

CITY OF COLONIAL HEIGHTS

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Office of the City Manager

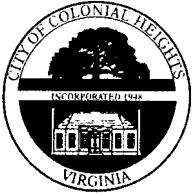
TO: The Honorable Mayor and Members of City Council
FR: Richard A. Anzolut, Jr., City Manager
DATE: September 11, 2009
SUBJ: Public – Private Education Facilities and Infrastructure Act (PPEA) Guidelines

During the Work Session of August 25, 2009, City Council reviewed model PPEA Guidelines as provided by the State Department of Legislative Services. At the conclusion of that review and discussion, Council expressed its interest in reviewing guidelines from other municipalities who have successfully conducted a PPEA solicitation and construction process. The City Attorney has gathered the attached guidelines from other localities to assist with Council's further review of this subject. A portion of the Work Session of September 15, 2009, has been scheduled for Council's continued discussion of this matter.

Staff is prepared to assist Council with the drafting of PPEA Guidelines for the City of Colonial Heights whenever such becomes necessary. If staff can be of any assistance to Council prior to the Work Session, please do not hesitate to contact the City Attorney or myself at your convenience.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance



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CITY ATTORNEY

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HUGH P. FISHER, III
CITY ATTORNEY
TAMARA L. DRAPER
LEGAL ASSISTANT

MEMORANDUM

TO: Richard A. Anzolut, Jr., City Manager

FROM: Hugh P. Fisher, III, City Attorney *H.P.F., III*

RE: PPEA Guidelines

DATE: September 10, 2009

Attached for inclusion among Council's September 15 work session agenda materials are PPEA guidelines promulgated by the Virginia Division of Legislative Services (DLS), the City of Hopewell, and the City of Winchester. In addition, attached is a table this office prepared of some of the differences among the three sets of guidelines.

Please feel free to contact me if you need further information.

PPEA Guideline Differences

		<u>DLS</u>	<u>HOPEWELL</u>	<u>WINCHESTER</u>
1.	Terms and Definitions section	Yes	Yes	No
2.	Defines “Affected Jurisdiction” and “Appropriating Body”	Yes	No	No
3.	Contains “Affected Jurisdictions” section	Yes	No	Yes
4.	Review fees	General	Specific	Specific
5.	“Reservation of Rights” section	No	Yes	No
6.	Extensive FOIA provisions	Yes	Yes	No
7.	“Posting Requirements” section	Yes	Yes	No
8.	Contains a list of “Other Factors” to be considered under “Proposal Evaluation and Selection Criteria”	Yes	Yes	No
9.	Under “Additional Review Procedures”, contains sections on “Public Private Partnership Oversight Advisory Committee” and “Appropriating Body”	Yes	No	No
10.	Under “Interim and Comprehensive Agreements”, provides provisions for interim agreement	Yes	Yes	No
11.	Notice and posting requirements	Yes	Yes	No
12.	Contains a “Governing Provisions” section	Yes	Yes	No



Public-Private Education Facilities and Infrastructure

2007 Model Guidelines Work Group

[PPEA Home](#)

[2007 Work Group](#)

[2006 Work Group](#)

[2005 Work Group](#)

[2002 Work Group](#)

- **Final Documents**
 - [2007 PPEA Model Guidelines](#)
 - [Model Guidelines \(showing revisions and source\)](#)
 - [Chart Tracking Changes from 8/15/07 Meeting](#)
- August 15, 2007 Meeting Scheduled at 10:00 a.m., Division of Legislative Services, 2nd Floor General Assembly Building.
 - [Tracking Document](#)
 - [Comments/Suggestions - Thomas Folk](#)
 - [Comments/Suggestions - City of Roanoke](#)
 - [Proposed definitions & terms](#)
- [Notice of Public Comment](#)
- May 30, 2007 Meeting Scheduled at 10:00 a.m., Division of Legislative Services, 2nd Floor General Assembly Building.
 - [Agenda](#)
 - [Senate Bill 756 \(2007\)](#)
 - [Senate Bill 1002 \(2007\)](#)
 - [House Bill 2381 \(2007\)](#)
 - [Work Group participants/contributors](#)
 - [PPEA Model Guidelines - Working Document](#)
 - [Tracking Sheet - Working Document](#)
 - [Work Plan](#)

[Privacy Statement](#) | [Text-only Homepage](#) | [Legislative Services](#) | [General Assembly](#)

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3 **Public-Private Education Facilities and Infrastructure**

4 **Act of 2002**

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6 **Model Guidelines**

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September 2007

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Public-Private Education Facilities and Infrastructure Act of 2002 Model Guidelines

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1
2 **Introduction**
3

4 **Overview**
5

6 The Public-Private Education Facilities and Infrastructure Act of 2002 (the
7 "PPEA") grants responsible public entities the authority to create public-private
8 partnerships for the development of a wide range of projects for public use if the public
9 entities determine there is a need for the project and that private involvement may
10 provide the project to the public in a timely or cost-effective fashion. The PPEA defines
11 "responsible public entity" (RPE) to include any public entity that "has the power to
12 develop or operate the applicable qualifying project." Individually negotiated interim or
13 comprehensive agreements between a private entity and an RPE will define the respective
14 rights and obligations of the RPE and the private entity.
15

16 In order for a project to come under the PPEA, it must meet the definition of a
17 "qualifying project." The PPEA contains a broad definition of qualifying project that
18 includes public buildings and facilities of all types; for example:
19

- 20 (i) An education facility, including but not limited to a school building
21 (including any stadium or other facility primarily used for school events),
22 any functionally related and subordinate facility and land to a school
23 building and any depreciable property provided for use in a school facility
24 that is operated as part of the public school system or as an institution of
25 higher education;
- 26 (ii) A building or facility that meets a public purpose and is developed or
27 operated by or for any public entity;
- 28 (iii) Improvements, together with equipment, necessary to enhance public
29 safety and security of buildings to be principally used by a public entity;
- 30 (iv) Utility and telecommunications and other communications infrastructure;
- 31 (v) A recreational facility;
- 32 (vi) Technology infrastructure and services, including but not limited to
33 telecommunications, automated data processing, word processing and
34 management information systems, and related information, equipment,
35 goods and services;
- 36 (vii) Technology, equipment, or infrastructure designed to deploy wireless
37 broadband services to schools, businesses, or residential areas, or
- 38 (viii) Any improvements necessary or desirable to any unimproved locally- or
39 state-owned real estate.

1
2 The PPEA establishes requirements that the RPE must adhere to when reviewing
3 and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies
4 the criteria that must be used to select a proposal and the contents of the interim or
5 comprehensive agreement detailing the relationship between the RPE and the private
6 entity.

7
8 In passing the legislation, and following subsequent amendments to the Act in
9 2005, 2006, and 2007, the General Assembly directed the Governor and the chairs of the
10 House and Senate Committees on General Laws to facilitate the development of model
11 guidelines to assist in the implementation of the PPEA. Because the PPEA is intended to
12 encourage innovative partnerships between RPEs and private entities, RPEs are
13 encouraged to maintain an open dialogue with private entities to discuss the need for
14 infrastructure improvements.

15
16 **Guidelines for the review and approval of proposals and projects**

17
18 Responsible public entities are required to adopt and make publicly available
19 guidelines that are sufficient to enable the public entity to comply with the requirements
20 of the PPEA. The guidelines should be reasonable and structured to encourage
21 competition. In addition, to facilitate communication, the RPE should designate an
22 individual to serve as the point of contact for receiving proposals submitted under the
23 PPEA and responding to inquiries regarding the PPEA or the guidelines.

24
25 | Guidelines adopted by all RPEs are required to include provisions that require the
26 posting and publishing of public notice of a private entity's request for approval of a
27 qualifying project, including (i) specific information and documentation to be released
28 regarding the nature, timing, and scope of the qualifying project pursuant to subsection A
29 of § 56-575.4; (ii) a reasonable time period of at least 45 days during which the RPE shall
30 receive competing proposals pursuant to subsection A of § 56-575.4. Such time period
31 shall also be determined by the RPE to encourage competition and public-private
32 partnerships in accordance with the goals of the PPEA; and (iii) a requirement for
33 advertising the public notice in the Virginia Business Opportunities publication and
34 posting a notice on the Commonwealth's electronic procurement website.

35
36 | RPEs that are agencies or institutions of the Commonwealth are required to
37 include the following provisions in their guidelines:

38
39 1. Opportunities for competition through public notice and availability of representatives
40 of the RPE to meet with private entities considering a proposal;
41
42 2. Reasonable criteria for choosing among competing proposals;
43
44 3. Suggested timelines for selecting proposals and negotiating an interim or
45 comprehensive agreement;

1 4. Authorization for accelerated selection and review and documentation timelines for
2 proposals involving a qualifying project that the RPE deems a priority;
3
4 5. Financial review and analysis procedures that shall include, at a minimum, a cost-
5 benefit analysis, an assessment of opportunity cost, and consideration of the results of all
6 studies and analyses related to the proposed qualifying project. These procedures shall
7 also include requirements for the disclosure of such analysis to the appropriating body for
8 review prior to execution of an interim or comprehensive agreement;
9
10 6. Consideration of the nonfinancial benefits of a proposed qualifying project;
11
12 7. A mechanism for the appropriating body to review a proposed interim or
13 comprehensive agreement prior to execution;
14
15 8. Criteria for triggering the establishment of an advisory committee consisting of
16 representatives of the RPE and the appropriating body to review the terms of the
17 proposed interim or comprehensive agreement. Suggested criteria include the scope,
18 costs, and duration of the qualifying project, as well as whether the project involves or
19 impacts multiple RPEs;
20
21 9. Analysis of the adequacy of the information released when seeking competing
22 proposals and providing for the enhancement of that information, if deemed necessary, to
23 encourage competition; and
24
25 10. Establishment of criteria, key decision points, and approvals required to ensure that
26 the RPE considers the extent of competition before selecting proposals and negotiating an
27 interim or comprehensive agreement.

28
29 Guidelines of local RPEs must include a requirement that such RPEs engage the
30 services of qualified professionals, which may include an architect, professional engineer,
31 or certified public accountant, not otherwise employed by the public entity, to provide
32 independent analysis regarding the specifics, advantages, disadvantages, and the long-
33 and short-term costs of any request by a private entity for approval of a qualifying project
34 unless the governing body of the RPE determines that such analysis of a request by a
35 private entity for approval of a qualifying project shall be performed by employees of the
36 RPE.

37 | Statement of Purpose

38
39 The following model guidelines have been developed to assist RPEs in adopting
40 guidelines to guide the implementation of the PPEA. The guidelines are intended to
41 serve as a general guide for the implementation of the PPEA. The RPE is not required to
42 adopt the entire text of the model guidelines. Each RPE has the flexibility to add or
43 delete provisions included in the model guidelines and to include provisions not
44 contained in the model guidelines so long as the resulting guidelines comply with the
45 PPEA. The complete text of the PPEA has been included in the Appendix to these model

1 guidelines. Although guidance with regard to the application of the PPEA is provided
2 herein, it will be incumbent upon all entities, both public and private, to comply with the
3 provisions of the PPEA.

4
5 In the event that the PPEA is amended in a manner that either conflicts with
6 guidelines developed by the RPE or concerns material matters not addressed by such
7 guidelines, the RPE should appropriately amend the guidelines. If the guidelines are not
8 amended prior to the effective date of the new law, the guidelines nonetheless shall be
9 interpreted in a manner to conform to the new law.

10
11 **I. General Provisions**

12
13 **A. Proposal Submission**

14
15 A proposal may be either solicited by the ~~RPE~~ or delivered by a private entity on
16 an unsolicited basis. Proposers may be required to follow a two-part proposal submission
17 process consisting of an initial conceptual phase and a detailed phase. The initial phase
18 of the proposal should contain specified information on proposer qualifications and
19 experience, project characteristics, project financing, anticipated public support or
20 opposition, or both, and project benefit and compatibility. The detailed proposal should
21 contain specified deliverables.

22
23 The PPEA allows private entities to include innovative financing methods,
24 including the imposition of user fees or service payments, in a proposal. Such financing
25 arrangements may include the issuance of debt instruments, equity or other securities or
26 obligations, including, if applicable, the portion of the tax-exempt private activity bond
27 limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to
28 the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of
29 education facilities using public-private partnerships, and to provide for carryovers of any
30 unused limitation amount. The PPEA is a flexible development tool that allows the use of
31 innovative financing techniques. Depending on the RPE's authority and the
32 circumstances of each transaction, financing options might include the use of special
33 purpose entities, sale and lease back transactions, enhanced use leasing, property
34 exchanges, development agreements, conduit financing and other methods allowed by
35 law.

36
37 Proposals should be prepared simply and economically, providing a concise
38 description of the proposer's capabilities to complete the proposed qualifying project and
39 the benefits to be derived from the project by the RPE. Project benefits to be considered
40 are those occurring during the construction, renovation, expansion or improvement phase
41 and during the life cycle of the project. Proposals also should include a scope of work
42 and a financial plan for the project, containing enough detail to allow an analysis by the
43 RPE of the financial feasibility of the proposed project. The cost analysis of a proposal
44 should not be linked solely to the financing plan, as the RPE may determine to finance
45 the project through other available means.

1 The RPE should establish clearly delineated criteria for (i) selecting among
2 competing proposals and (ii) the use of accelerated documentation, review, and selection
3 processes for proposals involving a qualifying project that the RPE deems a priority. In
4 addition, to facilitate the flow of critical information, the RPE may establish criteria by
5 which the proposer may provide clarification to a submitted proposal.

6

7 **B. Affected Jurisdictions**

8

9 Any private entity requesting approval from or submitting a conceptual or
10 detailed proposal to the RPE must provide each affected jurisdiction with a copy of the
11 private entity's request or proposal by certified mail, express delivery, or hand delivery.
12 Affected jurisdictions that are not RPEs under the proposed qualifying project shall have
13 60 days from the receipt of the request or proposal to submit written comments to the
14 RPE and to indicate whether the proposed qualifying project is compatible with the (i)
15 local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital
16 improvements budget or other government spending plan. Comments received within the
17 60-day period shall be given consideration by the RPE, and no negative inference shall be
18 drawn from the absence of comment by an affected jurisdiction.

19

20 **C. Proposal Review Fee**

21

22 The RPE shall receive an analysis of the proposal from appropriate internal staff
23 or outside advisors or consultants with relevant experience in determining whether to
24 enter into an agreement with the private entity. The RPE may charge a fee to the private
25 entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal
26 or competing unsolicited proposal submitted under the PPEA, including a fee to cover the
27 costs of outside attorneys, consultants, and financial advisors. Any fee charged for such
28 review of a proposal should be reasonable in comparison to the level of expertise required
29 to review the proposal and should not be greater than the direct costs associated with
30 evaluating the proposed qualifying project. "Direct costs" may include (i) the cost of
31 staff time required to process, evaluate, review and respond to the proposal and (ii) the
32 out-of-pocket costs of attorneys, consultants, and financial advisors.

33

34 The proposal fee may cover all or part of the initial review process. For example,
35 the RPE may require a proposal fee in an amount sufficient to cover all anticipated direct
36 costs associated with evaluating the proposal, or the RPE may require a smaller initial
37 processing fee with an additional proposal fee to be charged should the project proceed
38 beyond the initial review.

39

40 The RPE may establish a fee schedule for the cost of the proposal review. The
41 RPE shall set forth in the procedures it has established for the implementation of the
42 PPEA the methodology used to calculate proposal fees. If the cost of reviewing the
43 proposal exceeds the initially established proposal fee, the RPE may assess the proposer
44 the additional costs deemed necessary to evaluate the proposal.

45

1 For rejected proposals, the RPE may establish a schedule for refunding any
2 portion of fees paid in excess of its direct costs associated with evaluating the proposal. If
3 the cost of reviewing the proposal is less than the initially established proposal fee, the
4 RPE may refund to the proposer the excess fee. As noted in Section IV.A. 1 below, fees
5 should be refunded entirely if the RPE decides not to proceed to publication and
6 conceptual-phase review of an unsolicited proposal.

7

8 **D. Freedom of Information Act**

9

10 **1. General applicability of disclosure provisions.**

11

12 Proposal documents submitted by private entities are generally subject to the
13 Virginia Freedom of Information Act (“FOIA”) except that subdivision 11 of § 2.2-
14 3705.6 exempts certain documents from public disclosure. FOIA exemptions, however,
15 are discretionary, and the RPE may elect to release some or all of documents except to
16 the extent the documents are:

17

18 a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act
19 (§ 59.1-336 et seq.);

20

21 b. Financial records of the private entity that are not generally available to the
22 public through regulatory disclosure or otherwise, including but not limited to, balance
23 sheets and financial statements; or

24

25 c. Other information submitted by a private entity, where if the record or
26 document were made public prior to the execution of an interim or comprehensive
27 agreement the financial interest or bargaining position of the public or private entity
28 would be adversely affected.

29

30 Additionally, to the extent access to proposal documents submitted by private
31 entities are compelled or protected from disclosure by a court order, the RPE must
32 comply with the provisions of such order.

33

34 An RPE may contact the Freedom of Information Act Council (FOIAC) regarding
35 the applicability of the access provisions of FOIA:

36

General Assembly Building, 2 nd Floor 910 Capitol Street Richmond, VA 23219 E-mail: foiacouncil@leg.state.va.us	Telephone: 804/225-3056 Toll-Free: 1-866-448-4100 Fax: 804/371-8705
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37

38 **2. Protection from mandatory disclosure for certain documents submitted**
39 **by a private entity.**

40

41 Before a document of a private entity may be withheld from disclosure, the
42 private entity must make a written request to the RPE at the time the documents are
43 submitted designating with specificity the documents for which the protection is being

1 sought and a clear statement of the reasons for invoking the protection with reference to
2 one or more of three classes of records listed in Section I.D.1.

3

4 Upon the receipt of a written request for protection of documents, the RPE shall
5 determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii)
6 other information that would adversely affect the financial interest or bargaining position
7 of the RPE or private entity in accordance with Section I.D.1. The RPE shall make a
8 written determination of the nature and scope of the protection to be afforded by the RPE
9 under this subdivision. If the written determination provides less protection than
10 requested by the private entity, the private entity should be accorded an opportunity to
11 withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be
12 accorded protection from release although what may be protected must be limited to the
13 categories of records identified in Section I.D.1 .

14

15 Once a written determination has been made by the RPE, the documents afforded
16 protection under this subdivision shall continue to be protected from disclosure when in
17 the possession of the RPE or any affected jurisdiction to which such documents are
18 provided.

19

20 If a private entity fails to designate trade secrets, financial records, or other
21 confidential or proprietary information for protection from disclosure, such information,
22 records or documents shall be subject to disclosure under FOIA.

23

24 **3. Protection from mandatory disclosure for certain documents produced by
25 the RPE.**

26

27 The RPE may withhold from disclosure memoranda, staff evaluations, or other
28 records prepared by the RPE, its staff, outside advisors, or consultants exclusively for the
29 evaluation and negotiation of proposals where (i) if such records were made public prior
30 to or after the execution of an interim or a comprehensive agreement, the financial
31 interest or bargaining position of the RPE would be adversely affected, and (ii) the basis
32 for the determination required in clause (i) is documented in writing by the RPE.

33

34 Cost estimates relating to a proposed procurement transaction prepared by or for
35 the RPE shall not be open to public inspection.

36

37 **4. The RPE may not withhold from public access:**

38

39 (a) procurement records other than those subject to the written determination of
40 the RPE;

41

42 (b) information concerning the terms and conditions of any interim or
43 comprehensive agreement, service contract, lease, partnership, or any agreement of any
44 kind entered into by the RPE and the private entity;

45

46 (c) information concerning the terms and conditions of any financing arrangement
47 that involves the use of any public funds; or

(d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the RPE must comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the RPE to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

II. Solicited Proposals

The RPE may issue Requests for Proposals (RFPs) or Invitations for Bids (IFBs), inviting proposals from private entities to develop or operate qualifying projects. An RPE may not issue a RFP until it has adopted guidelines to govern the PPEA documentation, review, and selection process. The RPE may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by the RPE. In such a case the RPE should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The RPE may establish suggested timelines for selecting proposals for the review and selection of solicited proposals.

The RFP should 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 should be posted in such public areas as are normally used for posting of the RPE's notices, including the RPE's website. Notices should also be published in a newspaper or other publications of general circulation and advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement site. In addition, solicited proposals should be posted pursuant to Section III.B. The RFP should 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. Pre-proposal conferences may be held as deemed appropriate by the RPE.

1 **III. Unsolicited Proposals**

2

3 The PPEA permits public entities to receive, evaluate and select for negotiations
4 unsolicited proposals from private entities to develop or operate a qualifying project.

5

6 The RPE may publicize its needs and may encourage interested parties to submit
7 unsolicited proposals subject to the terms and conditions of the PPEA. When such
8 proposals are received without issuance of an RFP, the proposal shall be treated as an
9 unsolicited proposal. The RPE may establish suggested timelines for selecting proposals
10 for the review and selection of unsolicited proposals.

11

12 **A. Decision to Accept and Consider Unsolicited Proposal; Notice**

13

14 1. Upon receipt of any unsolicited proposal or group of proposals and payment of
15 any required fee by the proposer or proposers, the RPE should determine whether to
16 accept the unsolicited proposal for the purpose of publication and conceptual-phase
17 consideration. If the RPE determines not to accept the proposal and proceed to
18 publication and conceptual-phase consideration, it should return the proposal, together
19 with all fees and accompanying documentation, to the proposer.

20

21 2. If the RPE chooses to accept an unsolicited proposal for publication and
22 conceptual-phase consideration, it shall post a notice in a public area regularly used by
23 the RPE for posting of public notices for a period of not less than 45 days. The RPE shall
24 also publish the same notice for a period of not less than 45 days in one or more
25 newspapers or periodicals of general circulation in the jurisdiction to notify any parties
26 that may be interested in submitting competing unsolicited proposals. In addition, the
27 notice should be advertised in *Virginia Business Opportunities* and on the
28 Commonwealth's electronic procurement website. The notice shall state that the RPE (i)
29 has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the
30 proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer
31 based on the proposal, and (iv) will receive for simultaneous consideration any
32 competing proposals that comply with the procedures adopted by the RPE and the PPEA.
33 The notice also shall summarize the proposed qualifying project or projects, and identify
34 their proposed locations.

35

36 To ensure that sufficient information is available upon which to base the
37 development of a serious competing proposal, representatives of the RPE familiar with
38 the unsolicited proposal and the guidelines established by the RPE shall be made
39 available to respond to inquiries and meet with private entities that are considering the
40 submission of a competing proposal. The RPE shall conduct an analysis of the
41 information pertaining to the proposal included in the notice to ensure that such
42 information sufficiently encourages competing proposals. Further, the RPE shall establish
43 criteria, including key decision points and approvals to ensure proper consideration of the
44 extent of competition from available private entities prior to selection.

1 **B. Posting Requirements**

2 3. Conceptual proposals, whether solicited or unsolicited, shall be posted by the
3 4 RPE within 10 working days after acceptance of such proposals in the following manner:
5

6 6 a. For RPEs that are state agencies, departments, and institutions, posting shall be
7 7 on the Department of General Service's web-based electronic procurement program
8 8 commonly known as "eVA"; and
9

10 10 b. For RPEs that are local public bodies, posting shall be on the RPEs website or
11 11 by publication, in a newspaper of general circulation in the area in which the contract is
12 12 to be performed, of a summary of the proposals and the location where copies of the
13 13 proposals are available for public inspection. Posting may also be on the Department of
14 14 General Service's web-based electronic procurement program commonly known as
15 15 "eVA," in the discretion of the local RPE.
16

17 17 2. Nothing shall be construed to prohibit the posting of the conceptual proposals
18 18 by additional means deemed appropriate by the RPE so as to provide maximum notice to
19 19 the public of the opportunity to inspect the proposals.
20

21 21 3. In addition to the posting requirements, at least one copy of the proposals shall
22 22 be made available for public inspection. Trade secrets, financial records, or other records
23 23 of the private entity excluded from disclosure under the provisions of subdivision 11 of §
24 24 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE
25 25 and the private entity. Any inspection of procurement transaction records shall be subject
26 26 to reasonable restrictions to ensure the security and integrity of the records.
27

28 **C. Initial Review by the Responsible Public Entity at the Conceptual Stage**
29

30 30 1. Only proposals complying with the requirements of the PPEA that contain
31 31 sufficient information for a meaningful evaluation and that are provided in an appropriate
32 32 format should be considered by the RPE for further review at the conceptual stage.
33 33 Formatting suggestions for proposals at the conceptual stage are found in Section I. V. A.
34

35 35 2. The RPE should determine at this initial stage of review whether it will
36 36 proceed using:
37

38 38 a. Standard procurement procedures consistent with the VPPA; or
39

40 40 b. Guidelines developed by the RPE that are consistent with procurement of
41 41 other than professional services through "competitive negotiation" as the
42 42 term is defined in § 2.2-4301 of the Code of Virginia. The RPE may
43 43 proceed using such guidelines only if it makes a written determination that
44 44 doing so is likely to be advantageous to the RPE and the public based
45 45 upon either (i) the probable scope, complexity or priority of need; (ii) the
46 46 risk sharing including guaranteed cost or completion guarantees, added

value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.

3. After reviewing the original proposal and any competing proposals submitted during the notice period, the RPE may determine:

- (i) not to proceed further with any proposal;
- (ii) to proceed to the detailed phase of review with the original proposal;
- (iii) to proceed to the detailed phase with a competing proposal;
- (iv) to proceed to the detailed phase with multiple proposals; or
- (v) to request modifications or amendments to any proposals.

In the event that more than one proposal will be considered in the detailed phase of review, the RPE should consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

4. Discussions between RPEs and private entities about the need for infrastructure improvements shall not limit the ability of a RPE to later determine to use standard procurement procedures to meet its infrastructure needs. The RPE retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

IV. Proposal Preparation and Submission

A. Format for Submissions at Conceptual Stage

A RPE may require that proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as the RPE may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents that RPE may request:

1. Qualification and Experience

a. Identify the legal structure of the firm or consortium of firms making the proposal. 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.

1

2 b. Describe the experience of the firm or consortium of firms making the

3 proposal and the key principals involved in the proposed project including

4 experience with projects of comparable size and complexity. Describe the

5 length of time in business, business experience, public sector experience

6 and other engagements of the firm or consortium of firms. Include the

7 identity of any firms that will provide design, construction and completion

8 guarantees and warranties, and a description of such guarantees and

9 warranties.

10

11 c. Provide the names, addresses, and telephone numbers of persons within

12 the firm or consortium of firms who may be contacted for further

13 information.

14

15 d. Provide a current or most recently audited financial statement of the firm

16 or firms and each partner with an equity interest of twenty percent or

17 greater.

18

19 e. Identify any persons known to the proposer who would be obligated to

20 disqualify themselves from participation in any transaction arising from or

21 in connection to the project pursuant to the Virginia State and Local

22 Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of

23 Title 2.2.

24

25 2. Project Characteristics

26

27 a. Provide a description of the project, including the conceptual design.

28 Describe the proposed project in sufficient detail so that type and intent of

29 the project, the location, and the communities that may be affected are

30 clearly identified.

31

32 b. Identify and fully describe any work to be performed by the RPE.

33

34 c. Include a list of all federal, state, and local permits and approvals required

35 for the project and a schedule for obtaining such permits and approvals.

36

37 d. Identify any anticipated adverse social, economic, and environmental

38 impacts of the project. Specify the strategies or actions to mitigate known

39 impacts of the project.

40

41 e. Identify the projected positive social, economic, and environmental

42 impacts of the project.

43

44 f. Identify the proposed schedule for the work on the project, including the

45 estimated time for completion.

46

1 g. Propose allocation of risk and liability for work completed beyond the
2 agreement's completion date, and assurances for timely completion of the
3 project.
4
5 h. State assumptions related to ownership, legal liability, law enforcement,
6 and operation of the project and the existence of any restrictions on the
7 RPE's use of the project.
8
9 i. Provide information relative to phased or partial openings of the proposed
10 project prior to completion of the entire work.
11
12 j. List any other assumptions relied on for the project to be successful.
13
14 k. List any contingencies that must occur for the project to be successful.
15

16 3. Project Financing
17

18 a. Provide a preliminary estimate and estimating methodology of the cost of
19 the work by phase, segment, or both.
20
21 b. Submit a plan for the development, financing, and operation of the project
22 showing the anticipated schedule on which funds will be required.
23 Describe the anticipated costs of and proposed sources and uses for such
24 funds including any anticipated debt service costs. The operational plan
25 should include appropriate staffing levels and associated costs. Include
26 supporting due diligence studies, analyses, or reports.
27
28 c. Include a list and discussion of assumptions underlying all major elements
29 of the plan. Assumptions should include all significant fees associated
30 with financing given the recommended financing approach. In addition
31 complete disclosure of interest rate assumptions should be included. Any
32 ongoing operational fees, if applicable, should also be disclosed as well as
33 any assumptions with regard to increases in such fees.
34
35 d. Identify the proposed risk factors and methods for dealing with these
36 factors.
37
38 e. Identify any local, state, or federal resources that the proposer
39 contemplates requesting for the project. Describe the total commitment, if
40 any, expected from governmental sources and the timing of any
41 anticipated commitment. Such disclosure should include any direct or
42 indirect guarantees or pledges of the RPE's credit or revenue.
43
44 f. Identify the amounts and the terms and conditions for any revenue
45 sources.
46

1 g. Identify any aspect of the project that could disqualify the project from
2 obtaining tax-exempt financing.

4 **4. Project Benefit and Compatibility**

6 a. Identify who will benefit from the project, how they will benefit, and how
7 the project will benefit the overall community, region, or state.

9 b. Identify any anticipated public support or opposition, as well as any
10 anticipated government support or opposition, for the project.

12 c. Explain the strategy and plans that will be carried out to involve and
13 inform the general public, business community, and governmental
14 agencies in areas affected by the project.

16 d. Describe the anticipated significant benefits to the community, region or
17 state, including anticipated benefits to the economic condition of the RPE
18 and whether the project is critical to attracting or maintaining competitive
19 industries and businesses to the RPE or the surrounding region.

21 e. Describe compatibility with the local comprehensive plan, local
22 infrastructure development plans, the capital improvements budget, or
23 other government spending plan.

25 f. Provide a statement setting forth participation efforts that are intended to
26 be undertaken in connection with this project with regard to the following
27 types of businesses: (i) minority-owned businesses, (ii) woman-owned
28 businesses, and (iii) small businesses.

30 **B. Format for Submissions at Detailed Stage**

32 If the RPE decides to proceed to the detailed phase of review with one or more
33 proposals, the following information should be provided by the private entity unless
34 waived by the RPE:

36 1. A topographical map (1:2,000 or other appropriate scale) depicting the
37 location of the proposed project;

39 2. A list of public utility facilities, if any, that will be crossed by the qualifying
40 project and a statement of the plans of the proposer to accommodate such
41 crossings;

43 3. A statement and strategy setting out the plans for securing all necessary
44 property;

4. 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;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects 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 facility, and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
7. 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 resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the RPE's consideration of the proposal, including the identification of 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 Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2;
11. Additional material and information as the RPE may reasonably request.

Proposal Evaluation and Selection Criteria

There are several factors that the RPE may wish to consider when evaluating and selecting a proposal under the PPEA. The following are some of the factors that may be considered by the RPE in the evaluation and selection of PPEA proposals.

1 **A. Qualifications and Experience**

2

3 Factors to be considered in either phase of the RPE's review to determine whether

4 the proposer possesses the requisite qualifications and experience include:

5

6 1. Experience with similar projects;

7

8 2. Demonstration of ability to perform work;

9

10 3. Leadership structure;

11

12 4. Project manager's experience;

13

14 5. Management approach;

15

16 6. Financial condition; and

17

18 7. Project ownership.

19

20 **B. Project Characteristics**

21

22 Factors to be considered in determining the project characteristics include:

23

24 1. Project definition;

25

26 2. Proposed project schedule;

27

28 3. Operation of the project;

29

30 4. Technology; technical feasibility;

31

32 5. Conformity to laws, regulations, and standards;

33

34 6. Environmental impacts;

35

36 7. Condemnation impacts;

37

38 8. State and local permits; and

39

40 9. Maintenance of the project.

41

42 **C. Project Financing**

43

44 Factors to be considered in determining whether the proposed project financing

45 allows adequate access to the necessary capital to finance the project include:

- 1 1. Cost and cost benefit to the RPE;
- 2
- 3 2. Financing and the impact on the debt burden of the RPE or appropriating
4 body;
- 5
- 6 3. Financial plan, including the degree to which the proposer has conducted
7 due diligence investigation and analysis of the proposed financial plan and
8 the results of any such inquiries or studies;
- 9
- 10 4. Opportunity costs assessment;
- 11 |
- 12 5. Estimated cost;
- 13
- 14 6. Life-cycle cost analysis;
- 15
- 16 7. The identity, credit history, past performance of any third party that will
17 provide financing for the project and the nature and timing of their
18 commitment, as applicable; and
- 19
- 20 8. Such other items as the RPE deems appropriate.
- 21

22 In the event that any project is financed through the issuance of obligations that
23 are deemed to be tax-supported debt of the RPE, or if financing such a project may
24 impact the RPE's debt rating or financial position, the RPE may select its own finance
25 team, source, and financing vehicle.

26

D. Project Benefit and Compatibility

27 Factors to be considered in determining the proposed project's compatibility with
28 the appropriate local or regional comprehensive or development plans include:

- 31 1. Community benefits;
- 32
- 33 2. Community support or opposition, or both;
- 34
- 35 3. Public involvement strategy;
- 36
- 37 4. Compatibility with existing and planned facilities; and
- 38
- 39 5. Compatibility with local, regional, and state economic development efforts.
- 40
- 41

E. Other Factors

42 Other factors that may be considered by the RPE in the evaluation and selection
43 of PPEA proposals include:

44

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of the RPE and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the RPE deems appropriate.

VI. Additional Review Procedures.

A. Public Private Partnership Oversight Advisory Committee

An RPE that is an agency or institution of the Commonwealth shall and all other RPEs may establish criteria to trigger establishment of an advisory committee consisting of representatives of the RPE and the appropriating body to review the terms of the proposed interim or comprehensive agreement. The criteria should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

B. Appropriating Body

If the RPE for appropriating or authorizing funding to pay for a qualifying project is different from the RPE reviewing or approving the project, then the RPE reviewing or approving the project should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the RPE, review by the local governing body shall satisfy this requirement..

1 **VII. Interim and Comprehensive Agreements**

2

3 Prior to developing or operating the qualifying project, the selected private entity
4 shall enter into a comprehensive agreement with the RPE. Prior to entering a
5 comprehensive agreement, an interim agreement may be entered into that permits a
6 private entity to perform compensable activities related to the project. The RPE may
7 designate a working group to be responsible for negotiating any interim or
8 comprehensive agreement. Any interim or comprehensive agreement shall define the
9 rights and obligations of the RPE and the selected proposer with regard to the project.

10

11 **A. Interim Agreement Terms**

12

13 The scope of an interim agreement may include but is not limited to:

14

15 1. Project planning and development;

16

17 2. Design and engineering;

18

19 3. Environmental analysis and mitigation;

20

21 4. Survey;

22

23 5. Ascertaining the availability of financing for the proposed facility through
24 financial and revenue analysis;

25

26 6. Establishing a process and timing of the negotiation of the comprehensive
27 agreement; and

28

29 7. Any other provisions related to any aspect of the development or operation of
30 a qualifying project that the parties may deem appropriate prior to the
31 execution of a comprehensive agreement.

32

33 **B. Comprehensive Agreement Terms**

34

35 The scope of the comprehensive agreement shall include but not be limited to:

36

37 1. The delivery of maintenance, performance and payment bonds or letters of
38 credit in connection with any acquisition, design, construction, improvement,
39 renovation, expansion, equipping, maintenance, or operation of the qualifying
40 project;

41

42 2. The review of plans and specifications for the qualifying project by the RPE;

43

44 3. The rights of the RPE to inspect the qualifying project to ensure compliance
45 with the comprehensive agreement;

46

1 4. The maintenance of a policy or policies of liability insurance or self-insurance
2 reasonably sufficient to insure coverage of the project and the tort liability to
3 the public and employees and to enable the continued operation of the
4 qualifying project;

5 5. The monitoring of the practices of the private entity by the RPE to ensure
6 proper maintenance;

7 6. The terms under which the private entity will reimburse the RPE for services
8 provided;

9 7. The policy and procedures that will govern the rights and responsibilities of
10 the RPE and the private entity in the event that the comprehensive agreement
11 is terminated or there is a material default by the private entity including the
12 conditions governing assumption of the duties and responsibilities of the
13 private entity by the RPE and the transfer or purchase of property or other
14 interests of the private entity by the RPE;

15 8. The terms under which the private entity will file appropriate financial
16 statements on a periodic basis;

17 9. The mechanism by which user fees, lease payments, or service payments, if
18 any, may be established from time to time upon agreement of the parties. Any
19 payments or fees shall be set at a level that is the same for persons using the
20 facility under like conditions and that will not materially discourage use for
21 the qualifying project;

22 a. A copy of any service contract shall be filed with the RPE.

23 b. A schedule of the current user fees or lease payments shall be made
24 available by the private entity to any member of the public upon request.

25 c. Classifications according to reasonable categories for assessment of user
26 fees may be made.

27 10. The terms and conditions under which the RPE may contribute financial
28 resources, if any, for the qualifying project;

29 11. The terms and conditions under which existing site conditions will be assessed
30 and addressed, including identification of the responsible party for conducting
31 the assessment and taking necessary remedial action;

32 12. The terms and conditions under which the RPE will be required to pay money
33 to the private entity and the amount of any such payments for the project;

34 13. Other requirements of the PPEA or other applicable law; and

1
2 14. Such other terms and conditions as the RPE may deem appropriate.
3

4 Any changes in the terms of the interim or comprehensive agreement as may be
5 agreed upon by the parties from time to time shall be added to the interim or
6 comprehensive agreement by written amendment.
7

8 The comprehensive agreement may provide for the development or operation of
9 phases or segments of a qualifying project.
10

11 **C. Notice and Posting requirements**
12

13 1. In addition to the posting requirements of Section III. B, 30 days prior to
14 entering into an interim or comprehensive agreement, the RPE shall provide an
15 opportunity for public comment on the proposals. Such public comment period may
16 include a public hearing in the sole discretion of the RPE. After the end of the public
17 comment period, no additional posting shall be required based on any public comment
18 received.
19

20 2. Once the negotiation phase for the development of an interim or a
21 comprehensive agreement is complete and a decision to award has been made by the
22 RPE, the RPE shall post the proposed agreement in the following manner:
23

24 a. For RPEs that are state agencies, departments, and institutions, posting shall be
25 on the Department of General Service's web-based electronic procurement program
26 commonly known as "eVA"; and
27

28 b. For RPEs that are local public bodies, posting shall be on the RPEs' website or
29 by publication, in a newspaper of general circulation in the area in which the contract
30 work is to be performed, of a summary of the proposals and the location where copies of
31 the proposals are available for public inspection. Posting may also be on the Department
32 of General Service's web-based electronic procurement program commonly known as
33 "eVA," in the discretion of the local RPE.
34

35 c. In addition to the posting requirements, at least one copy of the proposals shall
36 be made available for public inspection. Trade secrets, financial records, or other records
37 of the private entity excluded from disclosure under the provisions of subdivision 11 of §
38 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE
39 and the private entity.
40

41 d. Any studies and analyses considered by the RPE in its review of a proposal
42 shall be disclosed to the appropriating body at some point prior to the execution of an
43 interim or comprehensive agreement.
44

1 3. Once an interim agreement or a comprehensive agreement has been entered
2 into, the RPE shall make procurement records available for public inspection, upon
3 request.

4
5 a. Such procurement records shall include documents protected from disclosure
6 during the negotiation phase on the basis that the release of such documents would have
7 adverse affect on the financial interest or bargaining position of the RPE or private entity
8 in accordance with Section II.D.3.

9
10 b. Such procurement records shall not include (i) trade secrets of the private
11 entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial
12 records, including balance sheets or financial statements of the private entity that are not
13 generally available to the public through regulatory disclosure or otherwise.

14
15 To the extent access to procurement records are compelled or protected by a court
16 order, then the RPE must comply with such order.

17
18 **VIII. Governing Provisions**

19
20 In the event of any conflict between these guidelines and the PPEA, the terms of the
21 PPEA shall control.

Terms and Definitions

"Affected jurisdiction" means any county, city, or town in which all or a portion of a qualifying project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

“Conceptual stage” means the initial phase of project evaluation when the public entity makes a determination whether the proposed project serves a public purpose, meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity proposer, reviews the project for financial feasibility, and warrants further pursuit.

“Cost-benefit analysis” means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

“Detailed stage” means the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

“Lifecycle cost analysis” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a

1 lower initial construction cost, it may not have the lowest lifecycle cost once
2 maintenance, replacement, and salvage value is considered.

3

4 **"Material default"** means any default by the private entity in the performance of its
5 duties that jeopardizes adequate service to the public from a qualifying project.

6

7 **"Operate"** means to finance, maintain, improve, equip, modify, repair, or operate.

8

9 | **"Opportunity cost"** means the cost of passing up another choice when making a
10 decision or the increase in costs due to delays in making a decision.

11

12 **"Private entity"** means any natural person, corporation, general partnership, limited
13 liability company, limited partnership, joint venture, business trust, public benefit
14 corporation, nonprofit entity, or other business entity.

15

16 **"Public entity"** means the Commonwealth and any agency or authority thereof, any
17 county, city or town and any other political subdivision of the Commonwealth, any
18 public body politic and corporate, or any regional entity that serves a public purpose.

19

20 **"Qualifying project"** means (i) any education facility, including, but not limited to a
21 school building, any functionally related and subordinate facility and land of a school
22 building (including any stadium or other facility primarily used for school events), and
23 any depreciable property provided for use in a school facility that is operated as part of
24 the public school system or as an institution of higher education; (ii) any building or
25 facility that meets a public purpose and is developed or operated by or for any public
26 entity; (iii) any improvements, together with equipment, necessary to enhance public
27 safety and security of buildings to be principally used by a public entity; (iv) utility and
28 telecommunications and other communications infrastructure; (v) a recreational facility;
29 (vi) technology infrastructure and services, including, but not limited to,
30 telecommunications, automated data processing, word processing and management
31 information systems, and related information, equipment, goods and services; (vii) any
32 technology, equipment, or infrastructure designed to deploy wireless broadband services
33 to schools, businesses, or residential areas; or (viii) any improvements necessary or
34 desirable to any unimproved locally- or state-owned real estate.

35

36 **"Responsible public entity"** means a public entity that has the power to develop or
37 operate the applicable qualifying project.

38

39 **"Revenues"** means all revenues, income, earnings, user fees, lease payments, or other
40 service payments arising out of or in connection with supporting the development or
41 operation of a qualifying project, including without limitation, money received as grants
42 or otherwise from the United States of America, from any public entity, or from any
43 agency or instrumentality of the foregoing in aid of such facility.

44

45 **"Service contract"** means a contract entered into between a public entity and the private
46 entity pursuant to § 56-575.5.

1
2 **"Service payments"** means payments to the private entity of a qualifying project
3 pursuant to a service contract.

4
5 **"State"** means the Commonwealth of Virginia.

6
7 **"User fees"** mean the rates, fees, or other charges imposed by the private entity of a
8 qualifying project for use of all or a portion of such qualifying project pursuant to the
9 comprehensive agreement pursuant to § 56-575.9.

10
11

City of Hopewell, Virginia

**Guidelines for the Implementation of the Public-Private Education
Facilities and Infrastructure Act of 2002**

**Adopted April 8, 2008, and
Amended _____, 2009**

City of Hopewell, Virginia
Guidelines for the Implementation of the
Public-Private Education Facilities and Infrastructure Act of 2002

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I. Introduction

The Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA") grants the City of Hopewell (the "City"), a responsible public entity as defined in the PPEA, the authority to enter into public-private partnership agreements for the development of a wide range of projects for public use if the City determines that there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. For the purposes of these guidelines, the term "City" includes its School Board in the case of education facilities. Individually negotiated interim and comprehensive agreements between a private entity, as defined in the PPEA, and the City will define the respective rights and obligations of the City and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the City and all private entities to comply with the provisions of the PPEA.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The City

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes;
2. The estimated cost of the project is reasonable in relation to similar facilities; and
3. The private entity's plans will result in the timely development or operation of the project.

The PPEA contains a broad definition of qualifying projects that include public buildings and facilities of all types, for example:

1. An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally related and subordinate facility and land to a school building and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
2. A building or facility that meets a public purpose and is developed or operated by or for any public entity;
3. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
4. Utility and telecommunications and other communications infrastructure;
5. A recreational facility;
6. Technology infrastructure and services, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
7. Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas, or
8. Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

The PPEA establishes requirements to which the City must adhere when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim or comprehensive agreement detailing the relationship between the City and the private entity.

The Hopewell City Council (the "City Council") adopted these guidelines on April 8, 2008 to implement the PPEA in the City. The City Manager will follow these guidelines in receiving and evaluating any proposal submitted to the City under the provisions of the PPEA. The City Council must adopt any amendments to these guidelines.

These guidelines shall govern all City PPEA projects, including education facilities, and shall be applicable to all City agencies, boards, commissions, and committees. The City Manager may designate a working group (the "Working Group") to assist the City Manager in evaluating proposals and negotiating any interim or comprehensive agreement. The City Manager shall implement these guidelines, receive proposals submitted under the PPEA, and respond to inquiries regarding the PPEA or these guidelines, but the City Manager may specifically designate one or more persons to perform one or more of these duties.

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 "PPEA PROPOSAL." To be considered, one original and eight (8) copies of any unsolicited proposal must be submitted along with the applicable fee to the City Manager, or his designee as set forth above, 300 N. Main Street, Hopewell, Virginia 23860 by certified mail, express

delivery or hand delivery. 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.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. Proposals may include, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the City. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the City of the financial feasibility of the proposed project. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The cost analysis of a proposal should not be linked solely to any proposed financing plan, as the City may determine to finance the project through other available means. The City Manager or his designee may request, in writing, clarification of the submission.

The PPEA 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 operator, 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. Prospective 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 private entity.

B. Proposal Review Fees

The PPEA authorizes the City to charge fees to cover the costs of processing, reviewing, and evaluating proposals.

1. A fee in accordance with the fee schedule below, paid with certified funds, shall accompany any initial proposal to cover the cost of determining whether it is a qualifying project with a reasonable expectation of satisfying the criteria of Va. Code § 56-575.4 (C) of the PPEA of public need or benefit, reasonable estimated cost, and timely acquisition of the project. The fee shall be based on the total cost of the proposal.
2. If the proposal is advanced to the detailed stage of review, an additional fee in accordance with the fee schedule below shall be due. The fee, paid in certified funds, shall accompany the proposer's submission at the detailed stage.

Review Stage	Fee	Minimum	Maximum
Conceptual/Initial	1%	\$2,500.00	\$5,000.00
Detail	1%	\$5,000.00	\$50,000.00

C. Reservation of Rights

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

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the City. 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 or terminate interim and comprehensive agreement negotiations with any proposer at any time before the actual 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 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.
8. Modify any standard fee schedule as stated herein 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.

D. Virginia Freedom of Information Act

1. General applicability of disclosure provisions

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that Va. Code § 2.2-3705.6 (11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the City may elect to release some or all of documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336 *et seq.*);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the City will comply with the provisions of such order.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the City at the time the documents are submitted, designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in Section I.D.1.

Upon the receipt of a written request for protection of documents, the City shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the City or private entity in accordance with Section I.D.1. The City will make a written determination of the nature and scope of the protection to be afforded by the City under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity will be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section I.D.1.

Once a written determination has been made by the City, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the City or any affected jurisdiction to which such documents are provided.

If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

3. Protection from mandatory disclosure for certain documents produced by the City

The City may withhold from disclosure memoranda, staff evaluations, or other records prepared by the City, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, the financial interest or bargaining position of the City would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the City.

Cost estimates relating to a proposed procurement transaction prepared by or for the City shall not be open to public inspection.

4. The City may not withhold from public access:

- a. Procurement records other than those subject to the written determination of the City;
- b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the City and the private entity;
- c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- d. Information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, the City will comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements and City ordinances and policies as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the City to comply with all other applicable law not in conflict with the PPEA.

III. Solicited Proposals

The City may issue Request for Proposals (RFPs) or Invitations for Bids (IFBs), inviting proposals from private entities to develop or operate qualifying projects. 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 projects identified by the City. 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 PPEA. The City may establish suggested timelines for selecting proposals for the review and selection of solicited proposals.

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. Public notice of the RFP shall be posted in such public areas as are normally used for posting of the City's notices, including the City's website and published in a newspaper or newspapers of general circulation in the City. In addition, solicited proposals shall be posted pursuant to Section IV. B. Pre-proposal conferences may be held as deemed appropriate by the City.

IV. Unsolicited Proposals

The PPEA permits the City to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop or operate a qualifying project.

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

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 by the proposer or proposers, the City Council shall, after receiving the recommendation of the City Manager, determine whether to reject the unsolicited proposal or accept the unsolicited proposal for publication and further conceptual-stage consideration. If the proposal is or proposals are for an education facility, the City Manager shall consult with the Superintendent of Schools ("Superintendent"), who may receive the recommendation of the School Board regarding the proposal or proposals.
2. If City Council chooses to accept an unsolicited proposal for publication and 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 for a period of not less than 45 days. The City may 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. Interested parties shall have adequate time as specified in the notice to submit competing unsolicited proposals. The notice shall state that the City (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the guidelines adopted by the City and pursuant to the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. If such unsolicited proposal is accepted and is to be evaluated using "competitive negotiation" procedures as described in Section IV. C. 1, the City shall make the written determination described in Section IV. C. 1 prior to such evaluation.

To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the City familiar with the unsolicited proposal and the guidelines established by the City shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The City shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the City shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.

3. Any proposal not accepted for conceptual-stage consideration will be returned, together with all fees and accompanying documentation, to the proposer.

B. Posting Requirements

1. Conceptual proposals accepted for review and further evaluation, whether solicited or unsolicited, shall be posted by the City within 10 working days after acceptance of such proposals.

Posting shall be on the City's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the City so as to provide maximum notice to the public of the opportunity to inspect the proposals.
3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions Va. Code § 2.2-3705.6 (11) shall not be required to be posted, except as otherwise agreed to by the City and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Review at Conceptual Stage

1. When one or more proposals are received, the City will determine at this initial stage of review whether it will proceed with the evaluation of the proposals using standard procurement procedures consistent with the Virginia Public Procurement Act 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 Va. Code § 2.2-4301. The City may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the City and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available. The City may reject any or all proposals.
2. After reviewing the original proposal and any competing proposals submitted during the notice period, the City may determine:
 - 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;
 - d. to proceed to the detailed stage with multiple proposals; or
 - e. to request modifications or amendments to any proposal.

In the event that more than one proposal will be considered in the detailed phase of review, the City shall consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

3. Discussions between the City and private entities 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 prior to the execution of an interim or comprehensive agreement.

V. Proposal Preparation and Submission

A. Format for Submissions at Conceptual Stage

At the conceptual stage, all proposals, whether solicited or unsolicited, shall contain information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; (iv) project benefit and compatibility; and (v) any additional information that the City may request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents that the City may request:

1. Qualifications and Experience
 - a. Identify the legal structure or type of private entity making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor (\$1 million or more) in the structure fits into the overall team. All members of the operator/offeror's team, including major subcontractors known to the proposer, must be identified at the time a proposal is submitted for the conceptual stage. Identified team members, including major subcontractors (over \$1 million), may not be substituted or replaced once a project is approved and comprehensive agreement entered into, without the written approval of the City. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor.
 - b. Describe the experience of the private entity making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the private entity. Describe the past safety performance record and current safety capabilities of the private entity. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims by or against the private entity. Include the identity of any private entity that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.
 - c. For each private entity or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the private entity's prior projects and clients for the past five years and contact information for same (names/addresses/telephone numbers). If a private entity has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and, second, it shall include as many of its most recent projects as possible. Each private entity or major subcontractor shall be required to submit all performance evaluation reports or other documents which are in its possession evaluating the private entity's performance during the preceding three years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project development, operation, and completion.
 - d. Provide the names, addresses, and telephone numbers of persons within the private entity who may be contacted for further information

- e. Provide a current or most recently audited financial statement of the private entity and each partner with an equity interest of ten percent or greater.
- f. 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.
- g. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. For each private entity or major subcontractor that will perform construction or design activities, provide the following information:
 - (1) A sworn certification by an authorized representative of the private entity attesting to the fact that the private entity is not currently debarred or suspended by any federal, state or local government entity.
 - (2) A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, private entity resources and business integrity of the private entity, including but not limited to, bonding capacities, insurance coverage and private entity equipment. This statement shall also include a mandatory disclosure by the private entity for the past five years any of the following conduct:
 - (A) bankruptcy filings
 - (B) liquidated damages
 - (C) fines, assessments or penalties
 - (D) judgments or awards in contract disputes
 - (E) contract defaults, contract terminations
 - (F) license revocations, suspensions, other disciplinary actions
 - (G) prior debarments or suspensions by a governmental entity
 - (H) denials of prequalification, findings of non-responsibility
 - (I) safety past performance data, including fatality incidents, "Experience Modification Rating," "Total Recordable Injury Rate" and "Total Lost Workday Incidence Rate"
 - (J) violations of any federal, state or local criminal or civil law
 - (K) criminal indictments or investigations
 - (L) claims filed by or against the firm
- i. Worker Safety Programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

2. Project Characteristics

- a. Provide a description of the proposed project, including the conceptual design, in sufficient detail so that type and intent of the project, its location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the City.
- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known or anticipated impacts of the project. Indicate if any environmental or archaeological assessment has been completed.

- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including sufficient time for the City to review, and the estimated time for completion.
- g. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- h. Propose allocation of risk and liability for work completed beyond the Comprehensive Agreement's completion date, and assurances for timely completion of the project.
- i. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the City's use of the project.
- j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

3. Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan shall include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed, as well as any assumptions with regard to increases in such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going. Such disclosure should include any direct or indirect guarantees or pledges of the City's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

- a. Identify community benefits, including the economic impact the project will have on the Commonwealth and the City in terms of amount of tax revenue to be generated for the Commonwealth and the City, the number of jobs generated for Virginia residents 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 generated for Virginia subcontractors.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.

- c. Explain the strategy and plan that will be carried out to involve and inform the general public, business community, local governments, and governmental agencies in areas affected by the project.
- d. Describe the compatibility of the project with local, regional, and state economic development efforts.
- e. Describe the compatibility with the City's comprehensive plan, infrastructure development plans, and capital improvements plan.

B. Format for Submissions at Detailed Stage

If the City decides to proceed to the detailed stage of review with one or more proposals, the following information must be provided by the proposer unless specifically waived in writing by the City:

- 1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
- 2. Conceptual site plan indicating proposed location and configuration of the project on the proposed site.
- 3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project.
- 4. Detailed description of the proposed participation of, use by, and financial involvement of the City.
- 5. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
- 6. A list of public facilities or other public improvements that will be required by the City to complete the project.
- 7. A statement and strategy setting out the plans for securing all necessary property interests required for the project. The statement must include the names and addresses, if known, of the current owners of the subject property interests, as well as a list of any property the proposer intends to request the City to condemn.
- 8. 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.
- 9. A total life-cycle cost specifying methodology and assumptions of the project or projects 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 facility and estimated annual operating expenses.
- 10. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- 11. 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.
- 12. Demonstration of consistency with appropriate City comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- 13. Explanation of how the proposed project would affect the City's development plans.

14. 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.
15. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact consideration of the proposal, including the identification of 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 (Va. Code § 2.2-3100 *et seq.*) of Title 2.2 of the Code of Virginia.
16. Additional material and information as the City may request.

VI. Proposal Evaluation and Selection Criteria

In reviewing any PPEA proposal accepted for consideration, the City shall engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the City, to provide independent analysis regarding the specifics, advantages, disadvantages and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless City Council determines that such analysis shall be performed by City employees.

The following items, along with the information that may be required under Sections V.A. and V.B. above, are some of the factors that the City may consider in the evaluation and selection of a PPEA proposal. The City reserves the right at all times to reject any proposal at any time for any reason.

A. Qualifications and Experience

Factors to be considered in either phase of the review to determine whether the proposer possesses the requisite qualifications and experience will include at a minimum:

1. Professional qualifications and experience with similar projects;
2. Demonstration of ability to perform the work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;
9. Financial condition of the proposer; and
10. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics include, along with the specified information required under V.A. and V.B. above, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology and technical feasibility;
5. Conformity to State and City laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

Factors considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include the following:

1. Cost and cost benefit to the City;
2. Financing, including debt source, and its impact on the debt or debt burden of the City;
3. Financial plan including overall feasibility and reliability of plan; default implications; the proposer's past performance with similar plans and similar projects; degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Life-cycle cost analysis.
5. Opportunity costs assessment;
6. Estimated cost; and
7. The identity, credit history and past performance of any third party that will provide financing for the project, and the nature and timing of their commitment, as applicable.

In the event that any project is financed through the issuance of obligations that are deemed by the City to be tax-supported debt of the City, or if financing such a project may impact the City's debt rating or financial position, the City may select its own finance team, source, and financing vehicle.

D. Project Benefit and Compatibility

Factors considered in determining the proposed project's compatibility with the City's comprehensive or development plans include the following:

1. Community benefits, including the economic impact the project will have on the City in terms of amount of tax revenue generated for the City, the number of jobs generated for area residents, and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors;
2. Community support or opposition, or both;
3. Public involvement strategy;

⁴ Compatibility with existing and planned facilities.

5. Compatibility with City, regional, and state economic development efforts; and
6. Compatibility with the City's land use and transportation plans.

E. Other Factors

Other factors that may be considered by the City in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents; and
9. The recommendation of a committee of representatives of the City which may be established to provide advisory oversight for the project.

VII. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the City. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of the City and the selected proposer with regard to the project.

A. Interim Agreement Terms

The scope of an interim agreement may include but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Availability of financing for the proposed facility through financial and revenue analysis;
6. The process to negotiate, and the timing of the negotiation of, the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

B. Comprehensive Agreement Terms

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with the development or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by the City;
3. The rights of the City to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the City to ensure proper maintenance of the project;
6. The terms under which the private entity will reimburse the City for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the City and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by the City and the transfer or purchase of property or other interests of the private entity by the City;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
 - a. A copy of any service contract shall be filed with the City.
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the City may contribute financial resources, if any, for the qualifying project;
11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
12. The terms and conditions under which the City will be required to pay money to the private entity and the amount of any such payments for the project;
13. Other requirements of the PPEA or other applicable law; and
14. Such other terms and conditions as the City may deem appropriate.

Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the interim or comprehensive agreement by written amendment.

The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with, proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the City. Accordingly, as part of the interim or comprehensive agreement, the proposer and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the proposer shall immediately notify the City of same. Any violation of this section of the interim or comprehensive agreement 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.

C. Notice and Public Hearing Requirements

1. In addition to the posting requirements of Section IV. B, 30 days prior to entering into an interim or comprehensive agreement, the City shall hold a public hearing on the proposals. After the public hearing is held, no additional posting shall be required.
2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the City, the City shall post the proposed agreement on the City's website or post a summary thereof by publication, in a newspaper of general circulation in the City.
3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision Va. Code § 2.2-3705.6 (11) shall not be required to be posted, except as otherwise agreed to by the City and the private entity.
4. Any studies and analyses considered by the City in its review of a proposal shall be disclosed to City Council at some point prior to the execution of an interim or comprehensive agreement.
5. Once an interim agreement or a comprehensive agreement has been entered into, the City shall make procurement records available for public inspection, upon request.
 - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have had an adverse affect on the financial interest or bargaining position of the City or private entity in accordance with Section II.D.3.
 - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336 *et seq.*); (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise; or (iii) cost estimates prepared by or for the City.

To the extent access to procurement records is compelled or protected by a court order, the City will comply with such order.

6. A copy of any comprehensive agreement shall be submitted by the City to the Auditor of Public Accounts within 30 days after execution.

VIII. Governing Provisions

In the event of any conflict between these guidelines and the requirements of the PPEA or other applicable law, the terms of the PPEA or other applicable law shall control.

Terms and Definitions

“Comprehensive agreement” means the comprehensive agreement between the private entity and the City that is required prior to the development or operation of a qualifying project.

“Conceptual stage” means the initial phase of project evaluation when the City makes a determination whether the proposed project serves a public purpose and meets the criteria for a qualifying project; assesses the qualifications and experience of a private entity proposer; reviews the project for financial feasibility; and determines whether the project warrants further pursuit.

“Cost-benefit analysis” means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, the City Manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

“Detailed stage” means the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

“Develop” or “Development” means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

“Interim agreement” means an agreement between a private entity and the City that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

“Lease payment” means any form of payment, including a land lease, by the City to the private entity for the use of a qualifying project.

“Lifecycle cost analysis” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

“Material default” means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

“Operate” means to finance, maintain, improve, equip, modify, repair, or operate.

“Opportunity cost” means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

“Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

“Public entity” means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

“Qualifying project” means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed

to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

“Responsible public entity” means a public entity that has the power to develop or operate the applicable qualifying project, including the City.

“Revenues” means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

“Service contract” means a contract entered into between a public entity and the private entity pursuant to Va. Code § 56-575.5.

“Service payments” means payments to the private entity of a qualifying project pursuant to a service contract.

“State” means the Commonwealth of Virginia

“User fees” means the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to Va. Code § 56-575.9.



**City of Winchester, Virginia
Procedures Regarding Requests Made Pursuant
to
the Public-Private Education Facilities and
Infrastructure Act of 2002**

Adopted by the Common Council for the City of Winchester on May 13, 2003

City of Winchester
Procedures Regarding Requests Made Pursuant to the Public-Private Education Facilities and
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I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1 to -575.16 (the “PPEA”), grants a public entity the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The definition of “public entity” in § 56-575.1 of the PPEA includes, *inter alia*, any political subdivision of the Commonwealth. Section 56-575.16 of the PPEA provides that a public entity having the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project (a “responsible public entity”) may not consider any proposal by a private entity for approval of the qualifying project pursuant to the PPEA until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with the PPEA. Accordingly, these procedures (the “Procedures”) are hereby adopted by the Common Council (the “Council”) as the governing body of the City of Winchester (the “City”).

II. GENERAL PROVISIONS

A. Proposals

1. Pursuant to Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to a responsible public entity may be either solicited from private entities by the public entity (a “Solicited Bid/Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”). In either case, any such proposal shall be clearly identified as a “PPEA Proposal.”
2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the City for that particular proposal and shall be consistent with all applicable provisions of the PPEA.
3. Any Unsolicited Proposal shall be submitted to the City by delivering six complete copies, together with the required initial review fee as provided below in § IV(C), to the City of Winchester, Virginia, Purchasing Department, Attention Purchasing Agent, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601. Other requirements for an Unsolicited Proposal are as set forth below in § IV. A working group may be designated by the City Manager to review and evaluate all unsolicited proposals.

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4. The City may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.

B. Affected Local Jurisdictions

1. The term “affected local jurisdiction” includes any county, city or town in which all or a portion of a qualifying project is located.
2. Any private entity submitting a Solicited Bid/Proposal or an Unsolicited Proposal to the City as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the City. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the City and to indicate whether the proposed qualifying project is compatible with the affected local jurisdiction’s local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. The City will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, the City may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

C. Virginia Freedom of Information Act

1. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act (“FOIA”) except as provided by § 56-575.4(G) of the PPEA.
2. In order to prevent the release of any confidential and proprietary information that otherwise could be held in confidence pursuant to § 56-575.4(G) of the PPEA, the private entity submitting the information must (i) invoke the exclusion from FOIA when the data or materials are submitted to the City or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the City as to the anticipated scope of

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protection prior to submitting the proposal. 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 private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

3. Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the City will determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the private entity. If the determination regarding protection or the scope thereof differs from the private entity's request, then the City will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the City to accord less protection than requested by the private entity, the private entity 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 in § IV(A)(1).

D. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

E. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the City to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. SOLICITED BID/PROPOSALS

The procedures applicable to any particular Solicited Bid/Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Invitation to Bid ("IFB") or Request for Proposal ("RFP"). Any proposal submitted pursuant to the PPEA that is not received in

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response to an IFB or RFP shall be an Unsolicited Proposal under these procedures, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPEA and provided for below in § IV(A)(2) and (b) proposals received in response to publicity by the City concerning particular needs when the County has not issued a corresponding IFB or RFP, even if the City otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

IV. UNSOLICITED PROPOSALS

The process for evaluating an Unsolicited Proposal, which is described in detail below, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the City's first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the City will give public notice of the Unsolicited Proposal. In step three the City will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. However, the City may discontinue its evaluation of any proposal at any time. Furthermore, if the City determines that it is in the City's interest to do so with respect to any Unsolicited Proposal, the City may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the City will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. If the City determines not to accept the proposal at this stage it will return the proposal and the accompanying initial review fee to the private entity.
2. If the City chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall give public notice of the proposal in accordance with the PPEA and shall specify a period of time not less than 45 days during which it will receive competing Unsolicited Proposals pursuant to § 56-575.4(A) of the PPEA. Although not required by the PPEA, at the discretion of the City such notice may be given consistent with the requirements for public notice as set forth by the Purchasing Department. During the 45-day period for receiving competing Unsolicited

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Proposals, the City may continue to evaluate the original Unsolicited proposal.

B. Contents of Initial Submission

1. An Unsolicited Proposal must contain information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. The information should be adequate to enable the City to evaluate the practicality and sufficiency of the proposal. The private entity may request that the City consider a two-step proposal process, consisting of an initial conceptual submission to be followed by a more detailed submission.
2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by the City. Project benefits to be considered may occur during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the City of the financial feasibility of the proposed project, including but not limited to (a) the identity of any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request the City to provide resources for financing the project and the nature and extent of any such resources.
3. The City may require additional submissions to clarify information previously provided or to address other areas of concern to the City.

C. Review Fees

1. A review fee will be charged a private entity submitting an Unsolicited Proposal to the City, to cover the City's costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to City staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, and financial advisors, used by the City in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees

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generally shall be in the amount necessary to completely cover all of the City's costs.

2. Such fees shall be imposed based on the reasonably anticipated costs to the City in accordance with the following schedule:
 - a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the City in order for the City to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than \$2,500 nor more than \$50,000, regardless of the anticipated total cost.
 - b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the City reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The City will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the City will continue to process, review, and evaluate the proposal.
 - c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the City's total costs incurred in processing, reviewing, and evaluating the proposal, the City shall reimburse the difference. Otherwise, the City shall retain all fees paid.

D. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA and these Procedures that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the City for further review at the conceptual stage.
2. The City will determine at this initial stage of review whether it will proceed using procurement through competitive sealed bidding as defined in the VPPA or procedures developed by the City that are consistent with procurement of other than professional services through competitive negotiation as defined in the VPPA.

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3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the City may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals. The City at all times retains the right to reject any proposal at any time for any reason whatsoever.

E. Format for Submissions at the Conceptual Stage

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the City may request:

1. Qualification and Experience
 - a. Identify the legal structure of the firm or consortium of firms making the proposal. 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.
 - b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
 - c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
 - d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
 - e. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in

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any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the City or any other public entity.
- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

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- j. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
3. Project Financing
 - a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
 - b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds.
 - c. Include a list and discussion of assumptions underlying all major elements of the plan.
 - d. Identify all anticipated risk factors and methods for dealing with these factors.
 - e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment.
 - f. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.
4. Project Benefit and Compatibility
 - a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the City, and identify who will benefit from the project and how they will benefit.
 - b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
 - c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

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- d. Explain whether and, if so, how the project is critical to attracting or maintaining competitive industries and businesses to the City or the surrounding region.
- e. Explain whether and, if so, how the project is compatible with the City's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.

F. Format for Submissions at the Detailed Stage

If the City decides to proceed to the detailed phase of review with one or more Unsolicited Proposals, then the following information must be provided by the private entity unless waived by the City:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.
3. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the public entity to condemn.
4. 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.
5. A total life-cycle cost specifying methodology and assumptions of the project or projects 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 facility and estimated annual operating expenses.
6. A detailed discussion of assumptions about user fees or rates, and usage of the projects.

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7. 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 resolution of official bodies, minutes of meetings, letters, or other official communications.
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
9. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
10. Identification of any known conflicts of interest or other limitations that may impact the City's consideration of the proposal, including the identification of any persons known to the private entity 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 Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
11. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the City. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the City, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.
12. Additional material and information as the City may request.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

Some or all of the following matters may be considered in the evaluation and selection of PPEA proposals. However, the City retains the right at all times to reject any proposal at any time for any reason whatsoever.

A. Qualifications and Experience

Factors to be considered in either phase of the City's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

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1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the City;

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2. Financing and the impact on the debt or debt burden of the City;
3. Financial plan;
4. Estimated cost;
5. Life-cycle cost analysis; and
6. The identity of any third party that will provide financing for the project and the nature and timing of their commitment.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

VI. COMPREHENSIVE AGREEMENT

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the City as provided by the PPEA. Any such comprehensive agreement, and any amendment thereto, must be approved by the Common Council for the City of Winchester before it is entered into on behalf of the City. As provided by the PPEA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to the City;

City of Winchester
**Procedures Regarding Requests Made Pursuant to the Public-Private Education Facilities and
Infrastructure Act of 2002**

2. Review and approval of plans and specifications for the qualifying project by the City;
3. The right of the City to inspect the qualifying project;
4. Maintenance of a policy or policies of liability insurance or self insurance in form and amount satisfactory to the City and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. Monitoring of the practices of the operator by the City to ensure proper maintenance;
6. Reimbursement to be paid to the City for services provided by the City;
7. Filing by the operator of appropriate financial statements on a periodic basis;
8. Policies and procedures governing the rights and responsibilities of the City and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the operator by the City and the transfer or purchase of property or other interests of the operator by the City;
9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying project. Classifications according to reasonable categories for assessment of user fees may be made.
10. Requiring a copy of any service contract to be filed with the City and providing that a schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.
11. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying project; and
12. Any other provisions required by applicable law.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment.



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. ~~City Manager~~

DATE: September 11, 2009

SUBJ: Initial Discussion of the Financial Projections prepared by the Colonial Heights Baptist Church Reuse Committee

During the Council Meeting of July 14, 2009, the Chairman and members of the Colonial Heights Baptist Church Reuse Committee presented their recommendations for the reuse of the property at 231 Chesterfield Avenue. These recommendations included a proposal to relocate the City Courthouse to the church site. The recommendations also included financial projections on the conversion of the church to a courthouse and the potential revenue that could be generated through the redevelopment of the courthouse site for commercial purposes. Since that presentation, the City Manager and Director of Finance have looked into the financial projections and conclusions as prepared by the Committee. A portion of the Work Session of September 15, 2009, has been scheduled for some initial discussion of these financial projections. The City Manager and Director of Finance would like to get some initial guidance from City Council on improving upon the work of the Committee. In some cases, city staff and city records have actual financial figures that differ somewhat from those prepared by the Committee. In our attempt to improve upon the work of the Committee, we will need some guidance from Council on an approach to certain elements of the financials.

The review of these construction estimates and financial projections should take two or more work session discussions with Council. If the City Manager and Director of Finance can gain some initial guidance from Council during the Work Session of September 15th, it would be our intention to re-run some of the financial calculations to improve upon them. It is our hope that this will assist City Council in its overall consideration of the future of both the church site and the existing courthouse site. It would be our intention to return with some updated projections for Council's review during the Work Session scheduled for October 20, 2009.

The City Manager and Director of Finance commend the Committee for its efforts to provide both construction cost estimates and redevelopment projections as part of their overall work. Our staff efforts to improve upon the work of the Committee should in no way be seen as anything but productive. City staff has access to information that could be considered more useful in enhancing the accuracy of City Council's final projections on this subject. We hope that staff working with the Committee and members of City Council will lead to the best work product possible on which to base these decisions.

Attached are some initial exhibits the City Manager and Director of Finance that we will use to seek guidance from Council on approaching the financials. If any questions arise on this matter prior to the Work Session of September 15th, please do not hesitate to contact me.

Attachments

cc: Hugh P. Fisher, III, City Attorney
 William E. Johnson, Director of Finance

City of Colonial Heights

Reuse Committee's
Presentation

Purpose

Clarify Assumptions and Options

Redevelopment Revenue Projections

Real Estate Appraisal Values

School Share of Future Revenues

Construction Cost Estimates

Reasons

- Assumptions of City Council may be different than that of Reuse Committee
- Finance has access to information that was not obtained by Reuse Committee
- Staff presumes City Council wants the most accurate projections it can get before a decision

Question 1

What level of tax revenue generation is anticipated for both sites?

Average of Citywide Comparables?

Highest Level of Comparables?

High Average Level of Comparables

Definitions

- City Average - Average of 5-6 Comparable Businesses
- City High - Highest Comparable Business
- City High Average - Average of 3 Top Comparable Businesses

20 Year Tax Projections

Temple as commercial

Land acers	12
Sale price	4.8 million scenario A & C 8.0 million scenario B (4.8 land + 3.3 building)

231 Chesterfield as commercial

4 to 5.8

2.9 million

Scenario A

Possible uses	1 Hotels & restaurant	
	<u>Yearly</u>	<u>20 yrs.</u>
Potential tax base	20 mil	
Realestate tax	242000	4840000
Room tax 8%	320000	6400000
Meal tax 5%	<u>300000</u>	<u>6000000</u>
	<u>\$862,000</u>	<u>\$17,240,000</u>

STRIPMALL OR OFFICE SPACE

	<u>Yearly</u>	<u>20 yrs.</u>
Potential tax base	8 mil	
Realestate tax	88000	1760000
Room tax 8%	0	0
Meal tax 5%	<u>50000</u>	<u>1000000</u>
	<u>\$138,000</u>	<u>\$2,760,000</u>

Scenario B

Possible uses	office building & restaurant	
	<u>Yearly</u>	<u>20 yrs.</u>
Potential tax base	20 mil	
Realestate tax	242000	4840000
Room tax 8%	0	0
Meal tax 5%	<u>300000</u>	<u>6000000</u>
	<u>\$542,000</u>	<u>\$10,840,000</u>

Scenario C

Possible uses	1 Hotels & 2 restaurant	
	<u>Yearly</u>	<u>20 yrs.</u>
Potential tax base	20 mil	
Realestate tax	242000	4840000
Room tax 8%	320000	6400000
Meal tax 5%	<u>600000</u>	<u>12000000</u>
	<u>\$1,162,000</u>	<u>\$23,240,000</u>

Question 2

What Scenarios are Desired?

Temple Avenue:

- Hotel & Restaurant
- Office Building & Restaurant
- Hotel & 2 Restaurants
- Other (3 Restaurants)

Question 2

Chesterfield Avenue

Strip Mall or Office Space is not defined but has Food Sales (1 Million).

- Strip Mall with Small Restaurant
- Strip Mall with Fast Food Restaurant
- Strip Mall with No Restaurant
- Other

WORKING WITH THE APPRAISAL

	231 Chester.	Average	401 Temple
Acers	5.87		9.7
Value/acre	\$596,252	\$494,277	\$392,303
Land value	\$2,901,406		\$4,794,487
Courthouse building	22,000 Sq Ft	\$150/Sq Ft	\$3,300,000

Question 3

Desired Method of Appraising Value of Current Sites?

City has Professional Appraisals of Both Sites

Chesterfield \$5.5 Million 2008

 \$3.5 Million 2009

Temple \$3.8 Million 2009

Committee Averaged City Appraisal Reports
(Raised Temple and lowered Chesterfield)

Committee Estimate Building Sale Value – Not Replacement Value

Question 4

How do we handle the current School share of new revenue that will be generated?

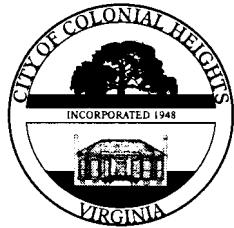
Committee suggests gross revenues from Temple site go to Courthouse debt.

Known Differences

- Local Sales Tax of 1% Should be Added to Revenue Sources
- Debt Issuance Rate of 4.05% Should be Increased to Current Estimate of 4.8047%

Other Areas to Explore

- Timing of Revenue Flows During Construction
- Debt Issuance Costs
- BPOL License Revenues
- Construction Cost Estimates
 - Cost per Square Foot
 - Architectural/Engineering Fees
 - Soft Costs
 - Special Systems Costs



CITY OF COLONIAL HEIGHTS

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Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *AM* City Manager

DATE: September 11, 2009

SUBJ: Public Hearing – Massage Clinics Located in Southpark Mall

During the Work Session of August 25, 2009, City Council discussed a request from CBL Associates, the owner of Southpark Mall, relating to the location of Massage Clinics in the City. The mall manager addressed Council asking that Chapter 193 of the City Code be amended to permit Massage Clinics in the Mall. As Council reviewed that evening, the existing City Code, in its definition of Massage Clinic, requires location to be in “freestanding or located within, a health club, tanning salon, hotel or motel (but not in a guest room in a hotel or motel), beauty salon or barber shop”. The mall manager presented the case that Massage Clinics and Day Spas are becoming more commonly located in more modern shopping and retail venues, such as enclosed malls. Council expressed an initial willingness to permit Massage Clinics to be located in the Mall, but also expressed its desire to maintain some control over the location of Massage Clinics. Council expressed that it preferred to keep them from all retail and commercial locations in the City other than those listed in the existing definition and the Mall.

At the conclusion of the Work Session discussion, it was agreed by Council that this matter could progress as soon as possible. As a result, staff has advertised for a Public Hearing on Ordinance No. 09-23 that would amend the definition of Massage Clinic to include the phrase “or an enclosed shopping mall”. This Public Hearing has been advertised for the Work Session of September 15, 2009. At the conclusion of the Public Hearing, it is recommended that Council provide first reading to the Ordinance. If such occurs, staff will schedule final adoption of the Ordinance for the Council Meeting of October 13, 2009.

If staff can be of assistance to Council prior to the Public Hearing, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
 William E. Johnson, Director of Finance
 Jeffrey W. Faries, Chief of Police



OFFICE OF THE
CITY ATTORNEY

CITY OF COLONIAL HEIGHTS
201 JAMES AVENUE
P. O. BOX 3401
COLONIAL HEIGHTS, VIRGINIA 23834-9001

HUGH P. FISHER, III
CITY ATTORNEY

TAMARA L. DRAPER
LEGAL ASSISTANT

(804) 520-9316 / FAX 520-9398

August 31, 2009

VIA FACSIMILE 861-9452

The Progress-Index
15 Franklin Street
Petersburg, VA 23803

Attention: Legal Advertisements

Dear Madam or Sir:

I have enclosed for publication in the legal advertisements section of your newspaper a notice of City Council holding a public hearing to accept public comment on and consider the adoption of Ordinance No. 09-23.

You are requested to publish the notice on **September 2, 2009**.

Please send a certificate of publication to the Office of the City Clerk in City Hall so that we may have evidence that legal requirements have been met.

If there is any problem in publishing the notice on the date requested, please notify this Office immediately so that we may make other arrangements for publication.

Thank you for your assistance.

Very truly yours,

Hugh P. Fisher, III
City Attorney

Enclosure

cc: The Honorable C. Scott Davis, Mayor
Richard A. Anzolut, Jr., City Manager
✓ Kimberly J. Rollinson, City Clerk
Jeffrey W. Faries, Chief of Police
Marjorie DeDanko, Commissioner of Revenue

NOTICE OF PUBLIC HEARING
CITY OF COLONIAL HEIGHTS, VIRGINIA

Notice is hereby given to all persons affected or interested that at the Colonial Heights City Council meeting to be held on **Tuesday, September 15, 2009, at 7:00 P.M.**, in Council Chambers of City Hall, 201 James Avenue, Colonial Heights, Virginia, the City Council shall hold a public hearing to accept comments on the following:

AN ORDINANCE NO. 09-23

To amend and reordain §193-1 of Chapter 193, Massage Clinics, of the Colonial Heights City Code, to change the definitional provisions of "Massage Clinic".

The Ordinance adds enclosed shopping mall to the list of commercial businesses where a massage clinic can be located.

A copy of the proposed ordinance is on file for public examination during regular business hours in the City Clerk's Office in City Hall, 201 James Avenue, Colonial Heights, Virginia. All persons affected or interested are invited to be present at the public hearing of the City Council, to be held at the time and place stated above, when an opportunity will be given for them to be heard.

Hugh P. Fisher, III
City Attorney

Any interested party whose participation in this meeting would require reasonable accommodation of a handicap should contact the City Manager's Office at 520-9265 at least six days in advance.

AN ORDINANCE NO. 09-23

To amend and reordain §193-1 of Chapter 193, Massage Clinics, of the Colonial Heights City Code, to change the definitional provisions of "Massage Clinic".

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That §193-1 of Chapter 193, Massage Clinics, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 193-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

BARBERSHOP -- An establishment which provides one or more of the following services in exchange for consideration: hair care, makeovers, facials, manicures, pedicures, or body waxing.

BEAUTY SALON -- An establishment which provides one or more of the following services in exchange for consideration: hair care, skin care, makeovers, facials, manicures, pedicures or body waxing.

CARE FACILITY -- A hospital, nursing home, convalescent care facility, assisted living facility, life care facility, or group care facility.

CERTIFIED MASSAGE THERAPIST -- Any person who administers a massage to another person, in exchange for consideration, and who has qualified as a certified massage therapist pursuant to the requirements of §§ 54.1-3000 and 54.1-3029 of the Code of Virginia (1950), as amended, including, but not limited to, a massage clinic operator.

CHIEF OF POLICE -- The City of Colonial Heights Police Chief or his designee.

CLIENT -- A person receiving a massage.

CONSIDERATION -- Anything of value given in exchange for services rendered, including, but not limited to, money, goods, services or advertising.

HEALTH CLUB -- An establishment which provides health and fitness equipment and programs for its client's use in exchange for any form of consideration. A health club may be located in a hotel or motel but not in a guest room in a hotel or motel.

MASSAGE -- The treatment of soft tissues for therapeutic purposes by the application of massage and body work techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. Massage shall not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture or podiatry is required by law.

MASSAGE CLINIC -- A fixed place of business where a certified massage therapist gives a client a massage. A massage clinic shall either be freestanding or located within a health club, tanning salon, hotel or motel (but not in a guest room in a hotel or motel), beauty salon or, barbershop, **or an enclosed shopping mall.**

MASSAGE CLINIC OPERATOR -- The person who files and signs the application for a massage clinic permit and who is responsible for the day-to-day operation of the clinic. The massage clinic operator need not qualify as a certified massage therapist if he or she does not intend to administer massage.

PUBLIC GATHERING -- Any event occurring in the City that is open to the general public and involves more than 50 persons.

SEATED MASSAGE -- A massage of the upper body or feet when the massage client is fully clothed and seated in a chair.

TANNING SALON -- An establishment that has as its primary business the provision of tanning services in exchange for consideration.

2. That this Ordinance shall be in full force and effect upon its passage on second reading.

Approved:

Mayor

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____

The Honorable Milton E. Freeland, Jr., Councilman: _____

The Honorable Kenneth B. Frenier, Councilman: _____

The Honorable W. Joe Green, Jr., Councilman: _____

The Honorable Elizabeth G. Luck, Vice Mayor: _____

The Honorable John T. Wood, Councilman: _____

The Honorable Diane H. Yates, Councilwoman: _____

The Honorable C. Scott Davis, Mayor: _____

Adopted on its second reading on _____

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____

The Honorable Milton E. Freeland, Jr., Councilman: _____

The Honorable Kenneth B. Frenier, Councilman: _____

The Honorable W. Joe Green, Jr., Councilman: _____

The Honorable Elizabeth G. Luck, Vice Mayor: _____

The Honorable John T. Wood, Councilman: _____

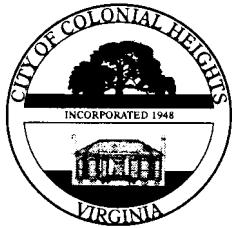
The Honorable Diane H. Yates, Councilwoman: _____

The Honorable C. Scott Davis, Mayor: _____

City Clerk

Approved as to form:

Hugh P. Parker, III
City Attorney



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council
FR: Richard A. Anzolut, Jr. *RAA* City Manager
DATE: September 11, 2009
SUBJ: Review of Draft Audit Committee By-Laws

As Council is aware, Mayor Davis and Councilman Freeland serve as City Council's Audit Committee. The primary function of the Audit Committee is to oversee the finalization of and conclusions in the City's Annual Financial Statements as prepared by the City's independent auditors in conjunction with the Department of Finance. During the review of the FY2008 Financial Report, the topic of formalizing the functions of the Audit Committee and adopting By-Laws was initially discussed between the auditors, staff and the Audit Committee. During the past several months, the Director of Finance has provided the Audit Committee with informational items prepared by the Government Finance Officers' Association so we could pursue a more formal approach to the duties of the Audit Committee. Attached are Draft By -Laws for the Audit Committee as prepared by the Director of Finance under the review of the City Attorney. A portion of the Work Session of September 15, 2009, has been scheduled for Council's discussion of these Draft By-Laws. The Draft By-Laws would also offer a School Board member the option to attend meetings of the Audit Committee at City Council's option. As Council knows, audit of the annual school finances is a significant component of the City's Comprehensive Annual Financial Report.

The Director of Finance will be available during the Work Session to overview this matter and assist Council in its consideration. If any questions arise prior to the September 15th Work Session, please do not hesitate to contact the Director of Finance or myself at your convenience.

Attachments

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance



RECEIVED

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JUN 22 2009

FINANCIAL ADMINISTRATION

City Manager's Office

To: Richard A. Anzolut, Jr., City Manager
From: William E. Johnson, Director of Finance *WEJ*
Date: 6/22/2009
RE: City Council Audit Committee Draft Bylaws

As a follow-up to my May 21, 2009 letter concerning the preparation of organizational bylaws, I have researched other jurisdictional Audit Committee documents, and held a brief discussion with the Mayor concerning any content desires he may have for the document. The attached draft for Audit Committee of Colonial Heights City Council consideration is based on several contributed documents found on AuditNet, which is an internet based resource for auditors sponsored by the Association of Local Government Auditors.

This would establish formally the committee and define its role and responsibilities in the overseer function for City Council in dealing with financial reporting, internal controls and governance policies and practices. This document closely follows recommendations by the Government Finance Officers Association (GFOA) and American Institute of Certified Public Accountants (AICPA).

If you have any questions or need further clarification, I am available at your convenience.

Audit Committee of Colonial Heights City Council Bylaws

Purpose

To assist City Council in fulfilling its responsibilities to oversee the City's systems of financial reporting, internal controls and governance policies and practices.

Membership

The Audit Committee will be a standing committee of City Council and shall consist of the Mayor as chairman and one other member of City Council. At their discretion, the Mayor and other Council member may invite a member of the School Board to attend the meetings of the Committee. The membership and terms of appointment to the Committee will be the same as the members' term to the City Council.

Authority

Generally, the Audit Committee has direct authority to receive reports and other items that come before it as information or to refer them to City Council with or without associated recommendations. If reports or other matters are received as information, they may not be normally referred on to City Council. Receiving reports for information implies that the Committee will satisfy itself that the reports adequately and appropriately reflect the findings of the auditors and that any management responses are acceptable. In addition, the Committee has authority to approve modifications to external audit work plans.

In exercising its authority, the Audit Committee will normally rely on the work of the Director of Finance and the City's external auditor to form its conclusion regarding the:

- effectiveness and efficiency of City operations including internal control systems,
- adequacy and appropriateness of the City's governance policies and practices, and
- adequacy and appropriateness of the City's financial policies and practices.

The Audit Committee has the direct authority to:

- receive reports for information,
- Interact with external auditor, and the Administrations to satisfy itself that audit recommendations and management action plans are reasonable responses to be observed conditions.
- resolve any disagreements between management and external auditors regarding financial or operational control and reporting,

- obtain information from employees or external parties as part of its review.
- be immediately informed of all matters that impair the conduct of an audit or review; however, where feasible such matters shall be first brought to the attention of the City Manager before communicating them to the audit committee,
- review and analyze the City's financial statements,
- approve modifications to the annual work plans of the external auditor, and
- make recommendations to Council regarding any further actions or decisions the Committee deems appropriate.

The Audit Committee may choose to refer any of these items forward to City Council for additional consideration or action if, in its judgment, the items warrant more comprehensive consideration.

The Committee has the authority and responsibility to recommend to City Council:

- the annual work plans of the external auditor,
- the appointment, reappointment, or dismissal and the fees of the external auditor,
- the external auditor's annual report related to the City's audited financial statements,
- any action, investigation, or analysis it wishes the external auditor to undertake,
- changes to corporate governance documents and practices as appropriate, and
- any changes to these Bylaws.

Meetings

Meetings of the Audit Committee will be scheduled by the chairman as needed to deal with audit matters. The City Manager or his designee will establish the agendas for all Audit Committee meetings. Audit matters requiring immediate attention may be addressed by either:

- calling a meeting of the Audit Committee, or
- by taking the matter directly to City Council.

Roles and Responsibilities

The Committee functions as the representative of Council in its interactions with the City's external auditor, and the Administration. Audit work in the City is conducted under either a guardian role or an agent of change role or a combination of both, depending on the nature of the project. Under the guardian role, projects are conducted that focus on financial reporting, control systems,

and protection of City assets. Under the agent of change role, projects are focused on improving the efficiency and effectiveness of operations. There are significant differences in the manners in which guardian and agent of change projects are conducted, but the desired outcome for both is improvement of the overall operation of the City. One of the primary functions of audit committee members is to be prepared to ask questions of both the auditors and the Administration to clarify the implications of audit observations and recommendations and of responses from the Administration.

Annual Review

The Committee will conduct an annual review of these Bylaws and submit recommendations for changes as appropriate to City Council for approval. During this review, the Committee will also conduct an evaluation of the effectiveness of its performance with the intent of identifying means of enhancing its overall effectiveness.

Financial Reporting

The Committee's role is to provide assurance to Council that financial disclosures made by the Administration fairly present the City's financial condition, results of operations in accordance with Generally Accepted Accounting Principles (GAAP), and long-term commitments. In carrying out this primarily guardian responsibility, the Committee's role includes:

- reviewing and evaluating the City's accounting policies and policy decisions,
- examining the City's financial statements (including variance reports, auditor's opinions and management letters, and other related reports),
- reviewing the selection process for the external auditor to ensure ongoing independence, fairness, value-for-money, and adequacy of the selection criteria,
- recommending, in consultation with the Administration, the appointment or reappointment and fees of the external auditor, and
- overseeing the external auditor's annual work plan.

To ensure that the Committee has access to the required financial and audit skill sets for this oversight role, the following provisions will be implemented:

- The Director of Finance will serve as the Committee's primary contact with the external auditor.
- The external auditor is ultimately responsible to City Council through the Audit Committee.

Internal Controls

The Committee's role is to provide assurance to Council through exercise of its agent of change and guardian functions that the City's key strategic business risk

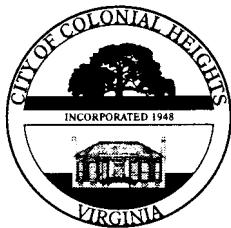
areas, systems of internal controls, and financial reporting processes and policies are functioning properly. The primary responsibility for implementing and maintaining systems of internal controls lies with the Administration. The Committee will monitor these areas primarily through the work of the external auditor.

Corporate Governance

The Committee's role is to provide assurance to Council through exercise of its guardian and agent of change functions that the City is in compliance with pertinent laws and regulations, is conducting its affairs ethically, and is maintaining effective controls against conflict of interest and fraud. The Committee will monitor these areas primarily through the work of the external auditor.

In-Private Meetings

Subject to open meeting provisions, the Committee may choose to schedule regular in-private sessions during the regular Committee meetings with the auditor(s), and without senior managers or other persons present, and vice versa. The purpose of such meetings would be to hear any informal comments the auditor(s) or senior managers may wish to make regarding reported audit observations and to speak candidly on emergent issues that are not appropriately discussed in a public forum.



CITY OF COLONIAL HEIGHTS

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www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *RAA* City Manager

DATE: September 11, 2009

SUBJ: Discussion of a Legislative Letter Relating to the Mandated Improvements at the South Central Wastewater Authority

For the past three years, City Council has had periodic discussions about the Nutrient Reduction Project at the South Central Wastewater Authority Wastewater Plant and its significant cost. As Council will recall, Chesapeake Bay Act and other state legislation now mandate the removal of additional quantities of certain substances from our wastewater discharge. Council is also aware of the substantial cost to provide for these treatment plant upgrades. During a discussion of this subject at the 2009 City Council Retreat, Council gave its endorsement to a delay in the project as proposed by Authority Staff. Since the Nutrient Reduction Project could result in an approximate 40% or more increase to our wastewater rates, Council chose to delay the start of the project until 2012 so that new debt service for the Nutrient Project would not be part of our rate structure until a significant amount of existing debt was retired in 2014. Council is reminded that the construction of the project is about a 30 month process.

Authority Staff has expressed some concern that limited funding could be available at the State level for grants to assist for the financing of the nutrient upgrades by 2012. As a result, the Petersburg City Manager and the Colonial Heights City Manager are suggesting a letter to our State Legislators seeking their support for the continuation of the grant funding long enough for the South Central Wastewater Authority to take advantage of it. At this point, it is possible that the Authority could qualify for up to \$25,000,000 in grant funding toward an overall construction project estimated slightly in excess of \$82,000,000 by 2012. A portion of the Work Session of September 15, 2009, has been scheduled for Council to consider the concept of approaching our State Legislators in an attempt to preserve grant funding for as long as possible. It should be noted that the City of Petersburg has also expressed its very strong interest in delaying the project because it is even more unaffordable for their rate payers. In round figures,

the City of Petersburg uses around 55% of the plant capacity and the City of Colonial Heights represents slightly over 20% of the plant capacity.

Attached is a letter prepared by Authority Staff that could be used to address the legislators. It is suggested that Council review this matter and consider this legislative approach in attempt to reduce the impact of the Nutrient Reduction Project on our rate payers.

If any questions arise on this matter before the September 15th Work Session, please do not hesitate to contact me.

Attachments

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance
William E. Henley, Director of Public Works & Engineering

DATE

Address

RE: Nutrient Reduction Upgrade Project Funding

To Whom It May Concern:

The South Central Wastewater Authority is nearly complete with design of an upgrade to its wastewater treatment facility to meet nitrogen and phosphorus limits established under the Chesapeake Bay Program. The design nutrient limits for our facility are 5.0 mg/l for Total Nitrogen and 0.5 mg/l¹ for Total Phosphorus². Due to the financial situation facing at least some of the five member jurisdictions, we have been required to defer construction of our project three years to start in 2012. The authority has successfully concluded WQIF grant allocation negotiations with DEQ. The estimate cost of our project in 2009 dollars is approximately \$71.0 million. Assuming an annual inflation rate of 5%, the total cost of this project in 2012 will increase to approximately \$82.1 million. Using the percentage allocation methodology agreed upon by our design engineers and DEQ, our grant share for such a project would be approximately \$25.7 million. The five jurisdictions would be required to fund the remaining \$56.4 million. The scale of this project requires that the Authority borrow the funds necessary for completion. A borrowing of \$56.4 million at 5.0% for 20 years results in an annual debt service payment of just under \$4.5 million³. This will have significant rate impacts on the jurisdictions. The Authority is currently paying debt service on the upgrade completed in 1996. That debt will be paid as of April 2015. The total current debt service is just over \$1.72 million per year. The breakout by locality is shown below.

SCWWA Current Debt Service

	Petersburg	Colonial Heights	Dinwiddie County ⁴	Chesterfield County ⁴	Prince George County	TOTAL
Annual Debt Service Due	\$921,215.30	\$668,754.47	-	-	\$130,962.98	\$1,720,932.75
Escrow Fund Contributions ⁵	\$870,000.00	-	-	-	-	\$870,000.00
Budgeted Cash Payments	\$51,215.30	\$668,754.47	-	-	\$130,962.98	\$850,932.75

¹ The actual Total Phosphorus design target is 0.3 mg/l based on WQIF provisions for lower permit limits based on installed technology.

² The information contained here is based on currently assigned load allocations for the Bay. At this time, EPA is in the process of evaluating lower load allocations for the Bay. These revised allocations, if put into place, would result in the imposition of lower nutrient limits; possibly as low as 3.0 mg/l for Total Nitrogen and 0.1 mg/l for Total Phosphorus. Imposition of such limits would require the Authority to completely redesign the project at a much higher construction cost or the Authority would have to purchase credits through the Nutrient Exchange in the later years of the project life or pay into the WQIF if no credits were available.

³ This does not include additional financing for capitalized interest or other financing mechanisms that may be employed.

⁴ Dinwiddie and Chesterfield Counties paid for their portions of the 1996 upgrade via cash contributions to the Authority. Dinwiddie's portion was funded via a separate borrowing resulting in an annual debt service payment of \$286,020.00. Chesterfield's portion was funded via internal cash reserves.

⁵ When the Authority was formed in 1996, Petersburg was paid for the value of the wastewater plant. The funds were put in escrow to pay the bulk of Petersburg's annual debt service for the 1996 upgrade.

The upgrade the plant will require greatly increased debt service payments over what the Authority is currently paying, even with grant funding. The breakout by locality with grant funding is shown below.

SCWWA Debt Service for Nutrient Upgrade with grant funding

	Petersburg	Colonial Heights	Dinwiddie County	Chesterfield County	Prince George County	TOTAL
Annual Debt Service Due	\$2,359,101.73	\$898,705.42	\$449,352.71	\$449,352.71	\$337,014.53	\$4,493,527.10
Escrow Fund Contributions	-	-	-	-	-	-
Budgeted Cash Payments	\$2,359,101.73	\$898,705.42	\$449,352.71	\$449,352.71	\$337,014.53	\$4,493,527.10

Payment of this level of debt service by the localities will require significant increases in rates. If the grants were not available and the Authority was required to fund \$82.1 million at the same rate and payback period, the annual debt service would be over \$6.5 million. The breakout by locality without grant funding is shown below.

SCWWA Debt Service for Nutrient Upgrade without grant funding

	Petersburg	Colonial Heights	Dinwiddie County	Chesterfield County	Prince George County	TOTAL
Annual Debt Service Due	\$3,434,082.48	\$1,308,221.90	\$654,110.95	\$654,110.95	\$490,583.21	\$6,541,109.49
Escrow Fund Contributions	-	-	-	-	-	-
Budgeted Cash Payments	\$3,434,082.48	\$1,308,221.90	\$654,110.95	\$654,110.95	\$490,583.21	\$6,541,109.49

In order to construct this project, the Authority will need assurance that the grant funding will still be available in 2012 and that it will be available in a reasonable timeframe (with no or minimal delays in grant disbursements). To summarize:

- Assuming 5% inflation to 2012, a 20 year funding term, and a 5.0% interest rate:
 - The Authority will be required to fund a nutrient upgrade project costing approximately \$82.1 million in 2012
 - The Authority's funding share of the project will be approximately \$56.4 million if full grant funding is realized
 - The Authority's grant share will be approximately \$25.7 million if the grant program is preserved.
- In order for the Authority to be able to construct this project:
 - Grant funding will need to be preserved at levels to ensure full and timely funding.
 - Interest rates and funding terms will need to be favorable to the five member jurisdictions.
 - No further reductions in nutrient load allocations can be imposed within the construction of the project.



CITY OF COLONIAL HEIGHTS

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Office of the City Manager

TO: The Honorable Mayor and Members of City Council
FR: Richard A. Anzolut, Jr.,^{MAN} City Manager
DATE: September 11, 2009
SUBJ: Continued Discussion of Economic Development Incentives and the Real Estate Tax Abatement Ordinance

During the Council Meeting of September 8, 2009, City Council conducted a Public Hearing and gave first reading to an ordinance that would create real estate tax abatement for qualifying investments in the Boulevard Development District and the Southpark Development District. At the conclusion of the first reading, the City Manager presented the concept that the Boulevard District had a minimum investment required to participate in the program, but the Southpark District did not. A portion of the Work Session of September 15, 2009, has been scheduled to discuss the concept of amending the ordinance to include a minimum investment in the Southpark District to qualify for the program.

The only qualification that currently exists in the Tax Abatement Ordinance is that the structure in the Southpark District be 20 years old or older. For the most part, Southpark Mall and its anchor stores are the only buildings that meet this minimum age qualification. Without a minimum investment to qualify for the program, it is possible that minor alterations performed by and in the Mall could qualify for tax relief. Although staff has no insight into the individual agreements between the Mall and its tenants when it comes to the redesign of interior's retail spaces to accommodate new tenants, as the Ordinance is currently written, these relative minor expenses could qualify for exemption. It is not staff's intent to provide tax exemption for normal business activities of the Mall. However, if the Mall itself performed renovation activities in the common areas of the Mall that make the shopping experience newer or fresher, this would attract more clients to the Mall and potentially generate more revenues for the City. Therefore, individual retail alterations should not qualify for tax exemption unless they are major investments that provide significant new retail spaces. On the other hand, major interior

modifications that change the appearance of the Mall and update it or make it more attractive should qualify for the tax abatement. The only way staff can see pursuing this subject is through a minimum investment required to participate in the program.

It is suggested that City Council consider this matter and advance an amendment to the Ordinance in November after the initial Tax Abatement Ordinance is adopted in October. At this point, we are suggesting a minimum investment of no less than \$100,000 to participate in the program. Staff has discussed this concept, but has no real insight as to an appropriate minimum level of investment. At this point, a \$100,000 investment would result in a \$50,000 abatement on assessed value. We consider that the absolute minimum number to be established as the minimum investment. We can certainly see a number in the \$200,000 - \$250,000 range if City Council wants to assure a significant alteration occurs before tax abatement is available.

As an additional element on this topic in the September 15th Work Session, the City Manager would like to go back to some of the other economic development incentives discussed in earlier Work Sessions. The concept of the waiver of permit and other city development fees through a Development Agreement is scheduled to be revisited during this Work Session. The City Manager would like to check Council's consensus on these other City related costs so language can be developed to use for marketing and recruitment purposes. In our previous Work Sessions, Council has expressed its willingness to spend money we have not yet made as a recruitment tool. While we would not formally codify these incentives, they would be included in marketing materials and ultimately included in a development agreement. Attached our materials used in our previous Work Sessions to cover the types of fees to be discussed. The City Manager would like to generate an overall policy statement for use in recruitment following this Work Session discussion.

If any questions arise on these matters prior to the September 15th Work Session, please do not hesitate to contact me.

Attachments

cc: Hugh P. Fisher, III, City Attorney
 William E. Johnson, Director of Finance

**CITY OF COLONIAL HEIGHTS
RETAIL DEVELOPMENT INCENTIVE PACKAGE
APRIL, 2009**

CONCEPT: Create a local Retail Development Enterprise Zone(s) with local incentives

OPTIONS: A.) Create one zone and one set of incentives

B.) Create up to three (3) zones with varying incentives

1.) Southpark/W. Roslyn Zone

2.) Boulevard Zone

3.) City owned real estate zone

POSSIBLE LOCAL INCENTIVES:

Local Liaison to developer – individual staff person assigned to project

September 15, 2009

Waiver of Permit Fees – 100% or a portion

Building Permit and/or Mechanical, Electrical, Plumbing
Zoning, Plan of Development Review, Subdivision Review Fees
Erosion and Sediment Control, Right-of-way Disturbance, Land
Disturbance Permit

Waiver or Refund of Water and Sewer Connection Charges – 100% or a portion
favored method is refund after store opens

Water and/or Sewer Line Tapping and Meter Setting Services or City brings water
and/or sewer to the right-of-way line

Cap on Real Estate and/or Business License Taxes for a fixed period
Refund any amount over base amount for 5 years

Zone Specific Incentives

Boulevard Zone

1. Façade Improvement Program or Boulevard Zone Grant Program.
2. Direct grants to new businesses in old, outdated buildings.
3. Exemption of increased real estate taxation from renovation as contained in the City Code for 10 years. Base value of the structure must increase by no less than 40% with a maximum exemption of \$1,000,000.*

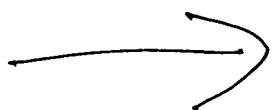
Southpark/W. Roslyn Zone

1. Exemption of increased real estate taxation from renovation as contained in the City Code for 10 years. Base value of the structure must increase by no less than 40% with a maximum exemption of \$1,000,000.*
2. Exemption of up to 50% of the increased real estate taxation from replacement of a structure as above.

City Owned Land Zone

1. Discounted Land Price
2. Site Grading/Site Prep Subsidy – direct refund of a percentage of certain taxes paid for a fixed number of years.
3. Exemption of the increase in assessed value of real estate for new construction or improvement in an amount up to 50% for a fixed number of years (10) as determined by City Council.

*Already contained in the City Code (Sec. 258-16.3 et sec.)



September 15, 2009

City of Colonial Heights Development Fees

3/5/2009

Fee	\$	Comments
Zoning & Planning		
Rezoning	\$750	includes 2 public hearing notices
Plan of Development	\$300	
Subdivision	\$300	
Boundary line Adjustment	\$11	
Special Use Permit	\$750	includes 2 public hearing notices
X Bd of Zoning Appeals	\$350	includes 1 public hearing notice
X Zoning Opinion	\$25	
Sign	\$35	
Building		
Building Permit	\$25	minimum
Plumbing / Mechanical / Electrical	"+1%	of total project cost

Fee	\$	Comments
Development		
Erosion and Sediment Control	\$100	
+each additional acre	\$10	
Land Disturbance	\$100	
"+each additional acre	\$10	
Right of Way Disturbance	\$50	
Sewer Connection fees		
Commercial or Industrial		
5/8" or 3/4" meter	\$2,000	
1" meter	\$3,500	
1 1/2" meter	\$7,000	
2" meter	\$12,000	
3" meter	\$23,000	
4" meter	\$37,000	
6" meter	\$73,000	
8" meter	\$117,000	
Water Connection fees		
Commercial or Industrial		
5/8" or 3/4" meter	\$2,000	
1" meter	\$3,500	
1 1/2" meter	\$7,000	
2" meter	\$12,000	
3" meter	\$23,000	
4" meter	\$37,000	
6" meter	\$73,000	
8" meter	\$117,000	