

Discussion and possible action City of Austin P3 Policy regarding AIPP

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AIPP PANEL | SEPTEMBER 2021



Andrew Moore manages the City of Austin's P3 Program. Find more info about the program here:
<http://austintexas.gov/departments/public-private-partnerships-p3-program-office>

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Public-Private Partnerships (P3) Program Office

Issue = unmet needs

- City-owned buildings are not meeting needs.
- Previous process was purchasing existing buildings as need arises.

Solution = needs met @ significant cost savings

- Planning ahead – uses RFP to solicit competitive bids
- Shifts financial risk to selected Developer
- Fixed Price and Delivery Date.

I'd like to start by explaining what "Public-Private Partnerships" or the "P3 delivery process" means in the City of Austin. When a City need arises, say for *staff office space* for example, the City typically purchases existing office buildings. The City does not have experience constructing office buildings. Many of city-owned or city-leased office buildings are reaching the end of their usefulness or do not meet the functions for which they were intended. To meet current and future needs, and to reduce the reliance on leased space, the City has developed a public-private partnership approach, which is managed by the P3 Program Office in the City's Financial Services Department:

The P3 approach uses a Request for Proposal (RFP) process to solicit competitive bids from Developer teams, allowing the City to shift the financial risk to the selected Developer using a fixed price and delivery date.

Should costs exceed the agreed upon price or delivery date, the Developer is held responsible. At the completion of the project, the City purchases the building. Typical savings is about 30% over the cost of constructing a building.

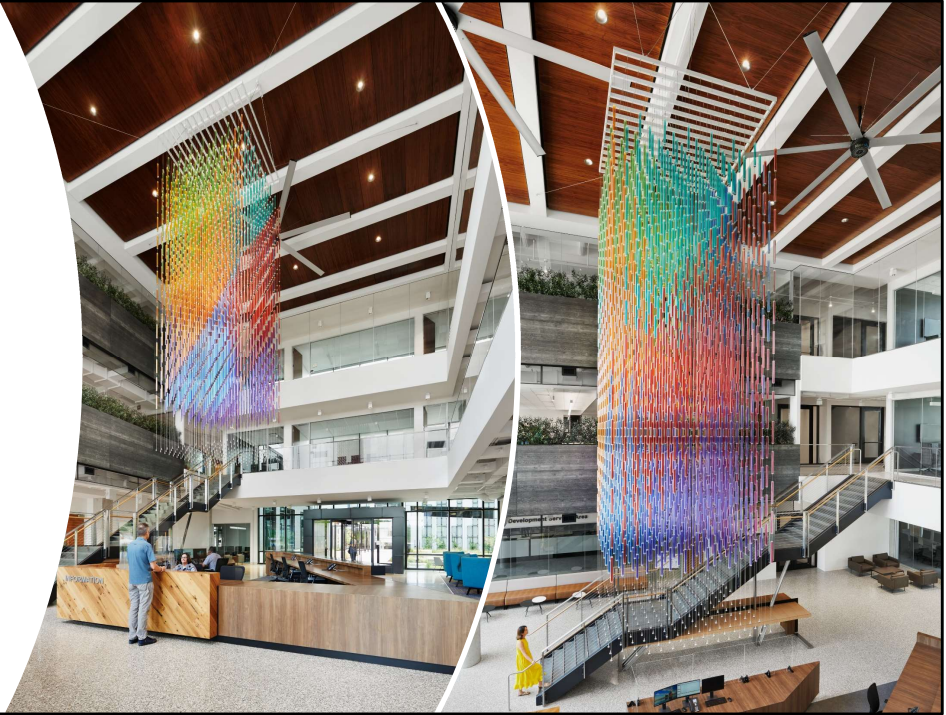
This process significantly reduces the cost and delivery timeline for public projects while also meeting City policy objectives.

Public-Private Partnerships (P3)
Program Office

City of Austin
Planning and
Development Center

Artist: Fyoog
Title: *Aurorae*
Budget: \$250K

More info about future P3
plans here:
[https://www.austintexas.gov/
edims/document.cfm?id=330
010](https://www.austintexas.gov/edims/document.cfm?id=330010)




The City used the P3 method to purchase the Planning and Development Center at the former Highland Mall campus, shown here. The artist, Fyoog which is owned by local artist/architect Dan Cheatham, did an excellent job of conceiving and installing an artwork that fit all the criteria, within a very short timeline. This budget does not represent 2% of the construction budget for this facility.

Austin Energy Headquarters, Mueller



Here you see the Austin Energy Headquarters, completed as a P3 project during the pandemic. The Developer hired Art and Artisans as their consultant and placed art throughout the building –the image you see in the lower right corner is an artist’s concept for an installation to be placed in the building lobby, which is public space. AIPP was not a part of this process. So far there is no AIPP artwork at this site.



CHAPTER 7-2. - ART IN PUBLIC PLACES.

§ 7-2-1 - DEFINITIONS.

In this chapter:

- (1) ART means a work of art or an artistically designed art feature that enhances the aesthetics of a building, bridge, streetscape, park, or other project for which funds are appropriated as described in this chapter and includes a mural, sculpture, garden, water feature, or other feature that appeals to the senses or the intellect.
- (2) PROJECT means a capital project funded in whole or in part by the City:
 - (a) to construct or remodel a building, decorative or commemorative structure, or parking facility;
 - (b) to acquire parkland or to develop a park;
 - (c) for a street improvement project, other than street repair or reconstruction;
 - (d) for an improvement to a streetscape;
 - (e) for a bridge including the incorporation of an artistic feature into the structural design;
 - (f) for a water or wastewater treatment facility; or
 - (g) that is an appropriate project for art as recommended by the Art in Public Places Panel and Arts Commission and approved by city council.
- (3) CONSTRUCTION COST means the cost of a project to the City as determined in accordance with [Section 7-2-4 \(Construction Cost Calculation\)](#).
- (4) STREETSCAPE means an improvement to a public right-of-way, including a sidewalk, tree, light fixture, sign, and furniture.

Source: 1992 Code Section 9-2-1; Ord. 031009-10; Ord. 031211-11.

Graceful Celebration of Diversity (detail), TEMPO 2019 by Ender Martos

So what is the issue? How does the AIPP Ordinance cover this type of project? The AIPP Ordinance defines what an eligible AIPP project means – **a capital project funded in whole or in part by the City**, and it expressly includes a new or remodeled buildings.



§ 7-2-4 - CONSTRUCTION COST CALCULATION.

(A) In this section:

- (1) DEBT ISSUANCE COST means the cost to the City to issue bonds for a project.
- (2) DEMOLITION COST means the cost to remove a building or other existing structure from a project site.
- (3) EQUIPMENT COST means the cost of equipment or furnishings that are portable or of standard manufacture and used in a project. Term excludes equipment or furnishings:
 - (a) that are custom designed; or
 - (b) that create a new use for a project.
- (4) PERMIT AND FEE COST means the cost of the permits and fees associated with a project.
- (5) REAL PROPERTY ACQUISITION COST means the cost to acquire land, including an existing building or structure, for a project, including appraisal and negotiation costs.

(B) Except as provided in Subsections (C) and (D), construction cost is the cost of a project to the City after deducting:

- (1) debt issuance cost;
- (2) demolition cost;
- (3) equipment cost;
- (4) permit and fee cost; and
- (5) real property acquisition cost.

(C) In calculating the construction cost of a project to acquire or develop parkland, the real property acquisition cost is not deducted.

(D) If the source of funding or the law governing a project does not permit an expenditure for art, the affected funds are excluded from the calculation of construction cost.

Source: 1992 Code Section 9-2-1 and 9-2-2(A); Ord. 031009-10; Ord. 031211-11.

However, the AIPP Ordinance expressly deducts **real property acquisition** costs when calculating the AIPP 2% eligible funding portion. **Real property acquisition** cost used to mean the cost of the land. Now, however, P3 is a real property acquisition process, and so it is now exempt from the AIPP Ordinance, which was last updated in 2004.

Challenges to the P3 project delivery path for AIPP



AIPP Ordinance. The AIPP Ordinance doesn't cover this method of delivery new construction projects to the City.



Funding. The AIPP 2% will need to be set aside at the outset of the project.



Timing. The Artist's work can't start until the City is certain of purchase, toward the end of construction.



Artist Contract. The contract for the AIPP artwork would have to be between the Artist and the Developer.

AIPP Ordinance. The AIPP Ordinance doesn't cover this method of delivery new construction projects to the City. There is interest from the Arts Commission and from AIPP and P3 Program staff to create a path for AIPP projects to happen within the P3 process.

Funding. The AIPP 2% would need to be set aside at the outset of the project and held until the end of the construction, when the City can be reasonably assured that the construction will be accepted.

Timing. Because the artwork installation would not be possible until the City knows that it will purchase the building or facility, the artist's opportunity wouldn't be confirmed until the project within months of construction completion.

Artist Contract. The contract for the AIPP artwork would have to be between the Artist and the Developer.

- Like the P3 Process, the artwork would be delivered in conformance with language about AIPP in the RFP and in the Developer's contract with the City.

AIPP policy language for the P3 process is due to be shared at a Council work session by December 9th.

Schedule, subject to change:

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|-----------------|--|
| September 13 | Presentation to 9/13 AIPP Panel to review issues and discuss any Panel concerns. |
| Sept. 14-16 | AIPP staff and P3 Program staff update presentation based on AIPP Panel input. |
| Sept. 17-20 | PDF of presentation is sent to the Arts Commission with request to revive the AIPP – P3 working group at the 9/20 AC meeting. |
| Sept. 21-Oct 15 | Arts Commission Working Group meets to consider recommendations regarding including AIPP in the P3 project delivery process. |
| October 18 | AC approves recommendations at October meeting. |
| Nov.-Dec. | Review Language with Audit and Finance Committee. Language goes to Council at a work session Nov. 2, Nov. 7 or Nov. 30 (prior to December 9) |

Questions?

AIPP will need to propose policy language to guide application of the AIPP ordinance to city projects delivered under the P3 process. [This is due to be presented at a Council work session by 12/9/21.](#)

Any Questions?