

City of Williamsburg, Virginia

**Guidelines for the Implementation of the
Public-Private Transportation Act of 1995**

Revised January 2016

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I. INTRODUCTION

The Public-Private Transportation Act of 1995, codified in Chapter 18 of Title 33.2 of the Code of Virginia (1950), as amended, (sometimes the "Act" or the "PPTA") is the legislative framework enabling the Commonwealth of Virginia, qualifying the City of Williamsburg (the "City"), other local governments, and certain other political entities to enter into agreements authorizing private entities to develop and/or operate qualifying transportation facilities. These guidelines are adopted to implement the Act for the City.

A. The Act

The Act grants responsible public entities the authority to allow private entities to "develop" and/or "operate" (as those terms are defined in the Act) qualifying transportation facilities if the public entities determine there is a need for the facilities and private involvement may provide the facilities to the public in a timely or cost-effective fashion. The Act defines "responsible public entity" to include any public entity that has the power to develop and/or operate qualifying transportation facilities. Individually negotiated Interim and Comprehensive Agreements will define the respective rights and obligations of the responsible public entity and the private entity.

Pursuant to Virginia Code § 33.2-1801 (A) and (C), it is the intent of the Act to encourage public/private ventures for transportation facilities which may result in the availability of facilities in a more timely or less costly fashion and to facilitate to the greatest extent possible the federal pooling and funding mechanisms to the end that transportation financing be expanded and accelerated and have the greatest possible flexibility in contracting between public and private entities.

Although guidance with regard to application of the Act is provided in these guidelines, all entities must comply with the provisions of the Act.

B. Executive Summary

The following are procedural guidelines (the "Guidelines") developed by the City and adopted by Williamsburg City Council (the "City Council"). Throughout these Guidelines, a reference to "responsible public entity" means the City of Williamsburg.

The Act allows both solicited and unsolicited project proposals. The major steps involved in evaluating, selecting, and implementing projects are similar for both solicited and unsolicited proposals. It is anticipated that the private sector may identify prospective projects.

Private entities may also propose innovative financing methods, including the imposition of user fees or service payments under the provisions of the Act. Financing arrangements may include the issuance of debt, equity, or other securities or obligations. A proposer may enter into sale and lease back transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

While procedures incorporated in these Guidelines are consistent with the requirements of the Code of Virginia, the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act, (Virginia Code § 2.2-4300 et seq.)

These Guidelines shall govern all City PPTA projects. The City Manager (the "Manager") shall evaluate any and all proposals and negotiate any Interim Agreement and Comprehensive Agreement. The City Manager is also authorized to designate a Selection Committee (the "Selection Committee") to be responsible for evaluating proposals and negotiating any Interim Agreement and the Comprehensive Agreement. The Manager (or designee) shall serve as the point of contact for implementation of these Guidelines, to receive proposals submitted under the PPTA, and to respond to inquiries regarding the PPTA or these Guidelines.

The Selection Committee will be chaired by the Manager or his/her designee and comprised of the Director of Public Works (or designee), The Director of Planning (or designee), The Director of Finance (or designee), and the City Attorney (or designee). The Composition of the Selection Committee may be modified or supplemented by the Manager at any time. The Manager, depending on the project, may elect to place one or more VDOT representatives on the Selection Committee.

II. GENERAL PROVISIONS

A. Proposal Submission

A proposal may be either solicited by the City or delivered by a private entity on an unsolicited basis. In either case, the proposal shall be clearly identified as a "PPTA PROPOSAL." To be considered, one original and five (5) copies of any unsolicited proposal must be submitted along with the applicable fee (as set out in these Guidelines) to the City of Williamsburg, c/o the City Manager, 401 Lafayette Street, Williamsburg, Va. 23185.

Also pursuant Virginia Code § 33.2-1805(A), proposers are required to provide copies of their proposal directly to the governing body of each affected local jurisdiction (city, county, town etc.) other than the City of Williamsburg in which the proposed project is to be located. The proposer shall forward a copy of the proposal to VDOT and/or FHWA if appropriate.

Proposers may be required to follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase, as described herein. The City may discontinue its evaluation of any proposal at any time during the conceptual or detailed phase.

To qualify for the evaluation and selection process, the Act requires a proposal to meet, among others, three criteria. First, the proposal must seek approval for a private entity to develop and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle

parking facility, port facility or similar commercial facility used for the transportation of persons or goods together with any buildings, structures, parking areas, appurtenances and other property needed to operate such facility, not including a commercial or retail use or other enterprise not essential to the transportation of persons or goods. Third, the proposal must be submitted to a public entity which currently has or may assert the power itself to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.

The PPTA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may also include the issuance of debt, equity or other securities or obligations and such other arrangements as are more particularly set out in § 33.2-1812 of the Act.

Proposals must be signed by an authorized representative of the entity submitting the proposal. All information requested in these Guidelines must be submitted. Proposers failing to submit all information requested for conceptual or detailed proposals may be given an opportunity to promptly submit missing information or may be given a lowered evaluation of the proposal. Proposals that lack critical required information may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to complete the proposed transportation facility. Emphasis should be placed on completeness and clarity of content.

Proposals submitted for consideration should include a Comprehensive scope of work and provide enough information about the transportation facility to determine whether it satisfies the evaluation and selection criteria. In addition, the financial plan for the project must contain enough detail so that an analysis will reveal whether the proposed transportation facility financing is feasible. The financial plan must disclose the full extent of any public sector financing and/or concession commitments.

Proposals should be organized in the order requested in these Guidelines. All pages of the proposal should be numbered. Evaluation of proposals will be facilitated if proposers cross reference responses by citing the tab number, and sub-letter, and repeating the text of the requirement, not the text of the proposal. If a response covers more than one page, the tab number and sub-letter should be repeated at the top of the next page.

The proposal should contain a table of contents, which cross references the requirements by category. Information which the proposer desires to present that does not fall within any of the requirements should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner may be returned for revision.

Each copy of the proposal should be placed in a D-ring binder and contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

Proposers who submit a proposal may be required to give one or more oral presentation(s) of their proposal. Such presentations will provide opportunities to educate the City and/or clarify aspects of the proposal.

The Manager may request in writing clarification of any submissions.

The PPTA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private entity, but also benefits to the private entity through innovative approaches to project financing, development and use. However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to public use and typically involve facilities critical to the public health, safety and welfare. Accordingly, the City shall continue to exercise full and proper due diligence in the evaluation and selection of private entities for these projects. Private entities proposing projects shall be held strictly accountable for their representations or other information provided regarding their qualifications, experience, or other contents of their proposals, including all specific aspects of proposed plans to be performed by the operator.

B. Proposed Review Fees

1. The City is authorized by the PPTA to charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposals or competing unsolicited proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with the evaluating the proposed transportation facility. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal, and (ii) the out-of-pocket costs for attorneys, consultants and financial advisors engaged by the City in its sole discretion to assist in such review.
2. No proposal review fee shall be charged for the review of proposals solicited by a request for proposals ("RFP") or invitation for bids ("IFB").
3. Proposal review fees shall be charged to any proposer whose unsolicited proposal has been accepted by the City for conceptual phase review. Such proposal review fees shall be based on the reasonably anticipated costs of the City in accordance with the following schedule:
 - a. Initial or Conceptual Phase Review Fee. A nonrefundable initial or conceptual review fee of Five Thousand Dollars (\$5,000.00) and must be submitted with each unsolicited proposal.

- b. Detailed Phase Review Fees. Upon the City's decision to proceed with a detailed state of review, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), at the time of the submittal of the detailed state of review. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal if and as the City reasonably anticipates incurring costs in excess of the initial detailed stage of review fee. The City shall notify the proposer of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fee is required before the City will continue the process, review and evaluation of the proposal.

C. Service Contracts

The City may contract with a private entity for transportation services to be provided by a qualifying transportation facility in exchange for service payments and other consideration as the City may deem appropriate.

D. Reservation Rights

In connection with any proposal or qualifying transportation facility, the City shall have all rights available to it by law in administering these Guidelines, including without limitation, the right in its sole, unfettered discretion to:

1. Reject any or all proposals at any time, for any reason. Proposers shall have no recourse against the City for such rejection. Proposers will be notified in writing of such rejection in accordance with these Guidelines.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate Interim or Comprehensive Agreement negotiations with any proposer at any time before the authorized execution of an Interim or Comprehensive Agreement by all parties.
4. Negotiate with a proposer without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to and/or cancel any request for proposals ("RFP") or invitation for bids ("IFB").
7. Revise, supplement or withdraw all or any part of these Guidelines at any time and from time to time. City Council approval shall be necessary for any significant revision, supplementation or withdrawal of all or any part of these Guidelines. The City Manager is authorized to make minor changes, adjustments, revision, supplementation or withdrawal of any part of these Guidelines.

8. Modify the standard fee schedule as stated in these Guidelines for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by proposers hereunder.
10. Request revisions to conceptual or detailed proposals.
11. Submit a proposal for review by outside consultants or advisors selected by the City without notice to the proposer. Such consultants or advisors shall be advised of, and required to, maintain the confidentiality of information that has been designated as confidential, and to refer all requests for such information to the City.

Under no circumstances shall the City be liable for, or reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the City makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these Guidelines, the proposer must submit the question in writing and the City will respond in writing as it determines appropriate.

E. Virginia Freedom of Information Act

All proposals submitted to the City become the property of the City and are subject to the Virginia Freedom of Information Act ("FOIA") (Virginia Code § 2.2-3700 et seq.). Proposers are advised to familiarize themselves with FOIA to ensure that documents identified as confidential or proprietary will not be subject to disclosure under FOIA.

In accordance with Virginia Code § 2.2-3705.6 (11) of the FOIA, proposals and records voluntarily submitted to the City under the PPTA are subject to disclosure except to the extent that they relate to (i) confidential proprietary records submitted to the City under a promise of confidentiality, or (ii) memoranda, working papers, or other records related to proposals if making public such records would adversely affect the financial interest of the City or private entity or the bargaining position of either party. Proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets provided by a private entity as evidence of its qualifications are not considered procurement records. Once a Comprehensive Agreement has been entered into, and the process of bargaining of all phases or aspects of the Comprehensive Agreement is complete, the City shall make the procurement records available upon request in accordance with § 2.2-4342 of the Code of Virginia.

In order for confidential proprietary information to be excluded from disclosure under the FOIA, the private entity must (i) invoke the exclusion when the data or materials for which protection from disclosure is sought are submitted to the City, (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why exclusion from disclosure is necessary. The City is authorized and obligated to protect

only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer, without reasonably differentiating between proprietary and non-proprietary information contained herein.

Upon timely receipt of a request that specifically designated portions of a proposal be protected from disclosure as confidential and proprietary, the City shall determine whether such protection is allowed under applicable law and, if allowed, the scope of such protection, and shall communicate its determination to the proposer. Upon the City's final determination to accord less protection than requested by the proposer, the proposer will be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below.

F. Use of Public Funds

Virginia constitutional and statutory requirements and City ordinances and policies as they apply to appropriation and expenditure of public funds shall apply to any Interim and Comprehensive Agreement entered into under the PPTA. Accordingly, the processes and procedural requirements associated with the expenditure or obligations of public funds shall be incorporated into planning for any PPTA project.

G. Applicability of Other Laws

The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPTA. In soliciting or entertaining proposals under the PPTA, the City shall also comply with applicable federal, state and local laws, including FOIA, that do not conflict with the PPTA. Likewise, in submitting proposals and in developing or operating facilities under the PPTA, private entities shall comply with applicable federal, state, and local laws.

Nothing in these Guidelines or in an Interim or Comprehensive Agreement entered into pursuant to these Guidelines shall be deemed to enlarge, diminish or affect the authority or supremacy, if any, of any Federal, State or Local Government laws, or any agency or instrumentality thereof.

H. Schedule

The City will make every attempt to complete the procurement process expeditiously. However, variations in any schedule may be necessary due to the volume, complexity of proposals received, the need for further information, timely cooperation by proposer, or other unanticipated circumstances. The following schedule is provided for illustrative purposes and depicts the time frames within which the City anticipates completion of each phase of the proposal selection process.

Initial/Conceptual Stage Review	1 – 3 Months
Receipt of Competitive Proposals	1 – 2 Months

Selection of Proposal for Detailed Stage Review	1 – 3 Months
Detailed Stage Review	8 – 14 Months
Final Project Selection — City Council Considerations	1 – 3 Months
Negotiation of Interim or Comprehensive Agreement	2 – 12 Months

Any solicitation pursuant to these guidelines will contain estimated schedules for each phase. All proposals advanced to the second phase will be provided a schedule for evaluation of the proposals.

The City shall provide a prioritized documentation, review, and selection process for qualifying transportation facilities that have approved or pending state and federal environmental clearances, secure significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility.

III. SOLICITED PROPOSALS

The City may issue RFPs inviting proposals from private entities to develop and/or operate qualifying transportation facilities as defined in the PPTA. The City may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP shall invite proposers to submit proposals on individual transportation facilities identified by the City Council. The City will set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPTA.

The RFP will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. The RFP will be posted in such public areas as are normally used for posting of the City's notices, including the City's website. Notices may also be published in newspapers or other publications of general circulation. Pre-proposal conferences may be held as deemed appropriate by the City. No fees shall be charged for processing, reviewing or evaluating a solicited proposal.

IV. UNSOLICITED PROPOSALS

The Act permits responsible public entities such as the City to receive, evaluate and select for negotiation unsolicited proposals from private entities to develop and/or operate qualifying transportation facilities under their jurisdiction. The City will evaluate unsolicited proposals whenever received so long as the proposals meet the requirements of the Act and these Guidelines. Once a proposal is received and deemed by the City to meet all legal and policy requirements for initial review, as set out in the Act and these Guidelines, the City will publish a notice accepting such proposal for initial review and inviting others to submit competing proposals. If federal aid funds are anticipated in the project, the proposer will also notify the

Federal Highway Agency. If state aid funds are anticipated in the project, the proposer will also notify the Virginia Department of Transportation.

The City may publicize its needs and may encourage interested parties to submit proposals subject to the terms and conditions of the PPTA. When such a proposal is received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee or fees (as set out in these Guidelines) by the proposer or proposers, the Selection Committee will recommend whether to reject the unsolicited proposal or accept the unsolicited proposal for publication and further, conceptual-stage consideration. Upon receipt of the Selection Committee's recommendation, the City Manager will decide whether to recommend to the City Council that the unsolicited proposal be accepted. The City Council will receive all unsolicited proposals forwarded by the City Manager and decide whether to approve them for publication and further conceptual-stage consideration. The criteria used to determine the acceptability of a proposal shall include but not be limited to the requirements set out in Section 33.2-1803 (C) of the Virginia Code.
2. If the City Council chooses to accept an unsolicited proposal for conceptual-stage consideration, the City shall post a notice in a public area regularly used by the City for posting of public notices and on the City's website and on the Virginia Department of General Services Electronic Procurement Website for a period of not less than 120 days. The City shall also publish the same notice in one or more newspapers or periodicals of general circulation in the City to notify any parties that may be interested in submitting competing unsolicited proposals. The notice shall state that the City (i) has received and accepted an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate a Comprehensive Agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with these Guidelines that are received by the City within 120 days following the date of posting of the notice on the Virginia Department of General Services Electronic Procurement Website. The notice also shall summarize the proposed qualifying transportation facility or facilities, and identify its or their proposed locations and shall outline the opportunities that will be provided for public comment during the review process. Copies of unsolicited proposals shall be available upon request, subject to the provisions of the FOIA and the PPTA.
3. Any proposal not accepted for conceptual-stage consideration will be returned, together with all fees and accompanying documentation, to the proposer.

B. Review at the Conceptual Stage

1. When two or more proposals are received, the City will determine at this initial state of review whether it will proceed with the evaluation of the unsolicited

proposals using standard procurement procedures consistent with the VPPA or procedures normally used by the City that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in §§ 2.2-4301 and 2.2-4302.2 of the Code of Virginia. The City may reject any or all proposals.

2. The Selection Committee shall review the original proposal and any competing proposals submitted during the notice period. Upon receipt of the Selection Committee's recommendation, the City Manager shall determine one of the following:
 - a. not to proceed further with any proposal;
 - b. to proceed to the detailed stage of review with the original proposal;
 - c. to proceed to the detailed stage with a competing proposal; or
 - d. to proceed to the detailed stage with multiple proposals.
3. Discussions between the City and private entity about the need for infrastructure improvements shall not limit the ability of the City to later determine to use standard procurement procedures to meet its infrastructure needs. The City retains the right to reject any proposal at any time for any reason prior to the execution of an Interim or Comprehensive Agreement.

V. PROPOSAL PREPARATION AND SUBMISSION AT CONCEPTUAL STATE

Each unsolicited conceptual proposal submitted to the City shall address the evaluation and selection criteria in the following areas: (1) Qualification and Experience; (2) Project Characteristics; (3) Project Financing; (4) Public Support; and (5) Project Compatibility. Solicited proposals may utilize the same evaluation criteria or develop specific criteria that are consistent with the priorities of the City and the attributes and merits of the RFP. The RFP shall be consistent with the goals and principles of these Guidelines. Any modifications in the evaluation and selection criteria will be noted in the RFP. The City reserves the right, at its sole discretion, to modify the evaluation and selection criteria to meet the needs of the project and the City.

A. Qualifications and Experience

Is the proposed team qualified, led, and structured in a manner that will clearly enable the team to complete the proposed project?

1. Description of Proposer.

Does the proposer identify the legal structure, i.e., type of business entity, of the firm or team of firms making the proposal? Does it identify the organizational structure for the project, the management approach, and how each partner and major subcontractor in the structure fits into the overall team? Does it provide proof of a contract or memorandum of agreement between the parties? All members of the proposer's team, including major subcontractors known to the proposer, must be identified at the time a proposal is submitted for consideration

for the conceptual stage. Identified team members, including major subcontractors, may not be substituted or replaced without the City's prior written approval once a project is approved and Comprehensive Agreement entered into. What is the status of the Virginia license of each partner, proposer, contractor, and major subcontractor?

2. Experience with Similar Infrastructure Projects.

Have members of this team previously worked together developing, constructing, operating, improving or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar project? Describe experience with projects similar to the proposed project. Did the proposer complete projects within the original contract completion date and within the original contract amount? Did the owner assess liquidated damages?

3. Past Performance.

Provide the following information for each firm or major subcontractor that will perform development and/or operation activities.

a. A sworn certification by an authorized representative of the firm attesting to whether the firm is currently debarred or suspended by any federal, state, or local government entity.

b. A completed qualification statement in a form acceptable to the City that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to bonding capacities, insurance coverage, and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three years, except as indicated, as to any of the following conduct:

- (1) bankruptcy filings;
- (2) liquidated damages;
- (3) fines, assessments or penalties;
- (4) judgments or awards in contract disputes;
- (5) contract defaults, contract terminations;
- (6) license revocations, suspensions, other disciplinary actions;
- (7) prior debarments or suspensions by a governmental entity;
- (8) denials of prequalification, findings of non-responsibility;
- (9) minimum five years safety performance data, including numeric "Experience Modification Rating" and issuing insurance company, "Recordable Incidence Rates," "Lost Time Incidence Rates," "OSHA 200 Summary and OSHA 300A Forms," and OSHA violations, dates and disposition;
- (10) violations of any federal, state or local criminal or civil law;
- (11) criminal indictments or investigations; and
- (12) legal claims filed by or against the firm.

4. Demonstration of Ability to Perform Work.

What commitments has the team made to carry out the project? Does the team possess the necessary financial, staffing, equipment, and technical

resources to successfully complete the project? Do the team and/or member firms have competing financial or workforce commitments that may inhibit successful completion and follow-through on this project? What is the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project? What training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State agency, are planned to be in place for employees of the firm and employees of any member of a consortium of firms?

5. Leadership Structure.

Is one firm designated as lead on the project? Which firm is proposed to be the developer or operator under contract with the City? Does the organization of the team indicate a well thought out approach to managing the project? Did they provide a copy of the written agreement in place between members?

6. Project Manager's Experience.

Is a project manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the project manager relative to the member firms? Does the project manager have experience leading this type and magnitude of project?

7. Management Approach.

Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the City?

8. Project Ownership.

Does the proposal identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?

9. Participation of Small Businesses, Businesses Owned by Women and Minorities, and Local Firms.

What is the level of commitment and history of the proposer to use small, minority, and women-owned business enterprises in developing and implementing the project? To what extent will local subcontractors and suppliers be expected to participate in project development and implementation? Does the proposer offer job training opportunities to support the development and retention of an effective labor force throughout the life of the project? How will the proposer document and report on this commitment?

10. Safety Record and Plan.

Does the proposal identify all construction partners' and subcontractors' safety records for a minimum of five years? Do these five years of records include: (i) the numeric Experience Modification Rating, the rating year, and name of issuing insurance company? (ii) a list of OSHA violations to include dates and disposition? (iii) Recordable Incidence Rates and Lost Time Incidence Rates? (iv) OSHA 200 Summary Forms and OSHA 300A Summary Forms or the

information contained in these forms in a combined similar forma? Has a safety plan been developed and does it include means and methods for implementation and sustainability.

11. Liability.

Is the liability structure among the team members clearly specified? Is there a written commitment to joint and several liability? If no, please explain why. Do they describe in detail the required parent company guarantees? Are there limits, qualifications, or caps on the proposer's liability and indemnification of the City?

12. Miscellaneous.

- a. Provide the names, addresses, and telephone number of persons within the firm or consortium of firms who may be contacted for further information.
- b. Provide a current or most recent audited financial statement of the firm or firms and each partner with an equity interest of ten percent or greater.
- c. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, Chapter 31, § 2.2-3100 et seq. of Title 2.2 of the Virginia Code.

B. Project Characteristics

Is the proposed transportation facility technically feasible?

1. Project Definition.

Is the project described in sufficient detail including a conceptual design, to determine the type and size of the project, the location of the project and all proposed interconnections with other transportation facilities, the areas that may be affected and alternatives (e.g., alignments) that may need to be evaluated? Describe the assumptions used in developing the project. Is the project description prepared in a way that fully recognizes any City, state, or federal requirements to analyze other project alignments and alternatives?

2. Proposed Project Schedule.

Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed and will be completed on time? Does the proposed schedule include sufficient time for City review and does it contain an estimated time of completion?

3. Operation.

Does the proposer present a reasonable statement setting forth plans for operation of the facility, including a schedule defining initiation of operations?

4. Technology.

Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology?

5. Conforms to Laws, Regulations, and Standards.

Is the proposed project consistent with applicable City, state, and federal codes, statutes and regulations, or reasonably anticipated modifications of City, state, federal codes, statutes, regulations or standards? Does the proposed design meet appropriate City, state, and federal standards?

6. Federal Permits and Oversight.

Will the project require some level of federal involvement or oversight? Does the proposal include how federal regulatory and approval issues will be addressed?

7. Meets/Exceeds Environmental Standards.

Is the proposed project consistent with applicable City, state and federal environmental statutes and regulations? Does or will the proposed design meet appropriate City, state or federal environmental standards? Does the proposal adequately address air quality conformity?

8. Federal, State and Local Permits and Approvals.

Does the proposal list the required permits and schedule to obtain them? Are there negative impacts (social, economic, and environmental) known for the project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?

9. Rights of Way.

Does the proposal set forth the method by which the private entity proposes to secure all property interests required for the transportation facility?

10. Maintenance.

Does the proposer have a schedule and plan to maintain this facility in conformance with standards acceptable to the City? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, legal liability, user fee collection and maintenance?

11. City Work.

Has the proposal identified and fully described any work to be performed by the City?

C. Project Financing

Has the proposer provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility or facilities?

1. Estimate and Methodology.

Has the proposer provided a preliminary estimate and methodology of the cost of the work by phase, segment, or both?

2. Plans.
Has the proposer submitted a plan for the development, financing, and operation of the project showing the anticipated scheduled on which funds will be required, described the anticipated costs of and proposed sources and uses for such funds, and included any supporting due diligence studies, analyses, or reports?
3. Financing.
Does the proposer demonstrate evidence of its ability and commitment to provide sufficient equity in the project as well as the ability to obtain the other necessary financing? Is the financial information submitted on the proposal sufficient to determine the proposer's capability to fulfill its obligations described in the project proposal?
4. Financial Plan.
Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined, discussed, and reasonable in nature? Are the plan's risk factors and methods for dealing with same been identified and apportioned appropriately? Are the planned sources of funding and financing realistic? Does the financial plan include an analysis of proposed service fees? Does the proposer commit to sharing risk and/or cost on the project? Does the proposer clearly identify any necessary public funds to develop and/or operate the project?
5. Estimated Cost.
Is the estimated cost of the facility reasonable in relation to the cost of similar projects? A significant portion of the final determination will rely on a cost/benefit analysis.
6. Life Cycle Cost Analysis.
Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed project and/or facility?
7. Concessions.
Does the proposer clearly identify and quantify the public sector commitments for financing and duration of the project under its operation, both one-time and on-going, and the timing of such commitment?

D. Public Support

Has the proposer garnered sufficient public support for the proposed project?

1. Community Benefits.
Who will benefit from the project, how they will benefit, and how will the project benefit the overall transportation system? Will this project bring a significant transportation and economic benefit to the City, the region, and/or the state? Are there ancillary benefits to the City because of the project? Are there adequate commitments to quantify and evaluate these benefits over the life of the project? What are the community benefits, including the economic impact the project will have on the City in terms of amount of tax revenue to be

generated for the City, the number of jobs generated and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts? Is the local workforce adequate to staff the development and operations activities?

2. Public and Government Support.

What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of City and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the community?

3. Public Involvement Strategy.

What strategies are proposed to involve appropriate government officials in developing this project? What level of community involvement has been identified for the project? Is there a clear strategy for informing, educating and obtaining community input through the development and life of the project?

E. **Benefits and Project Compatibility**

Is the proposed project beneficial and compatible with appropriate transportation and land use plans?

1. Compatibility with the Existing Transportation System.

Does this project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

2. Fulfills Policies and Goals

Does the proposed project help achieve performance, safety, mobility, or transportation demand management goals? Does the project improve connections among the transportation modes?

3. Enhance Community-Wide Transportation System.

Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?

4. Address the Needs of the Local, Regional and State Transportation Plans.

Does the project address the needs of the state, regional, and local transportation plans? Is the project in the region's long range transportation plan? Does the project support improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency?

5. Land Use Impacts.

Has the proposed project been coordinated with the City's Comprehensive and capital improvements plans? What steps have been proposed with City officials to coordinate land use with proposed transportation facilities?

6. Economic Development.

Will the proposed project enhance the City's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the City, consistent with stated objectives?

VI. FORMAT FOR SUBMISSIONS AT DETAILED STAGE

If the City Manager decides to proceed to the detailed stage of review with one or more proposals, the following information (with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility) must be provided in writing by the proposer unless specifically waived in writing by the City Manager.

- A. A topographical map (1:2,000 or other appropriate scale) depicting the location of the transportation facility or facilities.
- B. A description of the transportation facility or facilities including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities.
- C. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle costs of the transportation facility or facilities as proposed.
- D. A statement setting forth (i) the method by which the private entity proposes to secure any property interests required for the transportation facility; (ii) the names and addresses of the owners of such property interests; and (iii) a list of any property the proposer intends to request the City to condemn.
- E. Information relating to the current transportation plans, if any, of each affected jurisdiction.
- F. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals.
- G. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings.
- H. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment by the private entity.
- I. The names and addresses of the persons who may be contacted for further information concerning the request.

- J. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plans by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.
- K. Detailed description of the proposed participation of, use by, and financial involvement of the City.
- L. A list of public facilities or other public improvements that will be required by the City to complete the project.
- M. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
- N. A total life-cycle cost specifying methodology and assumptions of the transportation facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of the facility and estimated annual operating expenses.
- O. A detailed discussion of assumptions about user fees or rates, and usage of the project.
- P. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, or other official communications.
- Q. Demonstration of consistency with appropriate local Comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- R. Explanation of how the proposed project would affect the City's development plans.
- S. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance.
- T. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility, including revenue risk and operations and maintenance; and
- U. Such additional material and information as the City may reasonably request pursuant to these Guidelines or other written instructions.

VII. PROPOSAL EVALUATION AND SELECTION CRITERIA

Proposals shall be evaluated and judged on the basis of how well the proposer or proposers have met the criteria as specified in Part V and VI above with the weighting of such criteria, its evaluation, and the final decision subject to the sole discretion of the City.

VIII. AFFECTED JURISDICTIONS

The PPTA requires that a copy of each proposal submitted be provided by the proposer to each affected local jurisdiction (as defined in the Act) that is not a responsible public entity. The City shall send a request for comments in writing on the proposed qualifying transportation facility indicating whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency. Those affected local jurisdictions have 60 days from receipt of the request for comments on the proposal to submit written comments to the City. If comments from the affected jurisdiction have not been received within 60-day time frame, the City will conclude that the affected jurisdiction has no comment on the proposal.

IX. THE COMPREHENSIVE AND/OR INTERIM AGREEMENT

A. Introduction

Prior to developing and/or operating a transportation facility, the private entity selected must enter into an agreement with the City. The City reserves the right to either an Interim or a Comprehensive Agreement with the private entity. Each agreement will define the rights and obligations of the City and the private entity with regard to the project. The City will obtain such policy, legal, financial, and technical advice as may be required to successfully negotiate such agreement(s).

Following the evaluation of the selected proposer(s) at the detailed phase, the City Manager and Selection Committee will submit their recommendations to the City Council as to whether the City should negotiate a Comprehensive Agreement or an Interim Agreement to be followed by a Comprehensive Agreement with the selected proposer. Upon receipt of authorization from the City Council, the City Manager and the Selection Committee will negotiate the Interim or Comprehensive Agreement with the selected proposer. Upon conclusion of such negotiations the City Manager and the Selection Committee will submit the resulting draft Interim or Comprehensive Agreement, together with their recommendations to the City Council for its consideration, whereupon the City Council will determine whether to authorize the City Manager to execute such Agreement.

B. Interim Agreement.

Such Interim Agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including project planning and development, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of

financing the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the Comprehensive Agreement ; and (iii) contain any other provisions related to any aspect of the development and/or operation of a qualifying transportation facility that the parties may deem appropriate.

The City may enter in to an Interim Agreement with multiple private entities if City Council determines in writing that it is the public interest to do so.

C. Comprehensive Agreement.

Such Comprehensive Agreement may include but not be limited to:

1. The right of the private entity to develop and/or operate the transportation facility, the date of termination of the private entity's authority, duties and rights to operate the transportation facility, and the conditions under which the transportation facility will be dedicated to the City or other responsible public entity.
2. The mechanism by which user fees, if any, may be established from time to time upon agreement of the parties or following a process of public comment. Any user fees shall be set at a level that takes into account any lease payments, service payments, and compensation;
 - a. A copy of any service contract shall be filed with the City;
 - b. A schedule of the current user fees shall be made available by the private entity to any member of the public on request;
 - c. Classifications according to reasonable categories for assessment of user fees may be made; and
 - d. Parties shall establish fees that are the same for persons using the facility under like conditions except as required by agreement between parties to preserve capacity and prevent congestion of the facility.
3. The performance milestones that will be required of the private entity.
4. The right of the private entity to cross, subject to applicable permit requirements and other requirements of law, any canal or navigable water course.
5. The manner in which utilities are to be crossed or relocated and the obligation to pay the cost thereof.
6. The manner in which the private entity and the City (and/or VDOT and/or FHWA if appropriate) will work together to establish interconnections and interoperability between the transportation facility and other public transportation facilities.
7. The procedures by and conditions under which the City may exercise its power of eminent domain to facilitate the transportation facility.

8. The design, construction, operation and maintenance standards with which the private entity must comply.
9. The requirements of the private entity to submit plans, conforming to standards acceptable to the City, for the development and/or operation of the transportation facility, and for City approval.
10. The rights of the City, its successor, or assignee to inspect construction of, or improvements to, the transportation facility.
11. The obligation of the private entity to maintain the transportation facility and the rights of the City (and/or VDOT and/or FHWA if appropriate), its successor, or assignee to monitor the private entity's maintenance.
12. The right of the private entity to make and enforce, with the consent of the City, reasonable rules (if any) with respect to the transportation facility.
13. The terms under which the private entity will reimburse the responsible public entity for services provided.
14. The terms and conditions under which compensation will be paid to the private entity, which may include a reasonable development fee and/or reimbursement of development expenses, in the event of termination for convenience by the City.
15. The reasonable maximum return or rate of return on investment authorized for the private entity to earn:
 - a. The formula by which such rate of return will be calculated; and
 - b. The distribution of any earnings in excess of the negotiated maximum rate of return, which may be distributed in whole or in part to the City, the private entity for debt reduction, the Hampton Roads Transportation Fund, or shared with other appropriate public entities.
16. The terms and conditions under which the City may make grants or loans, or to contribute financial and/or in-kind resources, if any, for the development and/or operation of the transportation facility.
17. The rights of the City to dedicate property interests to the private entity for public use; conveyance of such property interests to the private entity in connection with a dedication under §33.2-1806 of the Code of Virginia which may include licenses, franchises, easements, or any other right or interest the City deems appropriate.
18. The events that will constitute private entity defaults, private entity's rights to notice and cure, and the remedies available to the City.
19. The events that will constitute City defaults, the City's rights to notice and cure, and the remedies available to the private entity.

20. Lender's rights and remedies with respect to private entity defaults and City remedies.
21. The events that will constitute force majeure and the remedies the parties will have in the event of occurrence.
22. The insurance and bonding requirements the private entity will be required to meet at each stage of development and/or operation of the transportation facility.
 - a. Performance and payment bonds shall be in form and amounts satisfactory to the City.
 - b. Insurance policies shall be filed and maintained by proposers in form and amounts satisfactory to the City and reasonably sufficient to insure coverage of tort liability as set out in §33.2-1808(4) of the Code of Virginia.
23. The guaranteed cost and completion guarantees related to the development and/or operation of the transportation facility and payment of damages for failure to meet the completion guarantee.
24. The allocation between the private entity and the City of liabilities for, among other things, permits, property damage, personal injury, transportation facility repair, and hazardous waste remediation.
25. The obligations of the private entity to maintain records, to allow inspection and audit, and to provide regular reports to the City.
26. The obligations of the private entity to file appropriate financial statements in form and frequency acceptable to the City.
27. The conditions under the private entity or the City may assign its rights under an Interim or a Comprehensive Agreement and/or its right to the transportation facility.
28. Other requirements of the PPTA and other applicable law.

Final authorization by the City Council to acquire, construct, improve, maintain or operate any transportation facility will be contingent upon successful negotiation and execution of a Comprehensive Agreement between the private operator and the City Manager. The City may enter in to Comprehensive Agreements with multiple private entities if City Council determines in writing that it is in the public interest to do so.

D. Amendments

Any changes in the terms of an Interim Agreement or Comprehensive Agreement as may be agreed upon by the parties from time to time shall be by written amendment approved by the City Council.

E. Certification of Accuracy of Representations and Submittals

Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals play a critical role in the evaluation process and in the ultimate selection of a proposal by the City Council. Accordingly, as part of the Comprehensive Agreement, the private entity shall certify that all material representations, information and data provided in support of, or in connection with a proposal is true and correct. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the private entity shall immediately notify the City of same. Any violation of this provision shall give the City the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

F. Comprehensive Agreement Provisions Relating to Construction Projects.

With respect to construction projects considered under the PPTA, the City generally anticipates addressing the following in the Comprehensive Agreement. Private entities are encouraged to include a discussion of these matters in proposals relating to construction projects.

1. The City prefers the design-build project delivery system. In design-build construction projects the private entity will be expected to assume single-point and liability for all design and construction activities.
2. To the fullest extent possible, the City expects the private entity to perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the Comprehensive Agreement. The City may consider assuming part of the risk of subsurface conditions that could not reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.
3. To the fullest extent possible, the City expects the private entity to perform to its own environmental assessment and any other studies required by federal, state or local laws at the project site. The risk of inadequate environmental assessment and any other studies of improper interpretation of the results of the environmental assessment and any other studies will be allocated to the private entity in the Comprehensive Agreement. The City may consider assuming part of the risk of environmental conditions that could not reasonably be foreseen notwithstanding the performance of an environmental assessment and any other studies meeting the ordinary standard of care of environmental engineers working under similar conditions.
4. The City encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction. Mutually agreed upon terms for the sharing of such savings will be incorporated in the Comprehensive Agreement.

G. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure.

The City is willing to enter into Comprehensive Agreements with private entities which have formed business associations such as joint ventures and limited liability companies.

In such cases, however the City will expect one or more of the principal members of the business association to provide a performance guaranty of all obligations undertaken in the Comprehensive Agreement. This requirement is in addition to the statutory requirement for a performance bond. Every individual, corporation and/or business interested in entering into a public-private partnership with the City under the provisions of the PPTA must be willing to provide this security if its bid/proposal is submitted as part of a joint venture, limited liability company or other business entity that limits the liability of its members, owners or partners.

APPENDIX A

1.0 City Rights and Disclaimers

1.1 Rights Reserved

The City reserves all rights available by law in processing PPTA proposals, including, without limitation, the sole and unfettered right to:

- Reject any and all proposals at any time;
- Terminate evaluation of any and all proposals at any time;
- Suspend, discontinue and/or terminate interim or comprehensive agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties, subject to appropriate documentation;
- Negotiate with a proposer without being bound by any provision in the proposal;
- Request or obtain additional information about any proposals;
- Issue addenda to, and/or cancel, any Solicitation for Proposal (SFP);
- Revise, supplement or withdraw all or any part of these guidelines;
- Decline to return any and all fees required to be paid by proposers as part of the evaluation process; and
- Request revisions to conceptual or detailed proposals.

1.2 Disclaimers and Conditions for PPTA Proposals

- Neither the City nor any of its agents and employees shall be liable for, or reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements;
- Any and all information made available to proposers is made for convenience purposes only, and is without representation or warranty of any kind;
- Proposers must submit questions concerning the PPTA process in writing to the designated representative of the City, who will coordinate a response in writing; proposers may not rely on oral responses to inquiries;
- The proposal must be submitted to the responsible public entity that has, or may assert, the power itself to perform the functions the proposer seeks to perform with respect to at least part of the specified transportation facilities. The City reserves the sole right to make this determination for any proposal submitted to the City.

APPENDIX B

1.0 Additional Internet Resources

Other information is available from one or more of the following resources:

City of Williamsburg: www.williamsburgva.gov

Virginia Department of Transportation - VDOT (transportation information, contacts):
<http://www.virginiadot.org>

Department of Rail and Public Transportation - DRPT (transportation information, contacts):
<http://www.drpt.virginia.gov>

Virginia Department of Aviation - VDOA (transportation information, contacts):
<http://www.doav.virginia.gov>

Department of Motor Vehicles – DMV (vehicle information, locations, contacts):
<http://www.dmv.state.va.us/>

Virginia Port Authority – VPA (facilities, port information, contacts):
<http://www.vaports.com>

Department of the Treasury (debt management information, contacts):
<http://www.trs.virginia.gov>

Legislative Information System (Code of Virginia, current and past legislative activity, legislator contacts): <http://legis.state.va.us/lis.htm>

Public Private Transportation Act (PPTA) of 1995 (Link is within Legislative Information System)
<http://leg1.state.va.us/cgi-bin/legp504.exe?051+fu1+CHAP0504>

The Virginia Freedom of Information Act (Under the Code of Virginia at §2.2-3700)
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-3700>

The Transportation Partnership Opportunity Fund (TPOF)
<http://www.virginiadot.org/projects/tpof.asp>

APPENDIX C

1.0 Disclosure Agreement/Certification Form

This completed form must accompany all proposals submitted under the provisions of the Public-Private Transportation Act (PPTA). If omitted, the proposal will not be processed until the City receives a completed form. A copy of this form will be included in the permanent file maintained by the Department for all proposals.

Freedom of Information Act:

- I (we) certify that I (am) we (are) familiar with the statute that deals with the release of information submitted under the Freedom of Information Act (Virginia Code § 2.2-3700 et seq.) as it relates to PPTA proposals, and will not hold the City, any of its agents or employees liable for the disclosure of all or part of a PPTA proposal. I (we) understand that if a FOIA request is made for confidential records in a proposal:
- The City will contact the proposer to allow a claim for exemption to be made pursuant to the Code of Virginia;
 - The City will determine whether the exemption has been properly claimed; and
 - The City will attempt to provide the advance notice to the proposer if the requested records are disclosed.¹

Communication:

- I (we) agree to limit all communications within the City staff, including advocacy efforts, to the individuals or entities designated in these guidelines and/or any solicitation documents. The goal of this condition is to ensure the integrity of the development, evaluation and negotiation process.

Debt Issues:

This proposal does does not require the creation of City-supported debt.

- If the proposal does require municipal or state-supported debt, I (we) understand that procedures established by the City Council, the General Assembly, Governor, Department of the Treasury, and the Department of Planning and Budget must be followed.

Environmental Requirements:

- I (we) understand that the proposal must comply with all applicable local, state and federal ordinances, laws and regulations concerning the environment, and agree to follow any procedures to implement them.

Oral Presentations (at option of the Department):

¹ Prior to submission of a proposal, proposers may make written request to the City for a meeting to identify and justify status of proposed confidential documents; make an oral presentation to City, and follow similar procedure with affected local jurisdictions to determine if FOIA exemptions apply. The City will notify the proposer of the decision.

I (we) understand that one or more oral presentations to explain details of the project may be required.

Signature of Proposer

Signature of Proposer

Title

Title

Company/Consortium

Company/Consortium

Received by: _____
Name

Date

Title

Proposal Identification Number: _____

1.1 Procurement Approval Form

Under Virginia Law responsible public entities must follow the provisions of the Virginia Public Procurement Act (Chapter 43 of the Virginia Code) unless as provided in Virginia Code § 33.2-1803.1 the chief executive officer of the responsible public entity shall make a finding of public interest. This determination must be made in writing and at a minimum must contain the following information:

1. A description of the benefits expected to be realized by the responsible public entity through the use of this chapter compared with the development and/or operation of the transportation facility through other options available to the responsible public entity.

2. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity, which shall include the following:

a. A discussion of whether revenue risk will be transferred to the private entity and the degree to which any such transfer may be mitigated through other provisions in the interim or comprehensive agreements;

b. A description of the risks, liabilities, and responsibilities to be retained by the responsible public entity; and

c. Other items determined appropriate by the responsible public entity in the guidelines for this chapter.

3. The determination of whether the project has a high, medium, or low level of project delivery risk and a description of how such determination was made. If the qualifying transportation facility is determined to contain high risk, a description of how the public's interest will be protected through the transfer, assignment, or assumption of risks or responsibilities by the private entity in the event that issues arise with the development and/or operation of the qualifying transportation facility.

The City Manager must issue such finding before the comprehensive agreement is signed. In most cases, this approval should be secured before significant public and private investment occurs in the development of a detailed proposal.

City Manager:

Project: _____

Location: _____

Proposer: _____

Description of Proposal:

Reasons for Departing from Provisions of the Virginia Purchasing Procedures Act (Virginia Code Chapter 43):

APPENDIX D

1.0 Checklist For Proposals

Yes No

- Is proposal content complete, clear, and concise? Proposals should include a comprehensive scope of work, and have enough detail to permit the responsible public entity to determine if pertinent PPTA criteria are met, including financial information. Incomplete proposals may result in lowered evaluation or the proposer may be allowed to submit omitted information.

Yes No

- Have proposal requirements listed below been met?

Conceptual Proposal Items (separated by tabs):

Qualifications and Experience – Tab 1

- Identify the legal structure of the firm, or consortium of firms making the proposal, including the specific liability structure (e.g. individual or joint and several). Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- Describe the experience of each firm and the key principals involved in the proposed project. Describe the length of time in business, business experience, public sector experience and other engagements of the firm(s). Describe experience with projects similar to the proposed project. Did the firm and key principles complete these projects within original contract completion dates and within original contract amount? Did the owner assess liquidated damages? Did the firm and key principles certify that it is not currently debarred or suspended by any federal, state or local entity? Has the firm and key principles provided a statement that covers items in Section V paragraph A, including all subparagraphs? The lead organization must be identified.
- Identify the Project Manager, and if the person works for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?
- Include the address, telephone number, and the name of a specific contact person for an entity for which the firm/consortia or primary members of the consortium have completed a similar project.
- Identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?
- Include the history and level of commitment of the key principles to use small, minority and women-owned business enterprises in implementing this project. What is the planned participation of small, women, and minority-owned businesses during project development and implementation? To what extent will local subcontractors and suppliers participate in this project? Are job training opportunities offered to support the development and retention of an effective labor force during the life of the project? How will the proposer document and report on this commitment?

- Provide a safety record (minimum of five years) for lead construction partners and subcontractors, as well as a safety plan for project implementation. Do these records include:
 1. The numeric Experience Modification Rating, the rating year, and name of issuing insurance company?
 2. A list of OSHA violations to include dates and disposition?
 3. Recordable Incidence Rates and Lost Time Incidence Rates?
 4. OSHA 200 and 300A Summary Forms or the information contained in these forms in a combined format? Are the results of these records satisfactory? Does the proposed safety plan provide adequate means and methods for effective implementation and sustainability?

- Specify the liability structure among the team members. If the proposer is a joint venture, an acknowledgment of joint and several liability is required, together with appropriate bonding and insurance requirements of the City. If the proposer is a single company hiring subcontractors, provide guarantees of performance by the subcontractors, including bonds and insurance coverage.

Project Characteristics – TAB 2

- Provide a description of the transportation facility or facilities, including the conceptual design and all proposed interconnections with other transportation facilities. Describe the project in sufficient detail so the type and intent of the project, the location, and the communities that may be affected are clearly identified. Describe the assumptions used in developing the project. The project description should be prepared in a way that fully recognizes any federal and/or Commonwealth requirements to analyze other project alignments and alternatives.

- Is the proposed project consistent with applicable local, state and federal ordinances, statutes and regulations, or reasonably anticipated modifications of local, state or federal ordinances statutes, regulations or standards? Does the proposed design meet appropriate local, state and federal ordinances and standards?

- Identify and fully describe any work to be performed by the City or other public or private entities.

- Include a list of all federal, state and local permit and approvals required for the project, a schedule for obtaining such permits and approvals, and how any regulatory issues will be addressed. Identify which, if any, permits or approvals are to be obtained by the City and have specific oversight requirements.

- Without completing the anticipated Environmental Document, identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts. Identify the projected positive social, economic and environmental impacts of the project.

- List the critical factors for the project's success.

- Is the proposed project consistent with applicable local, state and federal ordinances, environmental statutes and regulations? Does or will the proposed design meet appropriate local,

state or Federal environmental standards? Does the proposal adequately address air quality conformity?

- Propose allocation of risk and liability for post agreement work, and assurances for timely completion and safe operation of the project.
- Clearly state the assumptions related to ownership, legal liability, law enforcement and operation of the facility.
- Provide information on any phased (partial) openings proposed prior to final completion of the work.
- Include a schedule and plan to maintain this facility in conformance with standards acceptable to the City? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, user fee collection and maintenance?

Project Financing – TAB 3

- Provide a preliminary estimate and estimating methodology of the cost of the work by phase and/or segment (e.g. planning, design, construction).
- Submit a plan for the development, financing and operation of the project, showing: the anticipated schedule on which funds will be required; and proposed sources and uses for such funds, including any grants or loans requested by the private entity for the development and/or operation of a qualifying transportation facility.
- Include a list and discussion of assumptions (user fees or toll rates, and usage of the facility) underlying all major elements of the plan.
- Provide the proposed total life-cycle cost-specifying methodology and assumptions of the facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. Include in the life-cycle cost analysis a detailed analysis of the projected return and/or rate of return.
- Identify any local, state or federal resources that the proposer contemplates requesting for the project and investments the proposer anticipates making towards the project. Describe the total commitment (financial, services, grant, loans, property, etc.), if any, expected from governmental sources, private investors and the timing of any anticipated commitment (e.g., preliminary estimate and methodology of cost by phase and/or segment (planning, design, construction); plan for development, financing, and operation of facility, including funding schedule and proposed sources and uses of funds; list and discussion of assumptions supporting all major plan elements; risk factors and strategies for dealing with them; local/state/federal resources that may be requested for the project, along with total commitment, if any from public sector sources, and when these resources may be needed.
- Provide a financial statement of the firm/consortium and each major partner. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports, if such reports have been filed.

Public Support –TAB 4

- What are the transportation are economic benefits of this project to the City, region and state? Do these benefits include impacts upon tax revenues, number of jobs generated and related pay and benefits of such jobs, training opportunities and programs, and the number and value of subcontracts generated for Virginia subcontractors? Identify who will benefit from the project, how they will benefit and how the project will benefit the overall transportation system.
- Identify any known government support or opposition, or general public support or opposition for the project. Government/public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, etc.
- Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the project.

Project Benefit/Compatibility – TAB 5

- Describe the project's significant benefits to the City, region or state. Identify any state benefits resulting from the project including the achievement of state transportation policies or other state goals and City goals and compatibility with existing and planned multi-modal facilities.
- Describe significant benefits to the state's economic condition to include steps taken for coordination with local land use and comprehensive plans. Discuss whether this project is critical to attracting or maintaining competitive industries and businesses to the City. What is the impact upon local economy, jobs and job market?
- Describe how the project has been coordinated with City land use and comprehensive plans. What steps have been taken with City officials to coordinate land use and proposed transportation facilities? Does the project support improving safety, reduce congestion, increase capacity, and/or enhance economic efficiency?

Specific Deliverables (delivery dates to be determined on case-by-case basis):

- Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed facility or facilities.
- Provide a list of public utility facilities that will be crossed or affected by the transportation facility and a statement of the private entity's plans to accommodate such utility facility.
- Provide a statement setting out the plan for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the property as well as a list of any property the proposer intends to request the City to exercise its power of eminent domain.
- Provide a detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties. Include a brief description of the guarantees and warranties.
- Provide the proposed total life-cycle cost-specifying methodology and assumptions of the facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project

costs. Include in the life-cycle cost analysis a detailed analysis of the projected return and/or rate of return.

- Include a detailed discussion of assumptions about user fees or toll rates, and usage of the facility such as traffic forecasts and assumptions.
- Identify any known government support or opposition, or general public support or opposition for the project. Government/public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, etc.
- Demonstrate how the proposal will address the needs identified in the state or local transportation plans and local comprehensive plan by improving safety, reducing congestions, increasing capacity, or enhancing economic efficiency. Proposer will also indicate if necessary, the steps required for acceptance into such plans.
- Provide an explanation of how the proposed transportation facility would impact local transportation plans of each affected locality.
- Include a detailed discussion that provides the means and methods that the private entity will implement to guarantee cost and completion of the project within the schedules identified in project characteristics.
- Such additional material and information as the Independent Review Panel or the City may reasonably request.

Format/Submittal Items:

- Proper format followed:
 - Executive summary;
 - Pages numbered, cross-referenced by citing tab number, subletter, and repeating text of requirement;
 - If response covers more than one page, tab number and subletter should be repeated at top of next page;
 - Table of contents should be included, with cross-references requirements by category
 - Supplemental information not required may be inserted where appropriate or placed at the end and designated as additional material; and
 - Each copy of a proposal must be bound or otherwise contained in a single volume, where practical, with all necessary documentation included.

Note: Proposals deviating from this format may be eliminated from consideration.
- Proposal review fees shall be charged to any proposer whose unsolicited proposal has been accepted by the City for conceptual phase review. Such proposal review fees shall be based on the reasonably anticipated costs of the City in accordance with the following schedule:
 - Initial or Conceptual Phase Review Fee. A nonrefundable initial or conceptual review fee of Five Thousand Dollars (\$5,000.00) and must be submitted with each unsolicited proposal.
 - Detailed Phase Review Fees. Upon the City's decision to proceed with a detailed state of review, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not less than Five

Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), at the time of the submittal of the detailed state of review. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal if and as the City reasonably anticipates incurring costs in excess of the initial detailed stage of review fee. The City shall notify the proposer of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fee is required before the City will continue the process, review and evaluation of the proposal.

- Proposers submitting multiple project proposals must submit a Proposal review fee for each project.

Note: Failure to submit all fees will result in suspension of consideration of a proposal.

- Fee submitted in the form of a cashier's check payable to the Treasurer of the City of Williamsburg.
- Proposal signed by authorized representative of firm/consortium.
- Five paper copies and one electronic copy in PDF format of proposal, sealed in a mailing envelope or package bearing proposer's name, address, and the phrase "Public-Private Transportation Proposal" clearly shown on the outside of proposal shall be delivered to the coordinating public entity. The City or responsible coordinating public entity shall designate one individual to receive all proposals and to act as the point of contact. In the absence of such a designation, proposals shall be delivered to the Department of Public Works.
- Copies of proposal also prepared and sent directly to the governing body of each jurisdiction (city, county, town, etc.) affected by the proposed project. A list of all jurisdictions provided a proposal must accompany the conceptual proposal, with name and address of recipient and date delivered.

Proposers should send more detailed proposals developed during review and advisory phase to affected jurisdiction at the same time it is submitted to City.

1.1 Checklist For Selection and Evaluation Criteria

The proposal evaluation and selection criteria contained in these Guidelines have been developed so the City can critically evaluate the attributes each proposer submits in their proposal. Each conceptual unsolicited proposal submitted to the City should follow the attached evaluation and selection criteria. Solicited proposals can utilize the attached evaluation criteria or develop specific criteria that are consistent with the priorities of the City and the attributes and merits of the RFP. Any modifications in the evaluation and selection criteria will be noted in the SFP or the RFDP. The City reserves the right, at its sole discretion, to modify the evaluation and selection criteria to meet the needs of the project and the City.

Satisfactory Assessment?		Criteria
Yes	No	A. Qualifications and Experience - Does the proposer propose a team that is qualified, led, and structured in a manner that will clearly enable the team to complete the proposed project?
Yes	No	<i>Experience with Similar Infrastructure Projects</i> - Have members of this team previously worked together constructing, improving or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar privatization project? Has the proposer experience with similar projects and were these completed within original contract completion dates and within original contract amounts? Did the owner assess liquidated damages?
Yes	No	<i>Past Performance</i> – Have the firm and key principals provided certification that they are not currently debarred or suspended by any federal, state, or local government entity? Has the firm and each key principal provided a statement that confirms its business integrity to include bonding capacity, insurance and available equipment? Does this statement provide the disclosure of information as listed in Section V A including all subparagraphs?
Yes	No	<i>Demonstration of Ability to Perform Work</i> - What commitments has the team made to carry out the project? Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the project? Do the team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on this project?
Yes	No	<i>Leadership Structure</i> - Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there a written agreement in place between members?
Yes	No	<i>Project Manager's Experience</i> - Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?
Yes	No	<i>Management Approach</i> - Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the City?
Yes	No	<i>Project Ownership</i> – Does the proposal identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?

Satisfactory Assessment?		Criteria
Yes	No	<i>Participation of Small Businesses and Businesses Owned by Women and Minorities and local firms</i> -What is the history and level of commitment by the proposers to use small, minority-, and women owned business enterprises in developing and implementing the project? To what extent will small, minority and women owned businesses and local subcontractors and suppliers be expected to participate in project development and implementation? Are job training opportunities offered to support the development of an effective workforce throughout the life of the project? How will this commitment be documented and reported?
Yes	No	<i>Safety Record and Plan</i> – To what extend does the proposal identify the construction partners and subcontractors safety records for a minimum of five years? Do records include Experience Modification Rating, OSHA citation, Recordable and Lost Time Incidence Rates, and OSHA 200 and 300A forms or comparable information in combined similar format? Do these records indicate a satisfactory rating for all activities? Was a safety plan developed and does it include means and methods for implementation and sustainability?
Yes	No	<i>Liability</i> - Is the liability structure among the team members clearly specified? If the proposer is a joint venture, is there a written commitment to joint and several liability? Are there adequate parent company guarantees? Are there limits or caps on the proposer's liability and indemnification of the City? Is there adequate bonding and insurance proposed?
Yes	No	B. Project Characteristics - Is the proposed transportation facility technically feasible?
Yes	No	<i>Project Definition</i> - Is the project described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?
Yes	No	<i>Proposed Project Schedule</i> - Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed and will be completed on time?
Yes	No	<i>Operation</i> - Does the proposer present a reasonable statement setting forth plans for operation of the facility, including a schedule defining initiations of operations?
Yes	No	<i>Technology</i> - Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology?
Yes	No	<i>Conforms to Laws, Regulations, and Standards</i> - Is proposed project consistent with applicable local, state and federal ordinances, statutes and regulations, or reasonably anticipated modifications of local, state or federal ordinances, statutes, regulations or standards? Does the proposed design meet appropriate local, state and federal standards?
Satisfactory		Criteria

Assessment?		
Yes	No	<i>Federal Permits & Oversight</i> – Will the project require some level of federal involvement or oversight? Does the proposal include how federal regulatory and approval requirements will be met and how issues will be addressed?
Yes	No	<i>Meets/Exceeds Environmental Standards</i> - Is the proposed project consistent with applicable local, state and federal environmental ordinances, statutes or regulations? Does or will the proposed design meet appropriate local, state or federal environmental standards? Does the proposal adequately address air quality conformity?
Yes	No	<i>State and Local Permits</i> - Does the proposal list the required permits and schedule to obtain them? Are there negative impacts known for the project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?
Yes	No	<i>Rights of Way</i> - Does the proposal set forth the method by which the private entity proposes to secure all property interests required for the transportation facility?
Yes	No	<i>Maintenance</i> - Does the proposer have a plan to maintain this facility in conformance with standards acceptable to the Department? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, user fee collection and maintenance?
Yes	No	C. Project Financing - Has the proposer provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility?
Yes	No	<i>Financing</i> - Did the proposer demonstrate evidence of its ability and commitment to provide sufficient equity in the project as well as the ability to obtain the other necessary financing?
Yes	No	<i>Financial Plan</i> - Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Does the proposer commit to sharing risk and/or cost on the project? Does the proposer clearly identify any necessary public funds to develop and/or operate the project?
Yes	No	<i>Estimated Cost</i> - Is the estimated cost of the facility reasonable in relation to the cost of similar projects? A significant portion of the final determination will rely on a cost/benefit analysis.
Yes	No	<i>Life Cycle Cost Analysis</i> - Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed project and/or facility?
Yes	No	<i>Concessions</i> - Does the proposer clearly quantify the public sector commitments for financing and duration of operations?
Yes	No	D. Public Support - Has the proposer garnered sufficient public support for the proposed project?
Yes	No	<i>Community Benefits</i> - Will this project bring a significant transportation and economic benefit to the state, region, and/or localities? Do these benefits include increases to tax revenue, the number of jobs, available training opportunities and programs? Are there ancillary benefits to the communities because of the project?
Satisfactory Assessment?		Criteria

Yes	No	<i>Community Support</i> - What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of the national, state and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the community?
Yes	No	<i>Public Involvement Strategy</i> - What strategies are proposed to involve local officials in developing this project? What level of community involvement has been identified for the project? Is there a clear strategy for informing, educating and obtaining community input through the development and life of the project?
Yes	No	E. Project Compatibility - Is the proposed project compatible with appropriate transportation and land-use plans?
Yes	No	<i>Compatibility with the Existing Transportation System</i> - Does this project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local plans and facilities?
Yes	No	<i>Fulfills Policies and Goals</i> - Does the proposed project help achieve performance, safety, mobility or transportation demand management goals? Is the project compatible and coordinated with existing and planned multi-modal facilities and does the project improve connections among the transportation modes?
Yes	No	<i>Enhance Community-Wide Transportation System</i> - Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?
Yes	No	<i>Address the needs of the Local, Regional and State Transportation Plans</i> - Does the project addressing the needs of the state, regional and local transportation plans? Does the project improve safety, reduce congestion, increase capacity, and/or enhance economic efficiency? Is this project addressing the needs of plans and documents of the Virginia Multimodal Long Range Plan? If not, are steps proposed that will achieve coordination and meeting the needs with such plans?
Yes	No	<i>Land Use Impacts</i> - Has the proposed project been coordinated with local land use ordinances and comprehensive plans? What steps have been proposed with local planning officials to coordinate land use with proposed transportation facilities?
Yes	No	<i>Economic Development</i> - Will the proposed project enhance the City's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the City, consistent with stated objectives?

1.2 Checklist For Terms and Conditions of Comprehensive Agreement

Specific terms and conditions will vary, depending on the circumstances and situations unique to each proposal. However, the following terms and conditions must be included:

- Private entity's rights to acquire, construct, improve and /or operate the transportation facility, duration of rights, and conditions under which the facility will be dedicated to the City;
- Method by which user fees (if any) may be established, plus:
 - Copy of any service contract must be forwarded to the City;
 - Schedule of current user fees shall be made available by the private entity to any number of the public on request;
 - Classifications according to reasonable categories for assessment of user fees may be made.
- Performance milestones required of the private entity;
- Right of the private entity to cross, as granted by permit or other laws or regulations, any canal or navigable water course;
- Issues regarding utilities, including crossings, relocations, related cost obligations;
- Method by which the private entity and the City will incorporate the transportation into the existing transportation system;
- Procedures and conditions under which the City may exercise the power of eminent domain;
- Design, construction, operation and maintenance standards the private entity must follow;
- Requirements of the private entity to submit plans and specifications for the transportation facility to the City for approval;
- Rights of City to inspect construction or improvements to the transportation facility, plus the right of City to monitor maintenance to ensure private entity obligations are met;
- Right of the private entity, with City approval, to make and enforce rules for the transportation facility;
- Terms for reimbursement from the private entity to the responsible public entity for services provided;
- Reasonable maximum rate of return or return on investment authorized for the private entity to earn, along with the formula used to calculate this rate and the manner in which revenues will be distributed;
- Terms and conditions under which the City may contribute resources (e.g., financial, in-kind, etc.) for the transportation facility;
- Events that will be considered defaults, plus the rights to notice and cure, and the remedies available to the City and the private entity, respectively;
- Lender's rights and remedies with respect to private entity defaults and the City's remedies;
- Events that will constitute *force majeure* and the remedies the parties will have if these events occur;
- Insurance and bonding requirements the private entity must meet at each stage;

- Allocation between the private entity and the City of liabilities for items such as (but not limited to) property damage, personal injury, transportation facility repair and hazardous waste remediation;
- Private entity's obligation to maintain records, to allow inspection and audit and provide regular reports to the City or appropriate state or federal regulatory agency that may be providing funding or oversight;
- Conditions under which the private entity may assign its rights under the comprehensive agreement and/or its rights to the transportation facility; and
- Other requirements of the PPTA (specify):
