

Response to Nebraska Department of Correctional Services (NDCS) RFI #3016

Description of Mayer Brown's Enclosed Response Documents and Request for Proprietary Treatment

PACKET 1

Packet 1 includes:

- 6 original copies of a response document with our:
 - Signed RFI form
 - Cover letter
 - Credentials to serve NDCS
 - Examples of past projects and approaches
 - Principal contacts at Mayer Brown
- 1 USB drive with electronic copies our "entire RFI response," as instructed, including (1) this cover sheet (2) the document described above and (3) the document described below which we are requesting to be treated as proprietary

PACKET 2 – PROPRIETARY

Packet 2 includes:

- 6 copies of the section of our response entitled "Legal Considerations and Approaches to the NDCS Project" which we have marked as proprietary.

We believe the release of this portion of our response would cause competitive harm to Mayer Brown LLP as it provides our law firm competitors with access to the specific legal analysis and approach to work that our law firm brings to projects such as this. This legal analysis and approach to work is based on our accumulated experience advising on numerous projects over many years.

In addition, this section is written in the nature of legal advice to NDCS for the project and, therefore, we believe it should be treated as confidential on this basis as well. We believe it is in NDCS's interest to maintain the information as confidential and that the release of the information would not serve a public purpose because it would not be in the interest of NDCS. Disclosing potential aspects of NDCS's commercial and legal positions with possible counterparties prior to entering into a contemplated procurement and negotiation process related to the transaction would not be in NDCS's interest and, therefore, not in the interest of the public.



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Nebraska Department of Correctional Services

PACKET 1

Mayer Brown Response to RFI #3016

Design/Build/Finance Options for a proposed Adult Male
Multi-Security Level Correctional Facility



ORIGINAL

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May 22, 2020

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Ms. Kate Severin
NDCS Purchasing
NE Department of Correctional Services
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Re: RFI 3016 – Design/Build/Finance Options for proposed Adult Male Multi-Security Level Correctional Facility

Dear Ms. Severin:

Mayer Brown LLP is pleased to respond to the Nebraska Department of Correctional Services (NDCS) Request for Information issued on March 16 to gather information regarding Design/Build/Finance Options for a proposed Adult Male Multi-Security Level Correctional Facility to be operated by NDCS.

We applaud NDCS's diligence in reaching out to the market to solicit perspectives and ideas to inform the feasibility and planning of this project. As you gather information and consider advisors to assist you in the future, we would very much be interested in providing value to the State by being considered to act as your legal advisor for this project. To demonstrate our interest, we have provided approaches and legal perspectives for NDCS to consider, as well as examples where we have advised on structuring similar social infrastructure projects.

Our firm has a track record of bringing large, groundbreaking infrastructure projects and public-private partnerships (P3s) to completion and extensive experience developing innovative infrastructure financing and project delivery solutions. We have worked on projects such as this across the United States and around the world and apply that experience to the unique issues that each state faces in our federal system. We have a long and valued history in working with and representing the public sector on major infrastructure projects and have served as sponsor's counsel, lenders' counsel and underwriters' counsel on infrastructure and P3 projects. This breadth of experience and perspective allows us to understand the respective positions of governmental entities, private sector proposers and financing parties, the balancing of which is critical to the success of innovative infrastructure projects such as the one being pursued by NDCS.

We believe Mayer Brown can provide comprehensive, seamless and cost-effective advice to NDCS on this important project. We would be happy to discuss our experience and the issues, options and approaches we set forth in this response in more detail.

Sincerely,



Joseph Seliga

Credentials to Serve NDCS

Mayer Brown is able to offer the resources, skills and experience of a market leader in the development and financing of major public infrastructure projects, with significant experience advising government entities on major P3 infrastructure and leasing transactions. Our team would bring nationally and internationally recognized credentials and a depth of experience, highlighted by the following:

A US Market-Leading Infrastructure Practice with Experience from All Perspectives. Mayer Brown is widely recognized as the leading Government Transactions and P3 law firm in the United States. For the past 12 years, *Chambers USA* has ranked Mayer Brown's P3 practice in Band 1, with three ranked P3 lawyers in 2020. *Chambers USA* has acknowledged that we are unique among US market-leading infrastructure practices for the depth of our experience as sponsors' counsel, lenders' counsel, underwriters' counsel and government party counsel, enabling us to understand and appreciate all perspectives of infrastructure transactions. *Chambers USA* notes, "The team has strong experience across infrastructure sectors and most valuably has experience working for the private sector as well as the public sector," and "They have done a lot of PPP projects, they are very approachable, personable and the quality of their work is always excellent." In addition, Mayer Brown was named "Legal Advisor of the Year" in *P3 Bulletin's* "P3 Awards" in 2019 for the fourth year in a row; "Practice Group of the Year" by *Law360* in the Project Finance category in 2017 – 2019 and in the Transportation category in 2016; and "North American Infrastructure Law Firm of the Year" by *Infrastructure Investor* in 2014 – 2016.

Substantial Experience on Correctional Facilities and Other Social Infrastructure Projects. Mayer Brown has been at the forefront of innovative social infrastructure projects. Our experience spans nearly a decade, from our work on the Long Beach Courthouse project, one of the first social infrastructure P3 transactions, to the Purdue University student housing transaction—the first dedicated student housing availability payment P3 in the United States, which achieved financial close in October 2018. As detailed in this RFI response, we have advised on many prominent social infrastructure projects across the nation, including advising the Alabama Department of Corrections in connection with its procurement for new build-to-suit correctional facilities, acting as designated lenders' counsel on the Indianapolis Justice complex P3 project, and acting as advisor to the District of Columbia Office of Public-Private Partnership (DCOP3) on the Henry J. Daly police headquarters project.

Trusted Advisor to Government Owners Across the Country. Mayer Brown has been an advisor to government owners across the country, both those with established P3/innovative project delivery programs and those developing new programs. In addition to the Alabama Department of Corrections and DCOP3 noted above, our clients have included the City of St. Louis, Purdue University, the University of Cincinnati, the State of Indiana, the Texas Department of Transportation, the Arkansas Department of Transportation, the Illinois Department of Transportation, the Alabama Department of Transportation, the City of Chicago, the Port of Portland in Oregon and the California High-Speed Rail Authority.

Ability to Bring Complex First-of-Their-Kind Infrastructure Transactions to Completion. Mayer Brown lawyers have advised on the most complex and innovative infrastructure transactions undertaken in the United States to date, a number of which have been awarded North American, national or regional "Deal of the Year" status. We have been counsel in groundbreaking transactions involving social infrastructure, housing, public

parking facilities, rail, roadways, transit projects, bridges, airports, ports and water projects. This experience includes the first dedicated student housing availability payment P3 in the United States, the first long-term concessions of bridge and highway assets in the United States, the most significant US rail and transit P3 project, the first long-term lease of a US airport under the FAA airport privatization pilot program, and the first US financings to use an availability payment structure for transit, highway and new bridge construction.

A Commitment to Cost-Effective Legal Services, Delivered by Our Experienced Team. We are committed to providing NDCS with the highest quality and most cost-effective legal services. We have a track record of efficiently delivering legal services. In particular, as a matter of practice, we would use our extensive knowledge, experience and other expertise acquired performing services for our previous and current clients at no additional cost to NDCS. We believe our team of lawyers, including attorneys ranked for P3s in *Chambers USA*, is the most experienced team of infrastructure lawyers with the greatest depth of experience—from partners to associates—of any infrastructure team in the US.

Past Projects and Approaches

A correctional facility is considered a type of “social infrastructure”—buildings that provide accommodation or services for the benefit of the government or the public. We have advised on many of the nation’s groundbreaking social infrastructure P3 transactions, including both criminal justice-related and housing facilities that have direct relevance to the NDCS project.

Alabama Department of Corrections. We are counsel to the Alabama Department of Corrections (ADOC) on its first P3 project to develop three new, built-to-suit adult male correctional facilities. These new facilities will provide over 10,100 new beds, as well as support functions, including food, healthcare and program services, at a projected capital cost of \$900 million. Under the proposed structure, the selected developers will design, build, finance and lease one or more of the facilities to ADOC; while ADOC will operate the correctional facilities, the developers will be responsible for maintenance and facility management services over the 30-year lease term. On a tight procurement timeline, we have prepared the request for proposals, developed the terms for the lease agreement, and participated in negotiations with the shortlisted bidders. Together with local counsel, we have helped ADOC to analyze and develop creative solutions to address a number of complex state law issues impacting the legal and commercial terms of the transaction. Proposals were submitted on May 14, 2020 and are under review by the department.

Indianapolis Consolidated Justice Facility. We represented private placement investors as designated lenders’ counsel for the winning bidder on a design-build-finance-maintain availability payment P3 for a new consolidated justice facility in Indianapolis, Indiana, including adult detention, community corrections, criminal courthouse, sheriff’s department and related facilities. We performed lender due diligence of the proposed P3 agreement and other project documents for potential private placement investors and participated in drafting and negotiating the private placement financing and security documents to the point of being prepared for final financial close.

Henry J. Daly Building (Police Headquarters). We are counsel to the DCOP3 with respect to the renovation of the Henry J. Daly Building (“Daly Building”) located in Northwest Washington DC. Built in 1941, the Daly Building currently serves as the headquarters of the District’s Metropolitan Police Department. The Daly Building is approximately 600,000 square feet, inclusive of the Central Cell Block (CCB) with 57 holding cells in the basement. CCB is run by the District Department of Corrections and is the central detention facility that processes arrestees in advance of court appearances. The age of the building and deferred maintenance have contributed to the deteriorating condition of this historic asset, and DCOP3 is procuring the renovation of the Daly Building through a P3 to include design, construction and renovation, temporary relocation of District users, financing and long-term maintenance. We are advising DCOP3 on all aspects of the project, including drafting and negotiating the project agreement. This would be the first P3 building project for DCOP3.

Long Beach Courthouse. We advised Meridiam Infrastructure and its Long Beach Judicial Partners consortium on state and local governmental law and governmental relations considerations with respect to the Long Beach Courthouse project. This project is frequently cited as a national model for use of a P3 structure to develop and finance social infrastructure. Project implementation by California’s Administrative Office of Courts used an

innovative DBFOM availability payment P3 project delivery method. Construction was completed under budget and ahead of schedule in September 2013.

Purdue University Student Housing. We advised Purdue University, a public institution of the State of Indiana, on the development of new student housing facilities through a long-term P3 structure. The new facilities will add 1,300 beds, classrooms and meeting space, and dining and retail space. To meet the university's schedule, we developed an innovative pre-development agreement to expedite procurement and the project agreement, assisted in shortlisting bidders and ultimately an award, and facilitated final negotiations and closing over a five-month period (May to October 2018), staying on-time and on-budget. The transaction achieved financial close on October 26, 2018, and the new facilities are scheduled to open by August 1, 2020. This is the first use of a true availability payment structure for student housing facilities in the nation.

University of Cincinnati Student Housing. Mayer Brown is representing the University of Cincinnati to structure and procure a long-term partnership for its student housing facilities, which would be the first privatization of an entire public university housing system in the nation. We have developed the terms of a lease agreement, including the allocation of risks and responsibilities between the University and a private operator/lessee for all University student housing. Given the central importance of student quality of life on campus, we have helped the University to work through a number of complex policy and commercial considerations, while attempting to maximize the monetary value of the opportunity.

University of California, Merced 2020. We acted as designated lenders' counsel to a short-listed bidder for the University of California, Merced 2020 project, a first-of-its-kind availability payment P3 project. This project included the design and development of academic, administrative, research, recreational, residential and student services facilities sufficient to accommodate 10,000 students by the 2020–2021 academic year. We reviewed all P3 project documents, provided lender-perspective comments, and fully negotiated a detailed term sheet and commitment letters covering both bank loans and private placement notes for the proposed financing solutions to be included in the final bid submission. We also performed diligence activities for the lenders, including with respect to P3 risk analysis and local law authorization and appropriation risk considerations.

Long Beach Civic Center. Mayer Brown advised Plenary Group on tax aspects of its investment as an equity investor in a DBFOM P3 transaction to develop a new civic center in Long Beach, California, including a new city hall, main library and parking facilities and revitalization of a local park. Our analysis included the review of tax aspects of a tax-exempt financing structure of the project as well as a taxable bank financing structure that ultimately was utilized for the project. The financing packaged arranged by lead developer Plenary Group included \$239 million in a private placement from Allianz, \$213 million construction loan from Sumitomo Mitsui Banking Corp., \$21 million equity investment from Plenary and \$11.8 million in cash and land valued at nearly \$30 million from the city of Long Beach.

Howard University Student Housing. We advised Kroll Bond Rating Agency in connection with its rating of the financing structured to support the construction/rehabilitation and subsequent operation and maintenance of privatized student housing on the Howard University main campus in the District of Columbia. We assisted the rating agency with its diligence on the project, including review and comment on project documentation, with a specific focus on market-standard provisions and risk-transfer considerations. This project closed in early 2017.

Chicago Area Student Housing Project Finance P3 Transactions. We represented Educational Assistance Foundation, a not-for-profit entity affiliated with DePaul University, Roosevelt University and Columbia College, in the construction and financing (with tax-exempt, off balance sheet municipal bonds) of a 1,750-bed student dormitory known as University Center in Chicago's Central Business District. Our representation included negotiation of use agreements among the ownership entity and the three universities that initially shared use of the facility, as well as review and negotiation of design and construction contracts. We also served as underwriters' counsel in connection with a series of tax-exempt project financings for the construction and operation of student housing facilities, including \$75 million for a 580-bed facility adjacent to DePaul University in Chicago, \$50 million for a 500-bed facility adjacent to the University of Missouri Kansas City and \$85 million for a 780-bed facility adjacent to Columbia College in Chicago.

Legal Considerations and Approaches for the NDCS Project (PROPRIETARY)

We have prepared preliminary legal considerations and approaches for NDCS to consider regarding this project based on our substantial experience advising on correctional facilities and other social infrastructure projects. We have marked this section PROPRIETARY and, as instructed in the RFI, have provided an explanation for the reasons we consider the section proprietary and have included the section in a separate document in PACKET 2 of our response.

Principal Contacts

Form A

Respondent Contact Sheet

Request for Information Number 3016

Form A should be completed and submitted with each response to this RFI document. This is intended to provide the State with information on the vendor's name and address, and the specific persons who are responsible for preparation of the response.

Preparation of Response Contact Information	
Name:	Mayer Brown LLP
Organization Address:	71 S. Wacker Drive Chicago, IL 60606
Contact Person & Title:	Joseph Seliga, Partner, Mayer Brown LLP
E-mail Address:	jseliga@mayerbrown.com
Telephone Number (Office):	312-701-8818
Telephone Number (Cellular):	312-342-8292
Fax Number:	312-706-8339

Each respondent shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the vendor's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Name:	Mayer Brown LLP
Organization Address:	71 S. Wacker Drive Chicago, IL 60606
Contact Person & Title:	Joseph Seliga, Partner, Mayer Brown LLP
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Fax Number:	312-706-8339

Mayer Brown acknowledges receipt of RFI #3016 Addendum 1: Questions and Answers posted on May 1, 2020.



Joseph Seliga, Partner | +1 312-701-8818 | jseliga@mayerbrown.com

Joe is the co-lead of Mayer Brown's Government and Projects and Infrastructure practices. Joe advises on path-breaking social infrastructure, road, bridge, airport, port, public parking, and mass transit concession and public-private partnership (P3) transactions, including many "Deal of the Year" award-winning transactions. He has served as counsel to government owners, sponsors, developers, and lenders alike. Joe is widely recognized as a leader in the infrastructure industry, having actively advised clients on P3 transactions since joining the Firm in 2001. Joe is rated in Band One in Chambers USA and has been rated in Chambers USA since 2014 for his work on US P3 transactions. He was highlighted in Chambers USA by a client "for his thoroughness and his understanding and perspective on the challenges that come up in P3 deals" and for "always willing to go out of his way to help clients achieve their objectives in a timely fashion."



Stephanie Wagner, Partner | +1 312-701-8475 | swagner@mayerbrown.com

Stephanie is a partner in Mayer Brown's Global Infrastructure and Government practices, focusing in the areas of infrastructure development, state and local government law, and public finance, representing public and private sector clients in a wide array of transactional, legislative and regulatory matters. Stephanie has significant experience in complex government transactions, particularly in the infrastructure sector. Stephanie has been recognized in *Chambers USA* as a leading Projects: P3 lawyer since 2016. She was selected as a 2017 "Rising Star" by The Bond Buyer, which recognized 28 "stewards of the public trust, dreamers and innovators." Stephanie was selected for her expertise in representing both government and private-sector clients on the financing side of cutting-edge P3 deals. Stephanie also was named a 2016 "Rising Star" in transportation by Law360 for her strong track record of handling large, complex infrastructure projects and P3 transactions and is recognized by IFLR 1000 as a "notable practitioner" in the project development and project finance areas. As recognition of Stephanie's leadership in US P3 and public finance, she was asked to chair the National Association of Bond Lawyers' P3 Panels for its annual Bond Attorney's Workshop from 2016 through 2019.



Sara Hess, Counsel | +1 312-701-8594 | shess@mayerbrown.com

Sara is counsel in Mayer Brown's Government Transactions and Construction practices. Sara advises public- and private-sector owners, bidders, lenders, developers and contractors on P3 transactions, construction projects and innovative project delivery. Her experience includes transactions involving correctional facilities, higher education and other social infrastructure, highways and bridges, mass transit, airports and ports. Sara has extensive experience guiding clients through procurement of infrastructure projects, from analysis of delivery methods, to issuance and review of procurement documents, to evaluation of qualifications and proposals, and through award and closing. Sara is also a principal member of the Firm's Construction practice, with wide-ranging experience negotiating and preparing engineering-procurement-construction (EPC) contracts, design-build contracts, architecture/engineering agreements, consulting contracts, project management agreements and various types of construction contracts, including integrated project delivery (IPD) and construction management (CMGC) agreements.