

1 **FALLS CHURCH CITY PUBLIC SCHOOLS**  
2 **AND CITY OF FALLS CHURCH**  
3 **Public-Private Education Facilities and Infrastructure**  
4 **Guidelines**  
5 **Adopted on June 27, 2011**  
6

7 **I. GENERAL PROVISIONS**

8 **A. Proposal Submission**  
9

10 A proposal may be either solicited by the Falls Church City School Board and  
11 the City of Falls Church, Virginia (the City) or delivered by a private entity on  
12 an unsolicited basis. Proposers may be required to follow a two-part proposal  
13 submission process consisting of an initial conceptual phase and a detailed  
14 phase. The initial phase of the proposal should contain specified information on  
15 proposer qualifications and experience, project characteristics, project financing,  
16 anticipated public support or opposition, or both, and project benefit and  
17 compatibility. The detailed proposal should contain specified deliverables.  
18

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

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

45 The City should establish clearly delineated criteria for (i) selecting among  
46 competing proposals and (ii) the use of accelerated documentation, review, and  
47 selection processes for proposals involving a qualifying project that the City  
48 deems a priority. In addition, to facilitate the flow of critical information, the  
49 City may establish criteria by which the proposer may provide clarification to a  
50 submitted proposal.  
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52 **B. Affected Jurisdictions**  
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54 Any private entity requesting approval from or submitting a conceptual or  
55 detailed proposal to the City must provide each affected jurisdiction with a copy  
56 of the private entity's request or proposal by certified mail, express delivery, or  
57 hand delivery. Affected jurisdictions that are not Responsible Public Entities  
58 (RPEs) under the proposed qualifying project shall have 60 days from the  
59 receipt of the request or proposal to submit written comments to the City and to  
60 indicate whether the proposed qualifying project is compatible with the (i) local  
61 comprehensive plan, (ii) local infrastructure development plans, or (iii) capital  
62 improvements budget or other government spending plan. Comments received  
63 within the 60-day period shall be given consideration by the City, and no  
64 negative inference shall be drawn from the absence of comment by an affected  
65 jurisdiction.  
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67 **C. Proposal Review Fee**  
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69 The City shall receive an analysis of the proposal from appropriate internal staff  
70 or outside advisors or consultants with relevant experience in determining  
71 whether to enter into an agreement with the private entity. The City may charge  
72 a fee up to \$25,000 (dollars) to the private entity to cover the costs of  
73 processing, reviewing, and evaluating any unsolicited proposal or competing  
74 unsolicited proposal submitted under the PPEA, including a fee up to \$50,000  
75 (dollars) to cover the costs of outside attorneys, consultants, and financial  
76 advisors. Any fee charged for such review of a proposal should be reasonable in  
77 comparison to the level of expertise required to review the proposal and should  
78 not be greater than the direct costs associated with evaluating the proposed  
79 qualifying project. "Direct costs" may include (i) the cost of staff time required  
80 to process, evaluate, review and respond to the proposal and (ii) the out-of-  
81 pocket costs of attorneys, consultants, and financial advisors.  
82

83 The proposal fee may cover all or part of the initial review process. For  
84 example, the City may require a proposal fee in an amount sufficient to cover all  
85 anticipated direct costs associated with evaluating the proposal, or the City may  
86 require a smaller initial processing fee with an additional proposal fee to be  
87 charged should the project proceed beyond the initial review.  
88

89 The City may establish a fee schedule for the cost of the proposal review. The  
90 City shall set forth in the procedures it has established for the implementation of  
91 the PPEA the methodology used to calculate proposal fees. If the cost of

92 reviewing the proposal exceeds the initially established proposal fee, the City  
93 may assess the proposer the additional costs deemed necessary to evaluate the  
94 proposal.  
95

96 For rejected proposals, the City may establish a schedule for refunding any  
97 portion of fees paid in excess of its direct costs associated with evaluating the  
98 proposal. If the cost of reviewing the proposal is less than the initially  
99 established proposal fee, the City may refund to the proposer the excess fee. As  
100 noted in Section IV.A. 1 below, fees should be refunded entirely if the City  
101 decides not to proceed to publication and conceptual-phase review of an  
102 unsolicited proposal.  
103

#### 104 **D. Freedom of Information Act** 105

##### 106 1. General applicability of disclosure provisions. 107

108 Proposal documents submitted by private entities are generally subject to the  
109 Virginia Freedom of Information Act (“FOIA”) except that subdivision 11 of  
110 § 2.2-3705.6 exempts certain documents from public disclosure. FOIA  
111 exemptions, however, are discretionary, and the City may elect to release  
112 some or all of documents except to the extent the documents are:  
113

- 114 a. Trade secrets of the private entity as defined in the Uniform Trade  
115 Secrets Act (§ 59.1-336 et seq.);  
116
- 117 b. Financial records of the private entity that are not generally  
118 available to the public through regulatory disclosure or otherwise,  
119 including but not limited to, balance sheets and financial  
120 statements; or  
121
- 122 c. Other information submitted by a private entity, where if the record  
123 or document were made public prior to the execution of an interim  
124 or comprehensive agreement the financial interest or bargaining  
125 position of the public or private entity would be adversely affected.  
126

127 Additionally, to the extent access to proposal documents submitted by  
128 private entities are compelled or protected from disclosure by a court order,  
129 the City must comply with the provisions of such order.  
130

131 The City may contact the Freedom of Information Act Council (FOIAC)  
132 regarding the applicability of the access provisions of FOIA:  
133

134 **General Assembly Building, 2<sup>nd</sup> Floor**  
135 **910 Capitol Street Richmond, VA 23219**  
136 **E-mail: [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us)**  
137 **Telephone: 804/225-3056**  
138 **Toll-Free: 1-866-448-4100**  
139 **Fax: 804/371-8705**

140  
141 2. Protection from mandatory disclosure for certain documents submitted  
142 by a private entity.  
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144 Before a document of a private entity may be withheld from disclosure, the  
145 private entity must make a written request to the City at the time the  
146 documents are submitted designating with specificity the documents for  
147 which the protection is being sought and a clear statement of the reasons for  
148 invoking the protection with reference to one or more of three classes of  
149 records listed in Section I.D.1.  
150

151 Upon the receipt of a written request for protection of documents, the City  
152 shall determine whether the documents contain (i) trade secrets, (ii) financial  
153 records, or (iii) other information that would adversely affect the financial  
154 interest or bargaining position of the City or private entity in accordance  
155 with Section I.D.1. The City shall make a written determination of the nature  
156 and scope of the protection to be afforded by the City under this subdivision.  
157 If the written determination provides less protection than requested by the  
158 private entity, the private entity should be accorded an opportunity to  
159 withdraw its proposal. Nothing shall prohibit further negotiations of the  
160 documents to be accorded protection from release although what may be  
161 protected must be limited to the categories of records identified in Section  
162 I.D.1.  
163

164 Once a written determination has been made by the City, the documents  
165 afforded protection under this subdivision shall continue to be protected  
166 from disclosure when in the possession of the City or any affected  
167 jurisdiction to which such documents are provided.  
168

169 If a private entity fails to designate trade secrets, financial records, or other  
170 confidential or proprietary information for protection from disclosure, such  
171 information, records or documents shall be subject to disclosure under  
172 FOIA.  
173

174 3. Protection from mandatory disclosure for certain documents produced by  
175 the City.  
176

177 The City may withhold from disclosure memoranda, staff evaluations, or  
178 other records prepared by the City, its staff, outside advisors, or consultants  
179 exclusively for the evaluation and negotiation of proposals where (i) if such  
180 records were made public prior to or after the execution of an interim or a  
181 comprehensive agreement, the financial interest or bargaining position of  
182 the City would be adversely affected, and (ii) the basis for the determination  
183 required in clause (i) is documented in writing by the City .  
184

185 Cost estimates relating to a proposed procurement transaction prepared by or  
186 for the RPE shall not be open to public inspection.  
187

- 188                   4. The City may not withhold from public access:
- 189                   a. procurement records other than those subject to the written determination of  
190                   the City ;
- 191                   b. information concerning the terms and conditions of any interim or  
192                   comprehensive agreement, service contract, lease, partnership, or any  
193                   agreement of any kind entered into by the City and the private entity;
- 194
- 195                   c. information concerning the terms and conditions of any financing  
196                   arrangement that involves the use of any public funds; or
- 197
- 198                   d. information concerning the performance of any private entity  
199                   developing or operating a qualifying transportation facility or a  
200                   qualifying project.
- 201

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

205

206                   **E. Use of Public Funds**

207

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

213

214                   **F. Applicability of Other Laws**

215

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

219

220                   **II. SOLICITED PROPOSALS**

221

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

232

233                   The RFP should specify, but not necessarily be limited to, information and  
234                   documents that must accompany each proposal and the factors that will be used

235 in evaluating the submitted proposals. The RFP should be posted in such public  
236 areas as are normally used for posting of the City's notices, including the City's  
237 website. Notices should also be published in a newspaper or other publications  
238 of general circulation and advertised in *Virginia Business Opportunities* and  
239 posted on the Commonwealth's electronic procurement site. In addition,  
240 solicited proposals should be posted pursuant to Section III.B. The RFP should  
241 also contain or incorporate by reference other applicable terms and conditions,  
242 including any unique capabilities or qualifications that will be required of the  
243 private entities submitting proposals. Pre-proposal conferences may be held as  
244 deemed appropriate by the City.  
245

### 246 **III. UNSOLICITED PROPOSALS**

247  
248 The PPEA permits public entities to receive, evaluate and select for negotiations  
249 unsolicited proposals from private entities to develop or operate a qualifying  
250 project.  
251

252 The City may publicize its needs and may encourage interested parties to submit  
253 unsolicited proposals subject to the terms and conditions of the PPEA. When  
254 such proposals are received without issuance of an RFP, the proposal shall be  
255 treated as an unsolicited proposal. The City may establish suggested timelines  
256 for selecting proposals for the review and selection of unsolicited proposals.  
257

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

- 259  
260 1. Upon receipt of any unsolicited proposal or group of proposals and  
261 payment of any required fee by the proposer or proposers, the City  
262 should determine whether to accept the unsolicited proposal for the  
263 purpose of publication and conceptual-phase consideration. If the City  
264 determines not to accept the proposal and proceed to publication and  
265 conceptual-phase consideration, it should return the proposal, together  
266 with all fees and accompanying documentation, to the proposer.  
267
- 268 2. If the City chooses to accept an unsolicited proposal for publication and  
269 conceptual-phase consideration, it shall post a notice in a public area  
270 regularly used by the City for posting of public notices for a period of  
271 not less than 45 days. The City shall also publish the same notice for a  
272 period of not less than 45 days in one or more newspapers or periodicals  
273 of general circulation in the jurisdiction to notify any parties that may be  
274 interested in submitting competing unsolicited proposals. In addition, the  
275 notice should be advertised in *Virginia Business Opportunities* and on  
276 the Commonwealth's electronic procurement website. The notice shall  
277 state that the City (i) has received an unsolicited proposal under the  
278 PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim  
279 or comprehensive agreement with the proposer based on the proposal,  
280 and (iv) will receive for simultaneous consideration any competing

281 proposals that comply with the procedures adopted by the City and the  
282 PPEA.  
283

284 The notice also shall summarize the proposed qualifying project or projects, and  
285 identify their proposed locations.  
286

287 To ensure that sufficient information is available upon which to base the  
288 development of a serious competing proposal, representatives of the City  
289 familiar with the unsolicited proposal and the guidelines established by the City  
290 shall be made available to respond to inquiries and meet with private entities  
291 that are considering the submission of a competing proposal. The City shall  
292 conduct an analysis of the information pertaining to the proposal included in the  
293 notice to ensure that such information sufficiently encourages competing  
294 proposals. Further, the City shall establish criteria, including key decision points  
295 and approvals to ensure proper consideration of the extent of competition from  
296 available private entities prior to selection.  
297

#### 298 **B. Posting Requirements** 299

- 300 1. Conceptual proposals, whether solicited or unsolicited, shall be posted  
301 by the City or RPE within 10 working days after acceptance of such  
302 proposals on the City's or the RPE's website or by publication, in a  
303 newspaper of general circulation in the area in which the contract is to be  
304 performed. Information posted shall include a summary of the proposals  
305 and the location where copies of the proposals are available for public  
306 inspection. Posting may also be on the Department of General Service's  
307 web-based electronic procurement program commonly known as "eVA,"  
308 in the discretion of the City.  
309
- 310 2. Nothing shall be construed to prohibit the posting of the conceptual  
311 proposals by additional means deemed appropriate by the City so as to  
312 provide maximum notice to the public of the opportunity to inspect the  
313 proposals.  
314
- 315 3. In addition to the posting requirements, at least one copy of the proposals  
316 shall be made available for public inspection. Trade secrets, financial  
317 records, or other records of the private entity excluded from disclosure  
318 under the provisions of subdivision 11 of §40 2.2-3705.6 shall not be  
319 required to be posted, except as otherwise agreed to by the RPE and the  
320 private entity. Any inspection of procurement transaction records shall  
321 be subject to reasonable restrictions to ensure the security and integrity  
322 of the records.  
323

#### 324 **C. Initial Review by the Responsible Public Entity at the Conceptual Stage** 325

- 326 1. Only proposals complying with the requirements of the PPEA that  
327 contain sufficient information for a meaningful evaluation and that are  
328 provided in an appropriate format should be considered by the RPE for

329 further review at the conceptual stage. Formatting suggestions for  
330 proposals at the conceptual stage are found in Section IV.A.  
331

- 332 2. The City should determine at this initial stage of review whether it will  
333 proceed using:  
334
- 335 a. Standard procurement procedures consistent with the VPPA; or  
336
  - 337 b. Guidelines developed by the City that are consistent with  
338 procurement of other than professional services through "competitive  
339 negotiation" as the term is defined in § 2.2-4301 of the Code of  
340 Virginia. The City may proceed using such guidelines only if it  
341 makes a written determination that doing so is likely to be  
342 advantageous to the City and the public based upon either (i) the  
343 probable scope, complexity or priority of need; (ii) the risk sharing  
344 including guaranteed cost or completion guarantees, added value or  
345 debt, or equity investments proposed by the private entity; or (iii) the  
346 increase in funding, dedicated revenue or other economic benefit that  
347 would otherwise not be available.  
348
- 349 3. After reviewing the original proposal and any competing proposals  
350 submitted during the notice period, the City may determine:  
351 (i) not to proceed further with any proposal;  
352 (ii) to proceed to the detailed phase of review with the original  
353 proposal;  
354 (iii) to proceed to the detailed phase with a competing proposal;  
355 (iv) to proceed to the detailed phase with multiple proposals; or  
356 (v) to request modifications or amendments to any proposals.  
357

358 In the event that more than one proposal will be considered in the detailed phase  
359 of review, the RPE should consider whether the unsuccessful proposer should be  
360 reimbursed for costs incurred in the detailed phase of review, and such  
361 reasonable costs may be assessed to the successful proposer in the  
362 comprehensive agreement.  
363

- 364 4. Discussions between City and private entities about the need for  
365 infrastructure improvements shall not limit the ability of the City to later  
366 determine to use standard procurement procedures to meet its  
367 infrastructure needs. The City retains the right to reject any proposal at  
368 any time prior to the execution of an interim or comprehensive  
369 agreement.  
370

#### 371 **IV. PROPOSAL PREPARATION AND SUBMISSION**

##### 372 **A. Format for Submissions at Conceptual Stage**

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

383  
384 1. Qualification and Experience

- 385  
386 a. Identify the legal structure of the firm or consortium of firms making  
387 the proposal. Identify the organizational structure for the project, the  
388 management approach and how each partner and major subcontractor  
389 in the structure fits into the overall team.  
390  
391 b. Describe the experience of the firm or consortium of firms making  
392 the proposal and the key principals involved in the proposed project  
393 including experience with projects of comparable size and  
394 complexity. Describe the length of time in business, business  
395 experience, public sector experience and other engagements of the  
396 firm or consortium of firms. Include the identity of any firms that  
397 will provide design, construction and completion guarantees and  
398 warranties, and a description of such guarantees and warranties.  
399  
400 c. Provide the names, addresses, and telephone numbers of persons  
401 within the firm or consortium of firms who may be contacted for  
402 further information.  
403  
404 d. Provide a current or most recently audited financial statement of the  
405 firm or firms and each partner with an equity interest of twenty  
406 percent or greater.  
407  
408 e. Identify any persons known to the proposer who would be obligated  
409 to disqualify themselves from participation in any transaction arising  
410 from or in connection to the project pursuant to the Virginia State  
411 and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-  
412 3100 et seq.) of Title 2.2.

413  
414 2. Project Characteristics

- 415  
416 a. Provide a description of the project, including the conceptual design.  
417 Describe the proposed project in sufficient detail so that type and  
418 intent of the project, the location, and the communities that may be  
419 affected are clearly identified.  
420  
421 b. Identify and fully describe any work to be performed by the City.

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- 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 City'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.
  - j. List any other assumptions relied on for the project to be successful.
  - k. List any contingencies that must occur for the project to be successful.
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 should include appropriate staffing levels and associated costs. Include 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

- 470 assumptions should be included. Any ongoing operational fees, if  
471 applicable, should also be disclosed as well as any assumptions with  
472 regard to increases in such fees.  
473
- 474 d. Identify the proposed risk factors and methods for dealing with these  
475 factors.  
476
- 477 e. Identify any local, state, or federal resources that the proposer  
478 contemplates requesting for the project. Describe the total  
479 commitment, if any, expected from governmental sources and the  
480 timing of any anticipated commitment. Such disclosure should  
481 include any direct or indirect guarantees or pledges of the City's  
482 credit or revenue.  
483
- 484 f. Identify the amounts and the terms and conditions for any revenue  
485 sources.  
486
- 487 g. Identify any aspect of the project that could disqualify the project  
488 from obtaining tax-exempt financing.  
489

490 4. Project Benefit and Compatibility  
491

- 492 a. Identify who will benefit from the project, how they will benefit, and  
493 how the project will benefit the overall community, region, or state.  
494
- 495 b. Identify any anticipated public support or opposition, as well as any  
496 anticipated government support or opposition, for the project.  
497
- 498 c. Explain the strategy and plans that will be carried out to involve and  
499 inform the general public, business community, and governmental  
500 agencies in areas affected by the project.  
501
- 502 d. Describe the anticipated significant benefits to the community,  
503 region or state, including anticipated benefits to the economic  
504 condition of the City and whether the project is critical to attracting  
505 or maintaining competitive industries and businesses to the City or  
506 the surrounding region.  
507
- 508 e. Describe compatibility with the local comprehensive plan, local  
509 infrastructure development plans, the capital improvements budget,  
510 or other government spending plan.  
511
- 512 f. Provide a statement setting forth participation efforts that are  
513 intended to be undertaken in connection with this project with regard  
514 to the following types of businesses: (i) minority-owned businesses,  
515 (ii) woman-owned businesses, and (iii) small businesses.  
516

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

If the City decides to proceed to the detailed phase of review with one or more proposals, the following information should 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 proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary 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

564 persons known to the proposer who would be obligated to disqualify  
565 themselves from participation in any transaction arising from or in  
566 connection to the project pursuant to the Virginia State and Local  
567 Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of  
568 Title 2.2;

569  
570 11. Additional material and information as the City may reasonably request.  
571

## 572 **V. PROPOSAL EVALUATION AND SELECTION CRITERIA**

573  
574 There are several factors that the City may wish to consider when evaluating and  
575 selecting a proposal under the PPEA. The following are some of the factors that  
576 may be considered by the City in the evaluation and selection of PPEA  
577 proposals.  
578

### 579 **A. Qualifications and Experience**

580  
581 Factors to be considered in either phase of the City's review to determine  
582 whether the proposer possesses the requisite qualifications and experience  
583 include:

- 584 1. Experience with similar projects;
- 585
- 586 2. Demonstration of ability to perform work;
- 587
- 588 3. Leadership structure;
- 589
- 590 4. Project manager's experience;
- 591
- 592 5. Management approach;
- 593
- 594 6. Financial condition; and
- 595
- 596 7. Project ownership.  
597

### 598 **B. Project Characteristics**

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

- 601 1. Project definition;
- 602
- 603 2. Proposed project schedule;
- 604
- 605 3. Operation of the project;
- 606
- 607 4. Technology; technical feasibility;
- 608
- 609

- 610 5. Conformity to laws, regulations, and standards;
- 611
- 612 6. Environmental impacts;
- 613
- 614 7. Condemnation impacts;
- 615
- 616 8. State and local permits; and
- 617
- 618 9. Maintenance of the project.
- 619

620 **C. Project Financing**

621  
622 Factors to be considered in determining whether the proposed project financing  
623 allows adequate access to the necessary capital to finance the project include:  
624

- 625 1. Cost and cost benefit to the City;
- 626
- 627 2. Financing and the impact on the debt burden of the City or appropriating  
628 body;
- 629
- 630 3. Financial plan, including the degree to which the proposer has conducted  
631 due diligence investigation and analysis of the proposed financial plan  
632 and the results of any such inquiries or studies;
- 633
- 634 4. Opportunity costs assessment;
- 635
- 636 5. Estimated cost;
- 637
- 638 6. Life-cycle cost analysis;
- 639
- 640 7. The identity, credit history, past performance of any third party that will  
641 provide financing for the project and the nature and timing of their  
642 commitment, as applicable; and
- 643
- 644 8. Such other items as the City deems appropriate.
- 645

646 In the event that any project is financed through the issuance of obligations that  
647 are deemed to be tax-supported debt of the City, or if financing such a project  
648 may impact the City's debt rating or financial position, the City may select its  
649 own finance team, source, and financing vehicle.  
650

651 **D. Project Benefit and Compatibility**

652  
653 Factors to be considered in determining the proposed project's compatibility  
654 with the appropriate local or regional comprehensive or development plans  
655 include:  
656

- 657 1. Community benefits;
- 658
- 659 2. Community support or opposition, or both;
- 660
- 661 3. Public involvement strategy;
- 662
- 663 4. Compatibility with existing and planned facilities; and
- 664
- 665 5. Compatibility with local, regional, and state economic development
- 666 efforts.
- 667

668 **E. Other Factors**

669  
670 Other factors that may be considered by the City in the evaluation and selection  
671 of PPEA proposals include:

- 672 1. The proposed cost of the qualifying project;
- 673
- 674 2. The general reputation, industry experience, and financial capacity of the
- 675 private entity;
- 676
- 677 3. The proposed design of the qualifying project;
- 678
- 679 4. The eligibility of the project for accelerated documentation, review, and
- 680 selection;
- 681
- 682 5. Local citizen and government comments;
- 683
- 684 6. Benefits to the public, including financial and nonfinancial;
- 685
- 686 7. The private entity's compliance with a minority business enterprise
- 687 participation plan or good faith effort to comply with the goals of such
- 688 plan;
- 689
- 690 8. The private entity's plans to employ local contractors and residents;
- 691
- 692 9. The recommendation of a committee of representatives of members of
- 693 the City and the appropriating body which may be established to provide
- 694 advisory oversight for the project; and
- 695
- 696 10. Other criteria that the City deems appropriate.
- 697

698 **VI. ADDITIONAL REVIEW PROCEDURES**

699  
700 **A. Public Private Partnership Oversight Advisory Committee**

701  
702 The City may establish criteria to trigger establishment of an advisory  
703 committee consisting of representatives of the City, School Board, and others to

704 review the terms of the proposed interim or comprehensive agreement. The  
705 criteria should include, but not be limited to, the scope, total cost and duration of  
706 the proposed project, and whether the project involves or impacts multiple  
707 public entities. Timelines for the work of the committee should be developed  
708 and made available to proposers.

709  
710 **B. Appropriating Body**

711  
712 For any project whose funding will ultimately be appropriated by the City  
713 Council, any interim or comprehensive agreement developed under the PPEA  
714 must first be reviewed by the City Council prior to execution. For example, a  
715 project agreement that is managed by the School Board, but funded by  
716 appropriation of the City Council, must be reviewed by the City Council prior to  
717 execution by the School Board.

718  
719 **VII. INTERIM AND COMPREHENSIVE AGREEMENTS**

720  
721 Prior to developing or operating the qualifying project, the selected private  
722 entity shall enter into a comprehensive agreement with the RPE. Prior to  
723 entering a comprehensive agreement, an interim agreement may be entered into  
724 that permits a private entity to perform compensable activities related to the  
725 project. The RPE may designate a working group to be responsible for  
726 negotiating any interim or comprehensive agreement. Any interim or  
727 comprehensive agreement shall define the rights and obligations of the RPE and  
728 the selected proposer with regard to the project.

729  
730 An Interim Agreement will usually be less detailed than a Comprehensive  
731 Agreement and will leave open items for further negotiations to be included in  
732 the Comprehensive Agreement. An Interim Agreement may be used in  
733 situations where information is needed to further develop the concept of the  
734 project and perhaps even the feasibility of going forward with the qualifying  
735 project. Thus, an Interim Agreement might be appropriate in order to have the  
736 selected private entity do certain architectural and engineering (A/E) drawings  
737 and feasibility studies so that the locality can determine how the final qualifying  
738 project might be developed or even if the project should proceed before entering  
739 into a more detailed and final Comprehensive Agreement.

740  
741 An Interim Agreement may also be used to allow the private entity to start work  
742 on the A/E design and drawings while the remainder of the Comprehensive  
743 Agreement is completed. Therefore, an Interim Agreement should establish a  
744 process and timing for the continued negotiations and completion of a  
745 Comprehensive Agreement. In addition, the Interim Agreement should allow the  
746 City or private entity to terminate the Interim Agreement if matters do not work  
747 out during continued negotiations. This type of clause in the Interim Agreement  
748 would allow for termination of the agreement and provide for payment of the  
749 agreed-upon compensation to the private entity for the scheduled work that the  
750 private entity completed pursuant to the Interim Agreement.

751  
752 **A. Interim Agreement Terms**  
753

754 The scope of an interim agreement may include but is not limited to:  
755

- 756 1. Project planning and development;  
757
- 758 2. Design and engineering;  
759
- 760 3. Environmental analysis and mitigation;  
761
- 762 4. Survey;  
763
- 764 5. Ascertaining the availability of financing for the proposed facility  
765 through financial and revenue analysis;  
766
- 767 6. Establishing a process and timing of the negotiation of the  
768 comprehensive agreement; and  
769
- 770 7. Any other provisions related to any aspect of the development or  
771 operation of a qualifying project that the parties may deem appropriate  
772 prior to the execution of a comprehensive agreement.  
773

774 **B. Comprehensive Agreement Terms**  
775

776 The scope of the comprehensive agreement shall include but not be limited to:  
777

- 778 1. The delivery of maintenance, performance and payment bonds or letters  
779 of credit in connection with any acquisition, design, construction,  
780 improvement, renovation, expansion, equipping, maintenance, or  
781 operation of the qualifying project;  
782
- 783 2. The review of plans and specifications for the qualifying project by the  
784 City and the RPE;  
785
- 786 3. The rights of the City and the RPE to inspect the qualifying project to  
787 ensure compliance with the comprehensive agreement;  
788
- 789 4. The maintenance of a policy or policies of liability insurance or self-  
790 insurance reasonably sufficient to insure coverage of the project and the  
791 tort liability to the public and employees and to enable the continued  
792 operation of the qualifying project;  
793
- 794 5. The monitoring of the practices of the private entity by the City and the  
795 RPE to ensure proper maintenance;  
796
- 797 6. The terms under which the private entity will reimburse the City and the  
798 RPE for services provided;

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7. The policy and procedures that will govern the rights and responsibilities of the City and the RPE 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 RPE and the transfer or purchase of property or other interests of the private entity by the City and the RPE;
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 for the qualifying project;
  - a. A copy of any service contract shall be filed with the City and the RPE.
  - 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 and the RPE 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 and the RPE 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 and the RPE 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.

847 The comprehensive agreement may provide for the development or operation of  
848 phases or segments of a qualifying project.  
849

850 **C. Public hearing during proposal review process; notice and posting**  
851 **requirements.**  
852

- 853 1. At some point during the proposal review process, but at least 30 days  
854 prior to entering into an interim or comprehensive agreement, the City  
855 shall hold a public hearing on the proposals that have been received.  
856
- 857 2. Once the negotiation phase for the development of an interim or a  
858 comprehensive agreement is complete and a decision to award has been  
859 made by the RPE, the RPE shall post the proposed agreement on the  
860 RPE's or City's website or by publication, in a newspaper of general  
861 circulation in the area in which the contract work is to be performed, of a  
862 summary of the proposals and the location where copies of the proposals  
863 are available for public inspection. Posting may also be on the  
864 Department of General Service's web-based electronic procurement  
865 program commonly known as "eVA," in the discretion of the City.  
866
  - 867 a. At least one copy of the proposals shall be made available for public  
868 inspection. Trade secrets, financial records, or other records of the  
869 private entity excluded from disclosure under the provisions of  
870 subdivision 11 of § 2.2-3705.6 shall not be required to be posted,  
871 except as otherwise agreed to by the RPE and the private entity.  
872
  - 873 b. Any studies and analyses considered by the RPE in its review of a  
874 proposal shall be disclosed to City Council at some point prior to the  
875 execution of an interim or comprehensive agreement.  
876
- 877 3. Once an interim agreement or a comprehensive agreement has been  
878 entered into, the RPE shall make procurement records available for  
879 public inspection, upon request.  
880
  - 881 a. Such procurement records shall include documents protected from  
882 disclosure during the negotiation phase on the basis that the release  
883 of such documents would have adverse affect on the financial interest  
884 or bargaining position of the RPE or private entity in accordance  
885 with Section II.D.3.  
886
  - 887 b. Such procurement records shall not include (i) trade secrets of the  
888 private entity as defined in the Uniform Trade Secrets Act (§ 59.1-  
889 336 et seq.) or (ii) financial records, including balance sheets or  
890 financial statements of the private entity that are not generally  
891 available to the public through regulatory disclosure or otherwise.  
892

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

- 895  
896 4. The RPE shall electronically file a copy of all interim and  
897 comprehensive agreement and any supporting documents with the  
898 Auditor of Public Accounts. Such agreements and supporting documents  
899 should be provided within 30 days of the execution of the interim or  
900 comprehensive agreement.  
901

## 902 **VIII. GOVERNING PROVISIONS**

903  
904 In the event of any conflict between these guidelines and the PPEA, the terms of  
905 the PPEA shall control.  
906

## 907 **IX. TERMS AND DEFINITIONS**

908  
909 **"Affected jurisdiction"** means any county, city, or town in which all or a  
910 portion of a qualifying project is located.  
911

912 **"Appropriating body"** means the body responsible for appropriating or  
913 authorizing funding to pay for a qualifying project.  
914

915 **"Comprehensive agreement"** means the comprehensive agreement between  
916 the private entity and the responsible public entity that is required prior to the  
917 development or operation of a qualifying project.  
918

919 **"Conceptual stage"** means the initial phase of project evaluation when the  
920 public entity makes a determination whether the proposed project serves a  
921 public purpose, meets the criteria for a qualifying project, assesses the  
922 qualifications and experience of a private entity proposer, reviews the project for  
923 financial feasibility, and warrants further pursuit.  
924

925 **"Cost-benefit analysis"** means an analysis that weighs expected costs against  
926 expected benefits in order to choose the best option. For example, a city  
927 manager may compare the costs and benefits of constructing a new office  
928 building to those of renovating and maintaining an existing structure in order to  
929 select the most financially advantageous option.  
930

931 **"Detailed stage"** means the second phase of project evaluation where the public  
932 entity has completed the conceptual stage and accepted the proposal and may  
933 request additional information regarding a proposed project prior to entering into  
934 competitive negotiations with one or more private entities to develop an interim  
935 or comprehensive agreement.  
936

937 **"Develop"** or **"development"** means to plan, design, develop, finance, lease,  
938 acquire, install, construct, or expand.  
939

940 **"Interim agreement"** means an agreement between a private entity and a  
941 responsible public entity that provides for phasing of the development or  
942 operation, or both, of a qualifying project. Such phases may include, but are not

943 limited to, design, planning, engineering, environmental analysis and mitigation,  
944 financial and revenue analysis, or any other phase of the project that constitutes  
945 activity on any part of the qualifying project.  
946

947 **"Lease payment"** means any form of payment, including a land lease, by a  
948 public entity to the private entity for the use of a qualifying project.  
949

950 **"Lifecycle cost analysis"** means an analysis that calculates cost of an asset over  
951 its entire life span and includes the cost of planning, constructing, operating,  
952 maintaining, replacing, and when applicable, salvaging the asset. Although one  
953 proposal may have a lower initial construction cost, it may not have the lowest  
954 lifecycle cost once maintenance, replacement, and salvage value is considered.  
955

956 **"Material default"** means any default by the private entity in the performance  
957 of its duties that jeopardizes adequate service to the public from a qualifying  
958 project.  
959

960 **"Operate"** means to finance, maintain, improve, equip, modify, repair, or  
961 operate.  
962

963 **"Opportunity cost"** means the cost of passing up another choice when making  
964 a decision or the increase in costs due to delays in making a decision.  
965

966 **"Private entity"** means any natural person, corporation, general partnership,  
967 limited liability company, limited partnership, joint venture, business trust,  
968 public benefit corporation, nonprofit entity, or other business entity.  
969

970 **"Public entity"** means the Commonwealth and any agency or authority thereof,  
971 any county, city or town and any other political subdivision of the  
972 Commonwealth, any public body politic and corporate, or any regional entity  
973 that serves a public purpose.  
974

975 **"Qualifying project"** means (i) any education facility, including, but not  
976 limited to a school building, any functionally related and subordinate facility  
977 and land of a school building (including any stadium or other facility primarily  
978 used for school events), and any depreciable property provided for use in a  
979 school facility that is operated as part of the public school system or as an  
980 institution of higher education; (ii) any building or facility that meets a public  
981 purpose and is developed or operated by or for any public entity; (iii) any  
982 improvements, together with equipment, necessary to enhance public safety and  
983 security of buildings to be principally used by a public entity; (iv) utility and  
984 telecommunications and other communications infrastructure; (v) a recreational  
985 facility; (vi) technology infrastructure and services, including, but not limited to,  
986 telecommunications, automated data processing, word processing and  
987 management information systems, and related information, equipment, goods  
988 and services; (vii) any technology, equipment, or infrastructure designed to  
989 deploy wireless broadband services to schools, businesses, or residential areas;  
990 (viii) any services designed to increase the productivity or efficiency through the

991 use of technology or other means; (ix) any improvements necessary or desirable  
992 to any unimproved locally- or state-owned real estate; or (x) any solid waste  
993 management facility that produces electric energy derived from solid waste.  
994

995 **"Responsible public entity"** means a public entity that has the power to  
996 develop or operate the applicable qualifying project.  
997

998 **"Revenues"** means all revenues, income, earnings, user fees, lease payments, or  
999 other service payments arising out of or in connection with supporting the  
1000 development or operation of a qualifying project, including without limitation,  
1001 money received as grants or otherwise from the United States of America, from  
1002 any public entity, or from any agency or instrumentality of the foregoing in aid  
1003 of such facility.  
1004

1005 **"Service contract"** means a contract entered into between a public entity and  
1006 the private entity pursuant to § 56-575.5.  
1007

1008 **"Service payments"** means payments to the private entity of a qualifying  
1009 project pursuant to a service contract.  
1010

1011 **"State"** means the Commonwealth of Virginia.  
1012

1013 **"User fees"** mean the rates, fees, or other charges imposed by the private entity  
1014 of a qualifying project for use of all or a portion of such qualifying project  
1015 pursuant to the comprehensive agreement pursuant to § 56-575.9.