup>2</sup> that:

- (a) This certificate is being executed and delivered in connection with the Proposal submitted by [Proposer name] (the "Proposer") in response to the Request for Proposals to operate, maintain, finance, and undertake periodic lifecycle improvements for the University of Louisville (the "University") on-campus Utility Systems (the "Project"), dated [July 29, 2022] (the "RFP Phase II"), issued by the University. Capitalized terms used but not defined herein has the meanings set forth in this RFP. Reference is also made to the Request for Proposals Phase I ("RFP Phase I") dated February 1, 2022, as amended, for the Project and the Statement of Qualifications (the "SOQ") submitted by Proposer on February 28, 2022.
- (b) As to the matters herein set forth below, I either have personal knowledge or have obtained information from officers or employees of the Company in whom I have confidence and whose duties require them to have personal knowledge thereof. I make the certifications herein to the University pursuant to the requirements of this RFP Phase II with the intent and understanding that they will be relied upon by the University as a basis for the evaluation of the Proposal contemplated by this RFP Phase II.
- (c) **[Guarantor:** It is the intention of the Company to support the [name of Equity Participant or Operator] with the financial, human resources and other support needed by it to successfully satisfy its obligations in respect of the Project if the Proposer were to become the Concessionaire.]<sup>3</sup>
- (d) **Audited Financial Statements:** Since the Proposer's submission of the SOQ, the following annual financial statements and interim financial statements have become available for the Company [List periods and state whether the provided statements are audited or not] are complete and correct copies thereof. Where the Company has provided unaudited financial results, such

---

<sup>1</sup> Each of the Equity Participant and Operator entities in the Proposer team should provide its own separate certificate. If any such firm is proposing a Guarantor and consolidated financial statements are provided by the Guarantor on behalf of itself and such entity, then only one consolidated Financial Officer's Certificate should be submitted for the Guarantor. If an Equity Participant or Operator entity and its respective Guarantor are submitting separate financial statements, then each of the Guarantor and the entity must submit separate Financial Officer's Certificates, which may be updated as applicable. If an entity has no Guarantor, all references to "Guarantor" should be deleted from this certificate.

<sup>2</sup> Date must not be earlier than 14 calendar days prior to the Proposal Due Date.

<sup>3</sup> Delete if there is no Guarantor and not applicable.

financial results present fairly, in all material respects, the financial position and results of operations and cash flows of the Company, [the Guarantor and its consolidated subsidiaries, including the *[name of Equity Participant or Operator]*,]<sup>4</sup> as of such dates and for such periods. The Company has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.

- (e) **Off-Balance Sheet Liabilities:** The Company does not have any material off-balance sheet liabilities other than as described in the financial statements referred to above or listed in Annex A hereto attached.<sup>5</sup>
- (f) **Financial Information Summary:** Attached hereto as Annex B is a completed Company Information Summary relating to the Company. All the information provided in the attached Annex B is complete and correct to the best of my knowledge.
- (g) **Bankruptcy/insolvency proceedings:** [There has been no Insolvency Event relating to the Company or any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Company which has occurred since the SOQ submission date (whether or not such proceeding was ultimately dismissed).] [Attached hereto as Annex C is a detailed description of all Insolvency Events relating to the Company or any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Company which has occurred since the SOQ submission date (whether or not such proceeding was ultimately dismissed).]<sup>6</sup>

For the purposes of this certification, Insolvency Event means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction.

- (h) **Material Changes in Financial Condition:** [No material change in the financial condition of the Company has occurred or is projected to occur, as applicable (i) since the SOQ submission date; or (ii) during the next fiscal quarter following the date of the Proposal.] [Attached hereto as Annex D is a detailed description of material changes in the financial condition of the Company.]<sup>7</sup>

---

<sup>4</sup> Delete if this form is not being submitted by a Guarantor and not applicable.

<sup>5</sup> Fill out Annex A as "not applicable" if there is no off-balance sheet liability to disclose.

<sup>6</sup> Complete the appropriate certification. Delete the sentence that is not applicable. Fill out Annex C as "not applicable" if there is no Insolvency Event to disclose.

<sup>7</sup> Complete the appropriate certification. Delete the sentence that is not applicable. Fill out Annex D as "not applicable" if there is no material change in financial condition to disclose. Further instructions regarding material changes are provided in Annex D.

IN WITNESS WHEREOF, the undersigned is the [*Chief Financial Officer, Treasurer or equivalent officer*] of the entity to which this form relates, and has duly executed this certificate as of the date first written above.

By: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



**ANNEX A TO FINANCIAL OFFICER'S CERTIFICATE**  
**Off-Balance Sheet Liabilities**

*[COMPANY TO PROVIDE DETAILS]*

**ANNEX B TO FINANCIAL OFFICER'S CERTIFICATE**  
**Company Information Summary**

Entity: \_\_\_\_\_

Designate whether Equity Participant, Operator, or Guarantor: \_\_\_\_\_

<b>SHAREHOLDER<sup>1</sup></b>	<b>INTEREST (%)</b>
[Shareholder name]	
[No current shareholders, equity members partners or equivalent have a holding of 15% or greater]	

<b>RATING AGENCY<sup>2</sup></b>	<b>CURRENT RATING</b>
[Rating agency name]	
[Debt of the Company is not rated by any major credit rating agency]	
[Company has no debt]	

---

<sup>1</sup> List current shareholders, equity members partners or equivalent holding a 15% or greater interest in the company (indicate their percentage interest), as well as those having the right to appoint one or more board director(s). If such interest is held by a holding company, a shell corporation or other form of intermediary, also identify the ultimate or parent entity.

<sup>2</sup> If applicable, list all credit ratings available for the company and attach a copy of the most recent credit report.

**ANNEX C TO FINANCIAL OFFICER'S CERTIFICATE**  
**Insolvency Events**

*[COMPANY TO PROVIDE DETAILS]*

**ANNEX D TO FINANCIAL OFFICER'S CERTIFICATE**  
**Material Changes in Financial Condition**

*[COMPANY TO PROVIDE DETAILS]*

**INSTRUCTIONS TO PROPOSERS REGARDING ANNEX D:**

If applicable, this Annex D should include the following details regarding material changes in the Company's financial condition:

- (1) A description of each material change, actual and projected, and any related changes or disruptions in executive management;
- (2) Actual and projected impacts on the affected entity's organizational and financial capacity and its ability to remain engaged in this procurement and submit a responsive proposal; and
- (3) A detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead, including the likelihood that the circumstances of the change or impacts thereof will continue during the Project term.

Estimates of the impact on revenues, expenses and the change in equity should be provided separately for each material change. **References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.** Where a material change will have a negative financial impact, the affected entity should describe measures that would be undertaken to insulate the Project from any recent material changes and those currently in progress or reasonably anticipated in the future. If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity should describe measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth below is a list of examples of what the University considers to be a material change in financial condition.

- (a) A change in the tangible net worth of 10% or more of net assets;
- (b) A sale, merger or acquisition exceeding 10% of the value of net assets prior to the sale, merger or acquisition which in any way involves the affected entity or its parent company or Guarantor;
- (c) A change in credit rating for the affected entity or its parent company or Guarantor;
- (d) Inability to meet material conditions of loan or debt covenants by the affected entity or its parent company or Guarantor; that has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations or additional credit support from shareholders or other third parties;
- (e) In the current and three most recent completed fiscal years, the affected entity or its parent company or Guarantor; (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in labor force exceeding 5% of employees or involved the disposition of assets exceeding 10% of the then-net assets; and

- (f) Other events known to the affected entity that represent a material change in financial condition over the past three years, or which may be pending for the next reporting period.

**Schedule 4**  
**Requests for Clarification**

This form must be used for the submission of questions pertaining to the BPS for the Project. This form must be submitted to the University via email to [amber.horn@louisville.edu](mailto:amber.horn@louisville.edu).

Each RFC shall be categorized as Category 1, 2, or 3. "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a BPS. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect the Closing Consideration or value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a BPS. "Category 3" means an issue that is minor in nature, such as a clarification, a comment concerning a conflict between documents or with a document or a typographical mistake.

#	Category	Section	Comment